

THE GENERAL STATUTES OF NORTH CAROLINA

1969 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
D. W. PARRISH, JR., S. G. ALRICH, W. M. WILLSON
AND SYLVIA FAULKNER

Volume 3B

Place in Pocket of Corresponding 1964 Replacement Volume of
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Preface

This Cumulative Supplement to Replacement Volume 3B contains the general laws of a permanent nature enacted at the 1963, 1965, 1966, 1967 and 1969 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Preface

The General Statutes of North Carolina, as amended, are published in this form for the convenience of the public. The text is taken from the original statutes, and the amendments are inserted in the appropriate places. The text is printed in a plain, readable type, and the amendments are printed in a smaller type. The text is arranged in columns, and the amendments are arranged in rows. The text is arranged in columns, and the amendments are arranged in rows.



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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1963, 1965, 1966, 1967 and 1969 Sessions of the General Assembly affecting Chapters 117 through 136 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports volumes 260 (p. 133)-275 (p. 341).
- North Carolina Court of Appeals Reports volumes 1-5 (p. 227).
- Federal Reporter 2nd Series volumes 317-410 (p. 448).
- Federal Supplement volumes 217-298 (p. 1200).
- United States Reports volumes 373-394 (p. 575).
- Supreme Court Reporter volumes 83 (p. 1560)-89 (p. 2151).
- North Carolina Law Review volumes 41 (p. 665)-47 (p. 731).
- Wake Forest Intramural Law Review volumes 2-5.

The General Statutes of North Carolina 1969 Cumulative Supplement

VOLUME 3B

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ARTICLE 1.

Rural Electrification Authority.

§ 117-1. Rural Electrification Authority created; appointment; terms of members.

Cited in State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N. C. 250, 166 S.E.2d 663 (1969).

ARTICLE 2.

Electric Membership Corporations.

§ 117-10.1. Municipal franchises.—An electric membership corporation shall be eligible to receive a franchise pursuant to G.S. 160-2 (6) from any city or town:

- (1) In which such electric membership corporation is on April 20, 1965 furnishing electric service at retail to a majority of the electric meters; or
- (2) To which such electric membership corporation is on April 20, 1965 furnishing the entire supply of electricity at wholesale; or
- (3) Which is newly incorporated subsequent to April 20, 1965, and in which on the effective date of such incorporation the electric membership corporation is furnishing electric service at retail to a majority of the meters. (1965, c. 287, s. 9.)

§ 117-10.2. Restriction on municipal service.—No electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160-511, G.S. 160-512, and G.S. 160-513; provided, that an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing. (1965, c. 287, s. 10.)

§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.—The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the Secretary of State, who shall forthwith prepare a certified copy or copies thereof and forward one to the register of deeds in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7; 1967, c. 823, s. 32.)

Cross Reference.—See Editor's note to § 53-5. effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the third sentence.

Editor's Note. — The 1967 amendment,

effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the third sentence.

§ 117-13. Board of directors; compensation; president and secretary.—Each corporation formed hereunder shall have a board of directors and the powers of a corporation shall be vested in and exercised by a majority of the directors in office. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote, but if the bylaws so provide the directors may be elected on a staggered term basis: Provided, that the total number of directors on a board shall be so divided that not less than one third of them, or as nearly thereto as their division for that purpose will permit, shall be elected annually, and no term shall be longer than for three years; and provided further that, except as may be necessary in inaugurating such a plan, all directors shall be elected for terms of equal duration. The directors must be members and shall be entitled to receive for their services only such compensation as is provided in the bylaws: Provided, that such compensation shall not exceed thirty dollars (\$30.00) for each day of their attendance at meetings for which their attendance has been duly authorized. The board shall elect annually from its own number a president and a secretary. (1935, c. 291, s. 8; 1959, c. 387, s. 1; 1969, c. 760.)

Editor's Note.—

00)" in the proviso near the end of the section.

The 1969 amendment substituted "thirty dollars (\$30.00)" for "twenty dollars (\$20.-

§ 117-16.1. Discrimination prohibited. — No electric membership corporation shall, as to rates or services, make or grant any unreasonable preference or advantage to any member or subject any member to any unreasonable prejudice or disadvantage. No electric membership corporation shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. No electric membership corporation shall give, pay, or receive any rebate or bonus, directly or indirectly, or mislead or deceive its members in any manner as to rates charged for the services of such electric membership corporation. (1965, c. 287, s. 11.)

§ 117-19. Taxes and assessments.—(a) From and after April 20, 1965, no electric membership corporation heretofore or hereafter organized, reorganized, or domesticated under the provisions of this chapter shall be a public agency; nor shall any such corporation be, or have the rights of, a political subdivision of the State.

(b) With respect to its properties owned and revenues received on and after January 1, 1967, each electric membership corporation operating within the State shall be subject to, and shall pay taxes and assessments under, all laws rela-

tive to State, county, municipal and other local taxes and assessments applicable to the electric light and power companies in this State, except income tax.

(c) Each electric membership corporation operating in this State shall, on all of its properties located within any incorporated city or town, pay in lieu of taxes to such cities and towns and to the counties in which such cities and towns are located, amounts equal for 1965 to fifty per cent (50%), and equal for 1966 to one hundred per cent (100%), of the ad valorem property taxes that would be paid on such properties if such properties were owned by persons fully subject to such taxes.

(d) For the privilege of engaging in business in one or more incorporated cities or towns for the period beginning May 1, 1965, and ending December 31, 1966, or any part of such period, an electric membership corporation shall pay to the State an amount equal to six per cent (6%) of its gross receipts received within such period from the business of furnishing electricity to or within all such cities and towns, less, however, six per cent (6%) of such amount as such electric membership corporation has paid with respect to such sales to any public utility which pays a six per cent (6%) franchise tax to the State on its wholesale sales of electricity to such electric membership corporation. The reporting, payment, and collection provisions of G.S. 105-116 shall apply to the levy herein made. The State shall remit to such cities and towns the same proportion of such payments, and in the same manner, as is provided in G.S. 105-116 with respect to taxes paid by electric light and power companies.

(e) Except as provided in subsections (c) and (d) of this section, no electric membership corporation shall be subject during the years 1965 and 1966 to any tax levied by chapter 105 of the General Statutes except those taxes to which it was subject on December 31, 1964. (1935, c. 291, s. 14; 1965, c. 287, s. 12.)

Editor's Note. — The 1965 amendment rewrote the section, which formerly consisted of one paragraph declaring an electric membership corporation to be a public agency, with the rights of a political subdivision.

§ 117-20. Encumbrance, sale, etc., of property.—No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes of at least a majority of its members, and
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow monies from any source and in such amounts as the board may from time to time determine and (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor. (1935, c. 291, s. 15; 1965, c. 287, s. 13; 1969, c. 670, s. 1.)

Editor's Note. — The 1965 amendment rewrote the language appearing in parentheses in the first paragraph. The 1969 amendment added the last paragraph.

§ 117-21. Issuance of bonds.—A corporation formed hereunder shall have power and is hereby authorized, from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or

registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms or redemption, not exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this article shall possess all of the qualities of negotiable instruments. (1935, c. 291, s. 16; 1969, c. 670, s. 2.)

Editor's Note. — The 1969 amendment "annum, payable semiannually" following deleted "not exceeding six per centum per "rate or rates" in the second sentence.

§ 117-24. **Dissolution.**—Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of" (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years. (1935, c. 291, s. 19; 1965, c. 287, s. 14.)

Editor's Note.—Prior to the 1965 amendment, the last sentence in this section provided that the remaining assets should pass to and become the property of the State.

Quoted in *NLRB v. Randolph Elec. Membership Corp.*, 343 F.2d 60 (4th Cir. 1965).

§ 117-27: Repealed by Session Laws 1965, c. 287, s. 15.

ARTICLE 4.

Telephone Service and Telephone Membership Corporations.

§ 117-30. **Telephone membership corporations.** — In the event it is ascertained by the Rural Electrification Authority that the community or communities referred to in the foregoing section are in need of telephone service and

that there is a sufficient number of persons to be served to justify such services, and the telephone company serving in the area in which the community or communities are located is unwilling to provide such service, a telephone membership corporation may be organized by such community or communities in the same manner that electric membership corporations may be formed under article two of this chapter, and all of the provisions of said article shall be applicable to the formation of telephone membership corporations and such corporations shall have all the authority, powers and duties of such a corporation when formed under the provisions of said article; except that the provisions of §§ 117-8, 117-9, 117-10.1, 117-10.2, 117-16.1, 117-19 and 117-24 shall not be applicable to the organization of a telephone membership corporation, and except that such corporation so formed shall have no authority to engage in any business except the telephone business necessary to serving the community or communities prescribed in the application: Provided, that the references in said article to "power lines" or "energy" as to such telephone membership corporations shall be construed to mean telephone lines and telephone service. Provided further, that nothing herein shall be construed to authorize any telephone membership corporation organized hereunder to duplicate any line or lines, systems or other means by which adequate telephone service is being furnished; or to build or to construct a telephone line, or telephone lines, or telephone systems, or otherwise to provide facilities or means of furnishing telephone service to any person, community, town or city then being adequately served by a telephone company, corporation or system; or to provide telephone service in an unserved area while any telephone company, corporation or system is acting in good faith and with reasonable diligence in arranging to provide adequate telephone service to such person, community, town or city. (1945, c. 853, s. 2; 1965, c. 345, s. 1.)

Editor's Note. — The 1965 amendment "§§ 117-8 and 117-9" near the middle of substituted "§§ 117-8, 117-9, 117-10.1, the section. 117-10.2, 117-16.1, 117-19 and 117-24" for

§ 117-33. Declared public agency of State; taxes and assessments. —A telephone membership corporation heretofore or hereafter organized under this article shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said telephone membership corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said telephone membership corporation and is used for the purposes for which the corporation was formed. (1965, c. 345, s. 2.)

§ 117-34. Dissolution.—Any telephone membership corporation created under this article may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of" (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and

the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1965, c. 345, s. 2.)

§ 117-35. **Article complete in itself and controlling.**—This article 4 is complete in itself and shall be controlling. The provisions of any other law, general, special, or local except as provided in this article, shall not apply to a telephone membership corporation formed under this article. (1965, c. 345, s. 2.)

Chapter 118.

Firemen's Relief Fund.

Article 1.

Fund Derived from Fire Insurance Companies.

Sec.

118-10. Fire departments to be members of State Firemen's Association.

Sec.

118-5. Commissioner of Insurance to pay fund to treasurer.

ARTICLE 1.

Fund Derived from Fire Insurance Companies.

§ 118-1. **Fire insurance companies to report premiums collected.**

Local Supplemental Firemen's Retirement Funds.—Forsyth: 1969, c. 418; city of Burlington: 1969, c. 321; city of Charlotte: 1965, c. 210, amending 1947, c. 837; city of Clinton: 1969, c. 177; city of Fayetteville: 1969, c. 351; city of Greenville: 1967, c. 570; city of Henderson: 1969, c. 374, amending 1959, c. 810; city of New Bern: 1969, c. 704; city of Newton: 1969,

c. 363; city of Raleigh: 1969, c. 421; city of Reidsville: 1969, c. 412; city of Roanoke Rapids: 1969, c. 1072, amending 1969, c. 481; city of Rocky Mount: 1969, c. 434; city of Shelby: 1969, cc. 496, 552; city of Wilson: 1969, c. 138; town of Black Mountain: 1965, c. 672; town of Elkin: 1969, c. 169; town of Mount Airy: 1967, c. 302, s. 9; town of Wadesboro: 1967, c. 596.

§ 118-10. **Fire departments to be members of State Firemen's Association.**—For the purpose of supervision and as a guaranty that provisions of this article shall be honestly administered in a businesslike manner, it is provided that every department enjoying the benefits of this law shall be a member of the North Carolina State Firemen's Association and comply with its constitution and bylaws. If the fire department of any city, town or village shall fail to comply with the constitution and bylaws of said Association, said city, town or village shall forfeit its right to the next annual payment due from the funds mentioned in this article, and the Commissioner of Insurance shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 9; 1919, c. 180; C. S., s. 6072; 1925, c. 41; c. 309, s. 2; 1965, c. 624.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner."

The 1965 amendment deleted all provisions requiring departments to send delegates to meetings of the Association.

ARTICLE 3.

North Carolina Firemen's Pension Fund.

§ 118-20. **Secretary.**—There is hereby created an office to be known as secretary of the North Carolina Firemen's Pension Fund. He shall be named by the board and shall serve at its pleasure. The secretary shall be subject to the provisions of the State Personnel Act. The secretary shall be bonded in such amount as may be determined by the board, and he shall promptly transmit to the State Treasurer all moneys collected by him, which said moneys shall be deposited by the State Treasurer in said fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 359.)

Editor's Note. — The 1969 amendment rewrote the third sentence, which formerly provided for a maximum salary of eight thousand dollars to be fixed by the board.

§ 118-32. **Exemption of pensions from attachment, etc.; rights non-assignable.**—The pensions herein provided shall not be subject to attachment, garnishments or judgments against the fireman entitled to same, nor shall any rights in said fund or pensions or benefits therefrom be assignable nor shall the pensions be subject to any State or municipal tax. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 486.)

Editor's Note. — The 1969 amendment, effective as to all taxable years beginning on or after Jan. 1, 1969, added, at the end of the section, "nor shall the pensions be subject to any State or municipal tax."

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

Sec.

119-16.2. Application for license.

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-16.1. **"Kerosene" defined.**

Cited in *Stegall v. Catawba Oil Co.*, 260 N.C. 459, 133 S.E.2d 138 (1963).

§ 119-16.2. **Application for license.**—Any person, firm or corporation having in his possession kerosene on which the inspection fee has not been paid, and who is not required to be licensed under the provisions of G.S. 105-433, shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Commissioner of Revenue on a form prescribed by the Commissioner setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Commissioner of Revenue may require. Each distributor shall at the same time file a bond in such amount, not exceeding twenty thousand dollars (\$20,000.00) in such form and with such surety or sureties as may be required by the Commissioner of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for. Upon approval of the application and bond, the Commissioner of Revenue shall issue to the distributor a non-

assignable license with a duplicate copy of each place of business of said distributor in this State, a copy of which shall be displayed conspicuously at each such place of business and shall continue in force until surrendered or cancelled. No distributor shall sell, offer for sale, or use any kerosene within this State, until such license has been issued. Any distributor failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00), nor more than five thousand dollars (\$5,000.00), or imprisoned for not more than 24 months or both. (1967, c. 1110, s. 12.)

Editor's Note.—Section 18, c. 1110, Session Laws 1967, makes this section effective July 1, 1967.

Section 16, c. 1110, Session Laws 1967,

provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

§ 119-18. Inspection fee; allotments for administration expenses.—For the purpose of defraying the expenses of enforcing the provisions of this article there shall be paid to the Commissioner of Revenue a charge of one fourth of one cent per gallon upon all kerosene, gasoline, and other products of petroleum used as motor fuel. The inspection tax shall be due and payable at the same time that the gasoline road tax is due and payable under the provisions of §§ 105-434 to 105-436, and payment shall be made concurrently with payment of said gasoline road tax, unless the Commissioner of Revenue shall by rule and regulation prescribe other methods for the collection of such tax. There shall, from time to time, be allotted by the Budget Bureau, from the inspection fees collected under authority of the inspection laws of this State, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

No county, city, or town shall impose any inspection charge tax, or fee, in the nature of the charge prescribed by this section, upon kerosene, gasoline and other products of petroleum used as motor fuel. Distributors of kerosene licensed under G.S. 119-16.2 shall file reports as required by the Commissioner of Revenue, by not later than the twentieth of each month, and remit to the Commissioner of Revenue one quarter of a cent ($\frac{1}{4}$ of 1¢) inspection fee per gallon on all kerosene received during the preceding month. (1917, c. 166, s. 4; C. S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5; 1967, c. 1110, s. 12.)

Cross Reference.—For provision that a statutory reference to the "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

Editor's Note. — The 1967 amendment, effective July 1, 1967, added the second sentence of the second paragraph.

Section 16, c. 1110, Session Laws 1967, provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

§ 119-19. Failure to report or pay tax; cancellation of license.—If any person shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the Commissioner of Revenue may forthwith cancel the license of such person issued under § 105-433 or § 119-16.2, and notify such person in writing of such cancellation by registered mail to the last known address of such person appearing in the files of the Commissioner of Revenue. In the event that the license of any person shall be canceled by the Commissioner of Revenue as hereinbefore provided in this section, and in the event such person shall have paid to the State of North Carolina all the taxes due and payable by him under this article, together with any, and all penalties accruing under any of the provisions of this article, then the Commissioner of Revenue shall cancel and surrender the bond theretofore filed by said person under § 105-433 or § 119-16.2. (1933, c. 544, s. 10; 1967, c. 1110, s. 12.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, added the references to § 119-16.2 in the first sentence and at the end of the section.

Section 16, c. 1110, Session Laws 1967, provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

§ 119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; re-naming, etc., of gasoline.—In order to more fully carry out the provisions of this article there is hereby created a Gasoline and Oil Inspection Board of five members, to be composed of the Commissioner of Agriculture, the Director of the Gasoline and Oil Inspection Division, and three members to be appointed by the Governor, who shall serve at his will. The Commissioner of Agriculture and the Director of the Gasoline and Oil Inspection Division shall serve without additional compensation. Other members of the Board shall each receive the amount provided by G.S. 138-5 for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents a mile for the distance to and from Raleigh by the usual direct route for each meeting of the Board which he attends. These expenses shall be paid from the Gasoline and Oil Inspection Fund created by this article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided, however, that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State; and provided further, that if the Gasoline and Oil Inspection Board should promulgate any regulation which requires that gasoline be labeled, named or branded at the time of its first sale in the State, that such regulation shall provide in addition that any subsequent owner may rename, rebrand, or relabel such gasoline if such subsequent owner first files with the Board a notice of intention to do so, said notice to contain information showing the original brand, name, label, the company or person from whom the gasoline has been or is to be purchased, the minimum specifications registered by the seller, the brand, name, or label that is to be given such gasoline and the minimum specifications of such gasoline as filed with the Board; provided, further, that no labeling, naming or branding of gasoline which may be required by the Gasoline and Oil Inspection Board under the provisions of this article, shall be construed as permitting gasoline to become the subject of fair trade contracts, as provided in G.S. 66-52. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this State any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167; 1961, c. 961; 1969, c. 445, s. 2.)

Editor's Note.—

The 1969 amendment substituted

"amount provided by G.S. 138-5" for "sum of ten dollars" in the third sentence.

§ 119-34. Responsibility of retailers for quality of products.

Where a person is not a retail dealer, this section has no application. *Stegall v. Cat-*

awba Oil Co., 260 N.C. 459, 133 S.E.2d 138 (1963).

§ 119-41. Persons engaged in transporting are subject to inspection laws.—(a) The owner or operator of any motor vehicle using the highways of this State or the owner or operator of any boat using the waters of this State

transporting into, out of or between points in this State any gasoline or liquid motor fuel taxable in this State and/or any liquid petroleum product that is or may hereafter be made subject to inspection laws of this State shall make application to the Commissioner of Agriculture on forms to be provided by him for a liquid fuel carrier's permit. Upon receipt of said application, together with a signed agreement to comply with the provisions of the act and/or acts relating to the transportation of petroleum products subject to the motor fuel tax and/or inspection laws, the Commissioner of Agriculture shall, without any charge therefor, issue a numbered liquid fuel carrier's permit to the owner or operator of each motor vehicle or boat intended to be used in such transportation. Said numbered liquid fuel carrier's permit shall show the motor number and license number of the motor vehicle and number or name of boat, and shall be prominently displayed on the motor vehicle or boat at all times.

(b) This section shall not be construed to include the carrying of motor fuel in the supply tank of a vehicle when said supply tank is regularly connected with the carburetor of the engine of the vehicle, if said vehicle is operated by a franchise carrier engaged solely in the transportation of passengers to, from and between points in North Carolina, or if said supply tank has a capacity of one hundred gallons or less.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars (\$25.00) for each offense. (1937, c. 425, s. 24; 1939, c. 276, s. 2; 1949, c. 1167; 1951, c. 370; 1969, c. 1241.)

Editor's Note.—

The 1969 amendment rewrote this section.

§ 119-43. Display required on containers used in making deliveries.

And is negligence per se.—

Violation of a statute relating to the storage, handling and distribution of gas-

oline is negligence per se. *Byers v. Standard Concrete Prods. Co.*, 268 N.C. 518, 151 S.E.2d 38 (1966).

ARTICLE 4.

Liquefied Petroleum Gases.

§ 119-49. Minimum standards adopted; power of Board of Agriculture to make changes or additions; regulation by political subdivisions.

—The standards as set forth in Pamphlet No. 58 of the National Fire Protection Association entitled, THE STORAGE AND HANDLING OF LIQUEFIED PETROLEUM GASES dated 1969 and Pamphlet No. 54 of the National Fire Protection Association entitled, INSTALLATION OF GAS APPLIANCES AND GAS PIPING dated 1969 and the rules and regulations promulgated by the North Carolina State Board of Agriculture are hereby adopted as if set forth herein, as safety standards for the design, construction, location, installation and operation of equipment and facilities used in handling, storing, and distribution of liquefied petroleum gas, subject, always, to the power and authority of the North Carolina State Board of Agriculture to adopt, reject, or to add to any provisions set forth in said pamphlets as above entitled after a public hearing held upon fifteen (15) days' notice. After adoption by the Board of Agriculture of such provision or provisions as it may consider necessary in furtherance of the purposes of this article, such provision or provisions shall become a part of this safety code to the same extent as if written in this article.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas, which code shall conform with the code adopted by the State Board of Agriculture, and the inspection service rendered by such municipality or political subdivision shall conform to the

requirements of the inspection service rendered by the State Board of Agriculture in the enforcement of this article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671; 1967, c. 1231; 1969, c. 1133.)

Editor's Note.—

The 1967 amendment substituted "1965" for "May, 1961," and substituted "1964" for "June, 1959," near the beginning of the section.

The 1969 amendment, effective July 15, 1969, substituted "1969" for "1965" and for "1964" near the beginning of the section.

**Chapter 120.
General Assembly.**

Article 1.

Apportionment of Members; Compensation and Allowances.

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- 120-21, 120-22. [Repealed.]

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- 120-30.1 to 120-30.9. [Repealed.]

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- 120-30.15. [Repealed.]

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- 120-30.16. Co-operation with Commission.
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- 120-31. Legislative Services Commission organization.
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- 120-35. Payments for expenses.
- 120-36. Legislative Services Officer of the General Assembly.
- 120-36.1. [Repealed.]

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- 120-37. Elected officers—staff.
- 120-38, 120-39. [Repealed.]

Article 11.

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- 120-56. Legislative Intern Program Council created.
- 120-57. Legislative Intern Program Council to promulgate a plan for the use of legislative interns.

ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-1. **Senators.**—For the purpose of nominating and electing members of the Senate in 1966 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts as follows:

District 1 shall consist of Bertie, Camden, Chowan, Currituck, Gates, Hertford, Northampton, Pasquotank, Perquimans, and Washington counties and shall elect two Senators.

District 2 shall consist of Beaufort, Dare, Hyde, Martin, and Tyrrell counties and shall elect one Senator.

District 3 shall consist of Carteret, Craven, and Pamlico counties and shall elect one Senator.

District 4 shall consist of Edgecombe, Halifax, Pitt, and Warren counties and shall elect two Senators.

District 5 shall consist of Greene, Jones, and Lenoir counties and shall elect one Senator.

District 6 shall consist of Onslow County and shall elect one Senator.

District 7 shall consist of Franklin, Granville, and Vance counties and shall elect one Senator.

District 8 shall consist of Johnston, Nash, and Wilson counties and shall elect two Senators.

District 9 shall consist of Wayne County and shall elect one Senator.

District 10 shall consist of Duplin, New Hanover, Pender, and Sampson counties and shall elect two Senators.

District 11 shall consist of Durham, Orange and Person counties and shall elect two Senators.

District 12 shall consist of Wake County and shall elect two Senators.

District 13 shall consist of Chatham, Harnett, and Lee counties and shall elect one Senator.

District 14 shall consist of Cumberland and Hoke counties and shall elect two Senators.

District 15 shall consist of Bladen, Brunswick, and Columbus counties and shall elect one Senator.

District 16 shall consist of Caswell and Rockingham counties and shall elect one Senator.

District 17 shall consist of Alamance County and shall elect one Senator.

District 18 shall consist of Guilford and Randolph counties and shall elect three Senators.

District 19 shall consist of Davidson, Montgomery, Moore, Richmond, and Scotland counties and shall elect two Senators.

District 20 shall consist of Robeson County and shall elect one Senator.

District 21 shall consist of Alleghany, Ashe, Stokes, and Surry counties and shall elect one Senator.

District 22 shall consist of Forsyth County and shall elect two Senators.

District 23 shall consist of Rowan County and shall elect one Senator.

District 24 shall consist of Anson, Cabarrus, Stanly, and Union counties and shall elect two Senators.

District 25 shall consist of Davie, Watauga, Wilkes, and Yadkin counties and shall elect one Senator.

District 26 shall consist of Alexander, Catawba, Iredell, and Lincoln counties and shall elect two Senators.

District 27 shall consist of Mecklenburg County and shall elect three Senators.

District 28 shall consist of Burke and Caldwell counties and shall elect one Senator.

District 29 shall consist of Cleveland and Gaston counties and shall elect two Senators.

District 30 shall consist of Avery, McDowell, and Rutherford counties and shall elect one Senator.

District 31 shall consist of Buncombe, Madison, Mitchell, and Yancey counties and shall elect two Senators.

District 32 shall consist of Haywood, Henderson, and Polk counties and shall elect one Senator.

District 33 shall consist of Cherokee, Clay, Graham, Jackson, Macon, Swain,

and Transylvania counties and shall elect one Senator. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C. S., s. 6087; 1921, c. 161; 1941, c. 225; 1963, Ex. Sess., c. 1; 1966, Ex. Sess., c. 1, s. 1.)

Editor's Note.—

The 1963 amendment rewrote this section.

The 1966 amendment again rewrote this section. Section 3 of the 1966 act provided that § 120-1 as it read immediately prior to the ratification of the 1966 act should remain in force until November 7, 1966, for the sole purpose of governing the filling of

vacancies in the membership of the General Assembly elected in 1964.

Former § 120-1 was held invalid in *Drum v. Seawell*, 249 F. Supp. 877 (M.D.-N.C. 1965), aff'd, 383 U.S. 831, 86 Sup. Ct. 1237, 16 L. Ed. 2d 298 (1966).

But the present section was held valid in *Drum v. Seawell*, 250 F. Supp. 922 (M.D.N.C. 1966).

§ 120-2. House of Representatives.—For the purpose of nominating and electing members of the House of Representatives in 1966 and every two years thereafter, representative districts are established and seats in the House of Representatives are apportioned among those districts as follows, which representative districts shall be numbered from 1 through 49, consecutively:

District 1 shall consist of Camden, Chowan, Currituck, Gates, Pasquotank, and Perquimans counties and shall elect two Representatives.

District 2 shall consist of Beaufort, Dare, Hyde, Tyrrell, and Washington counties and shall elect two Representatives.

District 3 shall consist of Carteret, Craven, and Pamlico counties and shall elect three Representatives.

District 4 shall consist of Onslow and Pender counties and shall elect three Representatives.

District 5 shall consist of New Hanover County and shall elect two Representatives.

District 6 shall consist of Bertie, Hertford, and Northampton counties and shall elect two Representatives.

District 7 shall consist of Halifax and Martin counties and shall elect two Representatives.

District 8 shall consist of Pitt County and shall elect two Representatives.

District 9 shall consist of Greene, Jones, and Lenoir counties and shall elect two Representatives.

District 10 shall consist of Wayne County and shall elect two Representatives.

District 11 shall consist of Duplin County and shall elect one Representative.

District 12 shall consist of Bladen and Sampson counties and shall elect two Representatives.

District 13 shall consist of Brunswick and Columbus counties and shall elect two Representatives.

District 14 shall consist of Edgecombe and Nash counties and shall elect three Representatives.

District 15 shall consist of Johnston and Wilson counties and shall elect three Representatives.

District 16 shall consist of Franklin, Vance, and Warren counties and shall elect two Representatives.

District 17 shall consist of Caswell, Granville, and Person counties and shall elect two Representatives.

District 18 shall consist of Durham County and shall elect three Representatives.

District 19 shall consist of Wake County and shall elect four Representatives.

District 20 shall consist of Chatham and Orange counties and shall elect two Representatives.

District 21 shall consist of Alamance County and shall elect two Representatives.

District 22 shall consist of Harnett and Lee counties and shall elect two Representatives.

District 23 shall consist of Cumberland County and shall elect four Representatives.

District 24 shall consist of Hoke, Robeson, and Scotland counties and shall elect four Representatives.

District 25 shall consist of Rockingham County and shall elect two Representatives.

District 26 shall consist of Guilford County and shall elect six Representatives.

District 27 shall consist of Montgomery and Randolph counties and shall elect two Representatives.

District 28 shall consist of Moore County and shall elect one Representative.

District 29 shall consist of Richmond County and shall elect one Representative.

District 30 shall consist of Forsyth County and shall elect five Representatives.

District 31 shall consist of Davidson County and shall elect two Representatives.

District 32 shall consist of Stanly County and shall elect one Representative.

District 33 shall consist of Anson and Union counties and shall elect two Representatives.

District 34 shall consist of Rowan County and shall elect two Representatives.

District 35 shall consist of Cabarrus County and shall elect two Representatives.

District 36 shall consist of Mecklenburg County and shall elect seven Representatives.

District 37 shall consist of Alleghany, Ashe, Stokes, and Surry counties and shall elect three Representatives.

District 38 shall consist of Wilkes and Yadkin counties and shall elect two Representatives.

District 39 shall consist of Davie and Iredell counties and shall elect two Representatives.

District 40 shall consist of Catawba County and shall elect two Representatives.

District 41 shall consist of Gaston and Lincoln counties and shall elect four Representatives.

District 42 shall consist of Alexander, Burke, and Caldwell counties and shall elect three Representatives.

District 43 shall consist of Cleveland, Polk, and Rutherford counties and shall elect three Representatives.

District 44 shall consist of Avery, Mitchell, and Watauga counties and shall elect one Representative.

District 45 shall consist of Buncombe and McDowell counties and shall elect four Representatives.

District 46 shall consist of Henderson County and shall elect one Representative.

District 47 shall consist of Haywood, Madison, and Yancey counties and shall elect two Representatives.

District 48 shall consist of Jackson, Swain, and Transylvania counties and shall elect one Representative.

District 49 shall consist of Cherokee, Clay, Graham, and Macon counties and shall elect one Representative. (Code, s. 2845; Rev., s. 4399; 1911, c. 151; C. S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1.)

Editor's Note.—

Session Laws 1963, Ex. Sess., c. 2, proposed to amend Const., Art. 11, §§ 3, 4, 5 and 6, so as to increase the membership of the Senate, provide for compulsory redistricting of the Senate after each federal census and provide for one representative from each county. The proposed amendment was defeated by vote of the people at a general election held January 14, 1964.

The 1966 amendment rewrote this section. Section 17 of the amendatory act

provides that "G.S. 120-2 as that section read immediately prior to the ratification of this act shall remain in force until November 7, 1966, for the sole purpose of governing the filling of vacancies occurring in the membership of the General Assembly elected in 1964."

Session Laws 1966, Ex. Sess., c. 6, provides that in the event the United States Constitution is amended to permit representation in one house of bicameral state legislatures on some basis other than pop-

ulation, the membership of the North Carolina House of Representatives shall be reestablished as provided in § 120-2 as the same appears in the 1964 Replacement Volume 3B of the General Statutes.

Former § 120-2 was held invalid in

Drum v. Seawell, 249 F. Supp. 877 (M.D. N.C. 1965), aff'd, 383 U.S. 831, 86 Sup. Ct. 1237, 16 L. Ed. 2d 298 (1966).

But the present section was held valid in *Drum v. Seawell*, 250 F. Supp. 922 (M.D.-N.C. 1966).

§ 120-3. Pay of members and presiding officers of the General Assembly.—(a) The members of the General Assembly for the term for which they have been elected shall receive as compensation for their services the sum of fifteen dollars (\$15.00) per day for each day of their session and each day of any extra or special session. The compensation of the presiding officers of the two houses shall be twenty dollars (\$20.00) per day for each day of the session and for each day of any extra or special session.

(b) The pay of the members and presiding officers for a regular session of the General Assembly may be paid in installments, or upon a per diem basis, as the several members and presiding officers may elect, but in no instance shall installments or per diem amount to more than fifteen dollars (\$15.00) per day for the members and twenty dollars (\$20.00) per day for the presiding officers for the number of days the General Assembly has been in session.

(c) Any member or presiding officer may extend the disbursement of his pay over the two years of his term. Any member electing to do so shall notify the Department of Administration of his decision and shall designate any part of the total pay due him to be disbursed after the first day of January in the second year of his term. Any election to extend disbursement made by a member or presiding officer under this subsection shall be irrevocable and may not be rescinded. No installment shall be paid beyond the thirty-first day of December immediately following the election of the succeeding General Assembly. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120.)

Cross Reference. — As to subsistence, travel allowance, and expenses of Speaker of the House of Representatives and the President pro tempore of the Senate when the General Assembly is not in session, see § 120-4.

Amendment Effective 1971. — Session Laws 1969, c. 1278, s. 1, effective on the first day of the convening of the 1971 session of the General Assembly, will change this section to read as follows:

(a) Each member of the General Assembly, except the Speaker of the House, shall be paid for his services an annual salary of two thousand four hundred dollars (\$2,400.00), payable monthly, and an expense allowance of fifty dollars (\$50.00) per month. The Speaker of the House shall receive an annual salary of four thousand dollars (\$4,000.00), payable monthly, and an expense allowance of one hundred dollars (\$100.00) per month. Such salary and expense allowance for each member and for the Speaker of the House shall be in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any state board, agency, commission, standing committee and study commission.

(b) The additional compensation of the presiding officers of the two houses shall be twenty dollars (\$20.00) per day for each day of the session and for each day of any extra or special session.

(c) Members of the General Assembly wishing to be paid on an annual or semi-annual basis shall notify, in writing, the State Disbursing Officer, Department of Administration, by December 15 of the calendar year preceding the year in which payment is to be made.

Editor's Note.—

The first 1965 amendment affected the limitation on total amount of pay, which was deleted by the 1967 amendment.

The second 1965 amendment, gave effect to the first 1965 amendment, substituted "as the several members and presiding officers may elect" for "as asked for by the several members and presiding officers," in what is now subsection (b), and added what is now subsection (c). The second 1965 amendment was applicable for the years 1965 and 1966.

Session Laws 1967, c. 1120, effective July 1, 1967, rewrote this section, dividing it into subsections and deleting a limitation on total amount of pay.

Section 1½ of the 1965 amendatory act, as amended by Session Laws 1967, c. 776,

provides: "The provisions of this act as to installment payments as to the compensation paid shall apply to the sergeant of arms of both the House and Senate, the reading clerks of both the House and Senate and the principal clerks of both the

House and Senate. The provisions of this act shall apply not only to the 1967 Session of the General Assembly but shall apply to all subsequent sessions of the General Assembly."

§ 120-3.1. Subsistence and travel allowances for members and presiding officers.—(a) In addition to compensation for their services, members and presiding officers of the General Assembly shall also receive, while engaged in legislative duties, such subsistence and travel allowances as are limited and prescribed by subsections (b) and (c) of this section.

(b) The travel allowance authorized by subsection (a) of this section shall be paid the members and presiding officers of the General Assembly while coming to the city of Raleigh and returning to their respective homes, the distance to be computed by the usual route of public travel. Such travel allowance shall be paid upon proper certification, only for travel expense based on actual mileage, and the expense of such mileage shall be deemed to be eight cents (8¢) per mile. This travel allowance shall be limited to a maximum of one round trip each week during each regular or special session of the General Assembly.

(c) In addition to the travel allowance authorized in subsection (b) of this section, during any session of the General Assembly, whenever any member or presiding officer of either house of the General Assembly is directed by any committee of either house or by either house of the General Assembly to perform any legislative duties outside of the city of Raleigh when out of session, then in such event such member or presiding officer shall be paid subsistence allowances while engaged in such duties in the amount provided hereafter. Subsistence allowance for expenses incurred in connection with their duties in the General Assembly in the sum of twenty-five dollars (\$25.00) per day shall be paid members and presiding officers for each day of the period during which the General Assembly remains in session.

(1965, c. 86, s. 1; 1969, c. 1257, s. 1.)

Cross Reference. — As to subsistence, travel allowance, and expenses of Speaker of the House of Representatives and the President pro tempore of the Senate when the General Assembly is not in session, see § 120-4.

Editor's Note.—

The 1969 amendment eliminated the words "fixed by the Constitution" in subsection (a) and rewrote subsections (b)

and (c). Subsection (c) had been previously amended in 1965.

Session Laws 1969, c. 1257, s. 2.1, provides: "The payment of subsistence as provided in this act shall be made for each day the General Assembly has been in session since January 15, 1969."

As subsection (d) was not changed by the amendment, it is not set out.

§ 120-4. Speaker and President pro tempore.—For each day spent in the service of the State at times when the General Assembly is not in session, the Speaker of the House of Representatives and the President pro tempore of the Senate each shall be entitled to receive subsistence and travel allowances at the rates prescribed in § 120-3.1. The costs of clerical assistance, postage, and other office expenses incurred by the Speaker of the House of Representatives and the President pro tempore of the Senate in the performance of their official duties when the General Assembly is not in session shall be a proper charge against the funds appropriated for the maintenance and operation of the Legislative Research Commission. (1967, c. 1015, s. 1; 1969, c. 1257, s. 2.)

Amendment Effective on First Day of Convening of 1971 General Assembly. — Session Laws 1969, c. 1278, s. 2, effective on the first day of the convening of the 1971 session of the General Assembly, rewrites this section to read as follows:

"§ 120-4. Speaker and President pro tempore.—For each day spent in the service of the State at times when the General Assembly is not in session, the President pro tempore of the Senate shall be entitled to receive subsistence and travel allowances

at the rates prescribed in G.S. 138-5 (b). The costs of clerical assistance, postage, and other office expenses incurred by the Speaker of the House of Representatives and the President pro tempore of the Senate in the performance of their official duties when the General Assembly is not in session shall be a proper charge against the funds appropriated for the maintenance

and operation of the Legislative Research Commission."

Editor's Note. — Section 3 of Session Laws 1967, c. 1015, makes the act effective July 1, 1967. Former § 120-4 was repealed by Session Laws 1951, c. 23, s. 2.

Session Laws 1969, c. 1257, substituted "§ 120-3.1" for "§ 138-5 (b)" at the end of the first sentence.

§ 120-4.1. Legislative Retirement Fund. — (a) For the purpose of furthering the general welfare of the State, and in recognition of the public service rendered to the State and its citizens by the members of the General Assembly, there is hereby established a retirement fund to be designated as the "Legislative Retirement Fund," hereinafter referred to as the "Fund." The Fund shall be administered as set forth in this section. This Fund is established to provide retirement allowances for eligible members of the General Assembly of the State who qualify for such allowances as hereinafter provided.

(b) The Fund shall be administered by the Board of Trustees of the Teachers' and State Employees' Retirement System, hereinafter referred to as the Board.

(c) There is hereby created an office to be known as Director of the Legislative Retirement Fund. The Director of the Teachers' and State Employees' Retirement System of North Carolina shall serve ex officio as Director of the Fund at such additional salary as may be determined by the Board from time to time in its sole discretion.

(d) The Board shall have the power and duty to request the allocations necessary to carry out the provisions of this section, which shall be provided from funds appropriated to the General Assembly, to employ necessary clerical and other assistance as it may require, to determine the acceptability of all applications for retirement allowances, to provide for the payment of allowances hereunder, to make all necessary rules and regulations not inconsistent with law for the government of said Fund, to expend funds in accordance with the provisions of this section, and generally to exercise all other powers necessary for the administration of the Fund established by this section.

(e) The State Treasurer shall be the custodian of the retirement fund for members of the General Assembly of North Carolina. One fourth of the annual allocation to the Fund shall be transferred quarterly to a special fund to be established in the State Treasurer's Office to be known as the Legislative Retirement Fund. The Board of Trustees shall have authority to manage and invest all monies in the Fund not immediately needed for retirement allowances in the same manner as provided for the Teachers' and State Employees' Retirement Fund. The interest on such investments shall be credited to this Fund. The State Treasurer shall serve as investment officer under authority granted by the Board of Trustees.

(f) "Member" shall mean any person who is elected at a general election or appointed as a member of the General Assembly and who serves in said General Assembly as a member thereof, as a result of said election or appointment. A "full term" shall consist of any regular biennial session of the General Assembly. For the purposes of this section, credit shall be given only for a full term, and no credit shall be given for any period of service in which the member (i) fails to complete serving the full term or (ii) serves such term or any portion of such term as a result of election thereto in other than a general election: Provided, however, a member who is otherwise eligible and assumes his duties as a member of the General Assembly within one week after the convening of a regular session shall not be barred from credit for a full term.

(g) Any former member of the General Assembly who has at least four full terms of creditable service and who has attained the age of 65 shall be entitled to receive from the Fund a monthly retirement allowance of twenty-five dollars

(§25.00) per each full term of service. Credit shall be given for each full term of service as an active member commencing with the 1969 term; and credit shall also be given for each full term of service rendered before the 1969 term, as to any member who serves a full term during the 1969 term or any full term subsequent to 1969. Credit shall be given to any member or elected officer serving in the 1969 session who has attained the age of 70 years and has a total of three terms of creditable service, and the member qualifying shall be entitled to the retirement benefits provided for in this section. Notwithstanding anything herein to the contrary, no person shall be entitled to receive a retirement allowance hereunder unless his service as a member of the General Assembly or as an employee of the State in another capacity shall have been terminated and he shall have retired from the service of the State. No survivor benefits shall be payable under this section.

(h) Service retirement benefits shall be payable under this section effective the first day of the month following retirement. Application therefor by an eligible member for such service retirement benefits shall be filed as rules and regulations of the Board may provide.

(i) If a member who has served not less than three full terms becomes physically disabled during a fourth or later term, and such disability application is approved by the medical board of the Teachers' and State Employees' Retirement System, such person shall be entitled to receive disability benefits at the same rate as service retirement benefits, irrespective of age. Application for disability benefits shall be filed as rules and regulations of the Board may provide.

(j) If a member has commenced to receive service retirement or disability benefits and thereafter serves as a member of the General Assembly, or becomes a teacher or State employee within the definition thereof of the Teachers' and State Employees' Retirement System Act, payment of benefits shall be suspended during the period when such member is being paid a salary as a member of the General Assembly or teacher or State employee.

(k) There is hereby allocated as of July 1, 1969, and annually thereafter, as an item of joint expense from funds appropriated for the support of the General Assembly, to the Legislative Retirement Fund, such sums as are determined by the Board to be necessary in order (i) to cover the cost of the allowances provided in this section, and (ii) to cover any administrative expenses which the Board of Trustees may incur in the operation of the Fund. (1969, c. 1269, ss. 1-10.)

Editor's Note. — Session Laws 1969, c. 1269, § 1, provides: "This act shall be in full force and effect on and after the first day of the convening of the 1971 session of the General Assembly."

ARTICLE 3A.

Sessions.

§ 120-11.1. **Time of meeting.**—The regular session of the Senate and House of Representatives shall be held biennially beginning on the first Wednesday after the second Monday in January next after their election. (1967, c. 1181.)

Cross Reference. — For constitutional provision, see N.C. Const., art. II, § 2.

ARTICLE 6.

Acts and Journals.

§§ 120-21, 120-22: Repealed by Session Laws 1969, c. 1184, s. 8.

ARTICLE 6A.

Legislative Council.

§§ 120-30.1 to 120-30.9: Repealed by Session Laws 1965, c. 1142, effective July 1, 1965.

ARTICLE 6B.

Legislative Research Commission.

§ 120-30.10. **Creation; appointment of members; members ex officio.**—There is hereby created a Legislative Research Commission to consist of five senators to be appointed by the President pro tempore of the Senate and five representatives to be appointed by the Speaker of the House. The President pro tempore of the Senate and the Speaker of the House shall be ex officio members of the Legislative Research Commission. Provided, that when the President of the Senate has been elected by the Senate from its own membership, then the President of the Senate, shall make the appointments of the Senate members of the Legislative Research Commission, shall serve ex officio as a member of the Commission and shall perform the duties otherwise vested in the President pro tempore by §§ 120-30.13 and 120-30.14. (1965, c. 1045, s. 1.)

§ 120-30.11. **Time of appointments; terms of office.**—Appointments to the Legislative Research Commission shall be made within fifteen days subsequent to the close of each regular session of the General Assembly. The term of office shall begin on the day of appointment, and shall end on the date when the next regular session of the General Assembly convenes. (1965, c. 1045, s. 2.)

§ 120-30.12. **Vacancies.**—Vacancies in the appointive membership of the Legislative Research Commission occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Commission. Every vacancy shall be filled by a member of the same house as that of the person causing the vacancy.

If for any reason the office of President pro tempore of the Senate becomes vacant, the five Senate members of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted pursuant to this article, and such Senator so elected shall serve until the Senate shall elect a President pro tempore. If for any reason the office of Speaker of the House of Representatives becomes vacant, the five members of the House of Representatives of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted pursuant to this article, and such member of the House of Representatives so elected shall serve until the House of Representatives shall elect a Speaker. (1965, c. 1045, s. 3; 1969, c. 1037.)

Editor's Note.—The 1969 amendment added the second paragraph.

§ 120-30.13. **Cochairmen; rules of procedure; quorum.**—The President pro tempore of the Senate and the Speaker of the House shall serve as cochairmen of the Legislative Research Commission. The Commission shall adopt rules of procedure governing its meetings. Eight members, including ex officio members, shall constitute a quorum of the Commission. (1965, c. 1045, s. 4.)

§ 120-30.14. **Meetings.**—The first meeting of the Legislative Research Commission shall be held at the call of the President pro tempore of the Senate in the State Legislative Building. Thereafter the Commission shall meet at the call of the chairmen. Every member of the preceding General Assembly has the right to attend all sessions of the Commission, and to present his views at the meeting on any subject under consideration. (1965, c. 1045, s. 5.)

§ 120-30.15: Repealed by Session Laws 1969, c. 1184, s. 8.

Editor's Note. — The repealed section was codified from Session Laws 1965, c. 1045, s. 6.

§ 120-30.16. **Co-operation with Commission.** — The Legislative Research Commission may call upon any department, agency, institution, or officer of the State or of any political subdivision thereof for such facilities and data as may be available, and these departments, agencies, institutions, and officers shall co-operate with the Commission and its committees to the fullest possible extent. (1965, c. 1045, s. 7.)

§ 120-30.17. **Powers and duties.**—The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3),(4): Repealed by Session Laws 1969, c. 1184, s. 8. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8.)

Editor's Note.—The 1969 amendment repealed former subdivision (3), relating to custody of equipment, records, etc., and

former subdivision (4), relating to purchase and maintenance of furniture and supplies, and contracts for services.

§ 120-30.18. **Offices; per diem and allowances of members; payments from appropriations.** — The facilities of the State Legislative Building shall be available to the Commission for its work. The members of the Commission, including ex officio members, shall be paid such per diem, subsistence and travel allowances as are prescribed by law for State boards and commissions generally. All payments for purposes authorized by this chapter shall be paid by the State Treasurer upon written authorization of the chairmen of the Commission, from funds appropriated to the Legislative Research Commission or the Legislative Council, except that expenditures authorized under § 120-30.17 (4) of this chapter shall be paid from funds appropriated to the General Assembly. (1965, c. 1045, s. 9.)

ARTICLE 7.

Legislative Services Commission.

§ 120-31. **Legislative Services Commission organization.**—(a) The Legislative Services Commission shall consist of the President pro tempore of the Senate, three Senators appointed by the President pro tempore of the Senate, the Speaker of the House of Representatives, and three Representatives appointed by the Speaker of the House of Representatives. The President pro tempore of the Senate, and the Speaker of the House shall serve until the selection and qualification of their respective successors as officers of the General Assembly. The initial appointive members shall be appointed upon the date of ratification of this article and each shall serve for the remainder of his elective term of office and until his successor is appointed or until he ceases to be a member of the General Assembly, whichever occurs first. A vacancy in one of the appointive positions shall be filled in the same manner that the vacated position was originally filled, and the person so appointed shall serve for the remainder of the unexpired term of the person whom he succeeds. In the event the office of Speaker becomes vacated, the three Representatives shall elect one of themselves to perform the duties of

the Speaker as required by this article. In the event the office of President pro tempore becomes vacated, the three Senators shall elect one of themselves to perform the duties of President pro tempore as required by this article. Members so elevated shall perform the duties required by this article until a Speaker or a President pro tempore is duly elected by the appropriate house.

(b) The President pro tempore of the Senate shall be the chairman of the Commission in odd-numbered years and the Speaker of the House of Representatives shall be chairman of the Commission in even-numbered years.

(c) The Commission may elect from its membership such other officers as it deems appropriate, and may appoint other members of the General Assembly to serve on any committee of the Commission.

(d) The Commission may adopt rules governing its own organization and proceedings.

(e) Members of the Commission, when the General Assembly is not in session, shall be reimbursed for subsistence and travel allowance as provided for members of the General Assembly when in session for such days as they are engaged in the performance of their duties. (1969, c. 1184, s. 1.)

Revision of Article. — Session Laws 116; 1919, c. 170; C. S., ss. 3848, 3855, 1969, c. 1184, s. 1, revised and rewrote this article, which formerly consisted of §§ 120-31 to 120-36.1 and related to employees of the General Assembly. The former article was codified from 1846, c. 63; R. C., c. 52, s. 37; 1866-7, c. 71; 1870-71, resolution, p. 508; 1881, c. 292; Code, ss. 2868, 2870, 2873; Rev., ss. 2732, 2735, 4426; 1911, c. 3855(a), 6114; 1921, c. 160; 1923, c. 130; 1925, c. 72, s. 1; c. 116; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272; 1943, c. 303; 1945, c. 9; 1947, c. 998; 1951, c. 2; 1953, c. 1315; 1957, cc. 5, 1432; 1961, cc. 1176, 1177; 1965, c. 1131, s. 1; c. 1141; 1967, c. 25, s. 1; c. 1236, s. 1.

§ 120-32. Commission duties.—The Legislative Services Commission is hereby authorized to:

- (1) Determine the number, titles, classification, functions, compensation, and other conditions of employment of the joint legislative service employees of the General Assembly, including but not limited to the following departments:
 - a. Legislative Services Officer and Personnel,
 - b. Electronic document writing system,
 - c. Proofreaders,
 - d. Legislative printing,
 - e. Enrolling clerk and personnel,
 - f. Library,
 - g. Research and bill drafting,
 - h. Printed bills,
 - i. Disbursing and supply;
- (2) Determine the classification and compensation of employees of the respective houses other than staff elected officers; however, the hiring of employees of each house and their duties shall be prescribed by the rules and administrative regulations of the respective house;
- (3) Acquire and dispose of furnishings, furniture, equipment, and supplies required by the General Assembly, its agencies and commissions and maintain custody of same between sessions. It shall be a misdemeanor for any person(s) to remove any state-owned furniture, fixtures, or equipment from the State Legislative Building for any purpose whatsoever, except as approved by the Legislative Services Commission;
- (4) Contract for services required for the operation of the General Assembly, its agencies, and commissions; however, any departure from established operating procedures, requiring a substantial expenditure of funds, shall be approved by appropriate resolution of the General Assembly;

- (5)
 - a. Provide for engrossing and enrolling of bills,
 - b. Appoint an enrolling clerk to act under its supervision in the enrollment and ratification of acts;
- (6)
 - a. Provide for the duplication and limited distribution of copies of ratified laws and joint resolutions of the General Assembly and forward such copies to the persons authorized to receive same.
 - b. Maintain such records of legislative activities and publish such documents as it may deem appropriate for the operation of the General Assembly;
- (7)
 - a. Provide for the Secretary of State to index, print, bind, and distribute the session laws of each regular, extra or special session of the General Assembly and provide for the printing and distribution of the North Carolina Manual, Directory, and journals of each house.
 - b. Provide and supply to the Secretary of State such bound volumes of the journals and session laws as may be required by him to be distributed under the provisions of G.S. 147-45, G.S. 147-46.1, and G.S. 147-48. (1969, c. 1184, s. 2.)

§ 120-33. **Duties of enrolling clerk.**—(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision of the enrolling clerk.

(b) Prior to enrolling any bill, the enrolling clerk shall substitute the corresponding Arabic numeral(s) for any date or section number of the General Statutes or of any act of the General Assembly which is written in words.

(c) All bills shall be typewritten and carefully proofread before enrollment.

(d) Upon ratification of an act or joint resolution, the enrolling clerk shall assign in Arabic numerals a chapter number to each session law and deposit the ratified laws and joint resolutions with one true copy of each with the Secretary of State.

(e) The enrolling clerk shall furnish each member of the General Assembly with a legible conformed copy of all laws and joint resolutions of the General Assembly, which shall show the chapter number of any law or the number of any joint resolution, in conformity with the number assigned to the enactment.

(f) The enrolling clerk upon completion of his duties after each session shall deposit the original bills and resolutions enrolled for ratification by him with the Secretary of State. (1969, c. 1184, s. 3.)

§ 120-34. **Printing of session laws.**—(a) The Secretary of State, immediately upon the termination of each session of the General Assembly, shall cause to be published all the laws and joint resolutions passed at such session, whether public, private, general or special within the meaning of the Constitution and without regard to classification, except that the laws and resolutions shall be kept separate and indexed separately; and the volume shall contain the certificate of the Secretary of State that it was printed under the direction of the office of the Secretary of State and from ratified acts and resolutions on file in the office of the Secretary of State. In printing, the certificate required to be endorsed upon the original bills and resolutions shall be omitted; but immediately at the end of each law or resolution shall be inserted the word “ratified” adding the day, month, and year.

(b) All index references with respect to the session laws shall refer to the chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section numbers and not to page numbers.

(c) There shall be printed not more than twenty-five hundred (2,500) volumes

of the session laws and six hundred (600) volumes of the journals of each house of each session of the General Assembly, all of which shall be bound, and delivered to the Secretary of State for distribution by him under the provisions of G.S. 147-45, G.S. 147-46.1, G.S. 147-48 and other applicable statutes. (1969, c. 1184, s. 4.)

§ 120-35. **Payments for expenses.**—Actual expenses for the joint operation of the General Assembly shall be paid by the State Treasurer upon authorization of the President of the Senate and the Speaker of the House of Representatives. Expenses for the operation of a single house shall be paid by the State Treasurer upon authorization of the presiding officer of the appropriate house. The President of the Senate shall advise with the President pro tempore of the Senate with respect to all expenditures involving joint operations and Senate operations, and the President pro tempore shall make his recommendations in connection therewith. (1969, c. 1184, s. 5.)

§ 120-36. **Legislative Services Officer of the General Assembly.**—(a) The Legislative Services Officer of the General Assembly shall be appointed by and serve at the pleasure of the Legislative Services Commission, and his compensation shall be fixed by the Legislative Services Commission.

(b) The Legislative Services Officer of the General Assembly shall perform such duties as are assigned to him by the Legislative Services Commission and shall be available to the Legislative Research Commission to provide such clerical, printing, drafting, and research duties as are necessary to the proper functions of the Legislative Research Commission. (1969, c. 1184, s. 6.)

§ 120-36.1: Repealed by Session Laws 1969, c. 1184, s. 1.

Revision of Article.—See same catchline under § 120-31.

ARTICLE 8.

Elected Officers.

§ 120-37. **Elected officers—staff.**—(a) Each house shall elect a principal clerk, reading clerk, and sergeant-at-arms, each of whom shall serve for a term of two years, each of whom shall serve at the pleasure of the respective house or until his successor is elected.

(b) The salary of the staff elected officers of each house, during any session of the General Assembly, shall be as follows:

- (1) Principal clerk \$168.00 per week
- (2) Sergeant-at-arms 126.00 per week
- (3) Reading clerk 126.00 per week

The elected officers listed in this section shall also receive subsistence at the same daily rate as provided for members of the General Assembly, and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return.

(c) Upon the adjournment of any session of the General Assembly, the principal clerk of each house upon completion of the duties of their respective offices shall cause to be delivered to the office of the Secretary of State any bill or resolution that failed to be enacted or adopted and shall deposit all calendar books and such other records that may be deemed to be appropriate for safekeeping.

(d) The principal clerks and sergeants-at-arms of the Senate and House of Representatives, at such times as may be designated by the Legislative Services Commission, together with such assistants as may be necessary in arranging for the opening of the Senate and House of the General Assembly before the days for convening thereof, and such necessary services as are rendered after adjournment, shall receive the same salary and subsistence as shall be allowed by law to the said clerks, sergeants-at-arms, and their assistants during the session of the General Assembly. The principal clerks of the General Assembly shall be allowed

seventeen hundred dollars (\$1,700.00) as additional compensation for services required to be performed by them between regular sessions of the General Assembly, including the indexing and transcribing of a copy of their respective journals, which shall be filed in the office of the Secretary of State. The State Treasurer is directed to issue his warrants for such officers and clerks and for such time as is certified to by the President of the Senate and the Speaker of the House upon vouchers signed by them. (1969, c. 1184, s. 7.)

Revision of Article.—Session Laws 1969, c. 1184, s. 7, substituted the above section for the former three sections of article 8 of this chapter. Former article 8, which comprised §§ 120-37 through 120-39, was codified from Session Laws 1921, c. 219, ss. 1-3; C. S., s. 6116(a)-(c) and Session Laws 1953, c. 911, and related to preservation

and protection of furniture and fixtures of the General Assembly. For present provisions as to the furniture and equipment of the General Assembly, see § 120-32.

Opinions of Attorney General.—Mr. G. Andrew Jones, Jr., State Budget Officer, 7/15/69.

§§ 120-38, 120-39: Repealed by Session Laws 1969, c. 1184, s. 7.

Revision of Article.—See same catchline in note under § 120-37.

ARTICLE 11.

Legislative Intern Program Council.

§ 120-56. **Legislative Intern Program Council created.** — There is hereby created the Legislative Intern Program Council which shall consist of the President of the Senate, the Speaker of the House of Representatives and the chairman of the department of politics at North Carolina State University. Such Council shall establish a program for legislative interns for both Houses of the General Assembly. (1969, c. 32.)

§ 120-57. **Legislative Intern Program Council to promulgate a plan for the use of legislative interns.**—The Legislative Intern Program Council is hereby empowered and is directed to promulgate for each session of the General Assembly a plan providing for the selection, tenure, duties and compensation of legislative interns. Such plan shall become effective when it has been adopted by the Legislative Intern Program Council. (1969, c. 32.)

Chapter 121.

State Department of Archives and History.

Article 1.

General Provisions.

Sec.

121-7.1. Designation of privately owned buildings as worthy of preservation.

Article 3.

Salvage of Abandoned Shipwrecks and Other Underwater Archeological Sites.

121-22. Title to bottoms of certain waters and shipwrecks, etc., thereon declared to be in State.

Sec.

121-23. Department to be custodian of shipwrecks, etc., and underwater archeological artifacts; rules and regulations.

121-24. Department authorized to establish professional staff.

121-25. License to conduct exploration, recovery or salvage operations.

121-26. Funds received by Department under § 121-25.

121-27. Law-enforcement agencies empowered to assist Department.

121-28. Violation of article a misdemeanor.

ARTICLE 1.

General Provisions.

§ 121-7.1. **Designation of privately owned buildings as worthy of preservation.**—(a) In order to identify and designate privately owned buildings worthy of preservation, and in order to provide protection to the people of the State from the danger of loss or damage to significant privately owned buildings consistent with the rights of the owners thereof, the Department of Archives and History is authorized to establish a registry of historically or architecturally significant structures which have been determined by the Historic Sites Advisory Committee to possess such significant historic or architectural value as to deserve preservation. Said registry shall be known as the "State Register of Historically Significant Buildings." The individual structure will be known as a "registered building."

(b) The Department is further authorized to enter into a voluntary agreement with owners of registered buildings under the terms of which the Department of Archives and History shall permanently attach a seal to the buildings sought to be preserved, which seal shall incorporate the seal of the Department adopted in accordance with G.S. 121-2 (1) and the following legend:

"This structure is registered as an historically or architecturally significant building. It may not be altered, moved, or destroyed under penalty of law until sixty days after written notice is received at the North Carolina Department of Archives and History."

In the event the owner agrees as aforesaid to the placing of the seal on the building, he shall enter into an agreement, satisfactory in form to the Attorney General, encumbering the realty upon which the registered building is situate in the form of a covenant running with the land, the substance of which covenant shall be that the building may not be altered, moved, or destroyed until after sixty days written notice of intent is received at the North Carolina Department of Archives and History, but that after the expiration of said sixty days, the encumbrance shall become void and the owner of the registered building or his successors shall be remitted to such estate as he or his predecessor in title had prior to entering into the covenant. Such encumbrance shall be recorded as provided by law.

At any time prior to the expiration of sixty days after receipt of notice of intent to alter, move, or destroy a registered building the Director of the Department of Archives and History shall be empowered to bring an action to enjoin any substantial structural alteration, move, or destruction of a registered building or any threat thereof until sixty days after receipt of the aforesaid notice, and at the end of said sixty-day period, the injunction shall be dissolved upon motion of the party enjoined.

Any person who shall intentionally alter, move, destroy, or otherwise damage a registered building upon which the above described seal is displayed without prior written approval of the Department of Archives and History shall be guilty of a misdemeanor. (1969, c. 577.)

§ 121-13.1. **Preservation and custodial care of State Capitol legislative chambers.**—The legislative chambers in the Capitol shall be placed in custody of the State Department of Archives and History to be preserved as historic shrines for the edification of the present and future generations. Insofar as practicable, the aforesaid legislative chambers shall be maintained and preserved in the conditions in which they now are and shall be used primarily for the purpose of historic shrines and as public attractions, and, with the consent and approval of the Governor, may be used from time to time for governmental and educational purposes; provided, however, that the General Assembly may hold such sessions as it may by resolution deem proper; and, provided further, that the initial and final meetings of each regular or special session of the General

Assembly may commence and adjourn sine die in the aforesaid legislative chambers as ceremony in perpetuum rei memoriam.

The State Department of Archives and History is hereby entrusted with the responsibility herein specified, as being the agency with the experience and staff best qualified to preserve historic sites and shrines in suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such co-operation and assistance shall be made available to the said Department of Archives and History, and such labor supplied as may be feasible, by the General Services Division of the Department of Administration. (1961, c. 724; 1965, c. 1129.)

Editor's Note. — The 1965 amendment rewrote the first paragraph.

ARTICLE 3.

Salvage of Abandoned Shipwrecks and Other Underwater Archeological Sites.

§ 121-22. Title to bottoms of certain waters and shipwrecks, etc., thereon declared to be in State.—Subject to chapter 82 of the General Statutes, entitled "Wrecks" and to the provisions of chapter 210, Session Laws of 1963 [§§ 121-7, 121-8.1 to 121-8.3 and 143-31.2], and to any statute of the United States, the title to all bottoms of navigable waters within one marine league seaward from the Atlantic seashore measured from the extreme low watermark; and the title to all shipwrecks, vessels, cargoes, tackle, and underwater archeological artifacts which have remained unclaimed for more than 10 years lying on the said bottoms, or on the bottoms of any other navigable waters of the State, is hereby declared to be in the State of North Carolina, and such bottoms, shipwrecks, vessels, cargoes, tackle, and underwater archeological artifacts shall be subject to the exclusive dominion and control of the State. (1967, c. 533, s. 1.)

Editor's Note.—Section 10 of Session Laws 1967, c. 533, makes the act effective July 1, 1967.

Common Law. — Under the common law, wrecks or derelicts became the prop-

erty of the Crown or its grantee after a year and a day if no owner appeared within that time to claim them. State ex rel. Bruton v. Flying "W" Enterprises, Inc., 273 N.C. 399, 160 S.E.2d 482 (1968).

§ 121-23. Department to be custodian of shipwrecks, etc., and underwater archeological artifacts; rules and regulations.—The custodian of shipwrecks, vessels, cargoes, tackle and underwater archeological artifacts as defined in § 121-22 hereof shall be the State Department of Archives and History, which is empowered to promulgate such rules and regulations as may be necessary to preserve, protect, recover and salvage any or all underwater properties as defined in § 121-22 hereof; such rules and regulations, when approved by the Governor and Council of State, shall have the force and effect of law. (1967, c. 533, s. 2.)

§ 121-24. Department authorized to establish professional staff.—The Department of Archives and History is also authorized to establish a professional staff for the purpose of conducting and/or supervising the surveillance, protection, preservation, survey and systematic underwater archeological recovery of underwater materials as defined in § 121-22 hereof. (1967, c. 533, s. 3.)

§ 121-25. License to conduct exploration, recovery or salvage operations.—Any qualified person, firm or corporation desiring to conduct any type of exploration, recovery or salvage operations, in the course of which any part of a derelict or its contents or other archeological site may be removed, displaced or destroyed, shall first make application to the Department of Archives and History for a permit or license to conduct such operations. If the Department of Archives and History shall find that the granting of such permit or license is in the best interest of the State, it may grant such applicant a permit or license for such a period of time and under such conditions as the Department may deem to be

in the best interest of the State. Such permit or license may include but need not be limited to the following:

- (1) Payment of monetary fee to be set by the Department
- (2) That a portion or all of the historic material or artifacts be delivered to custody and possession of the Department
- (3) That a portion of all of such relics or artifacts may be sold or retained by the licensee
- (4) That a portion or all of such relics or artifacts may be sold or traded by the Department.

Permits or licenses may be renewed upon or prior to expiration upon such terms as the applicant and the Department may mutually agree. Holders of permits or licenses shall be responsible for obtaining permission of any federal agencies having jurisdiction, including the United States Coast Guard, the United States Department of the Navy and the United States Army Corps of Engineers prior to conducting any salvaging operations. (1967, c. 533, s. 4.)

§ 121-26. **Funds received by Department under § 121-25.**—Any funds which may be paid to or received by the Department of Archives and History under the terms of § 121-25 hereof may be allocated for use by the Department of Archives and History for continuing its duties under this article, subject to the approval of the Budget Division of the Department of Administration. (1967, c. 533, s. 5.)

§ 121-27. **Law-enforcement agencies empowered to assist Department.**—All law-enforcement agencies and officers, State and local, are hereby empowered to assist the Department of Archives and History in carrying out its duties under this article. (1967, c. 533, s. 6.)

§ 121-28. **Violation of article a misdemeanor.**—Any person violating the provisions of this article or any rules or regulations established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in cases of misdemeanor. (1967, c. 533, s. 8.)

Chapter 122.

Hospitals for the Mentally Disordered.

Article 1.

Organization and Management.

Sec.

122-4. Designation of regions for the several institutions under the North Carolina State Department of Mental Health.

122-5, 122-6. [Repealed.]

122-8.2. Commissioner authorized to receive research data; identification of persons prohibited; penalty.

122-20. [Repealed.]

Article 2.

Officers and Employees.

122-25. Superintendents and business managers of hospitals and residential centers for the retarded; personnel.

Article 2A.

Local Mental Health Clinics.

Sec.

122-35.2. Development of community mental health services.

122-35.3. Joint State and community operations of mental health clinics.

Article 2B.

Rehabilitation of Alcoholics.

122-35.13. Appropriation to Department of Mental Health; establishment of division on alcoholism.

122-35.14. Use of funds by local government agencies.

122-35.15. Local government agencies to match State funds.

122-35.16. Multi-city or multi-county governmental agency; prerequisite

Sec. sites to receiving matching funds.
 122-35.17. Construction of local alcoholic rehabilitation centers.

Article 3.

Admission of Patients; General Provisions.

122-41. Expenses to be paid by county of residence; penalty; recovery from estate of patient or inebriate.
 122-52. [Repealed.]

Article 7.

Judicial Hospitalization.

122-63. Clerk may commit for observation and treatment period or may order out-patient treatment.

Article 7A.

Chronic Alcoholics.

122-65.6. Definitions.
 122-65.7. Jurisdiction of trial court over persons acquitted of public drunkenness by reason of chronic alcoholism.

Sec. 122-65.8. Procedures for treatment.
 122-65.9. Article supplementary to other provisions.

Article 11.

Mentally Ill Criminals.

122-90. [Repealed.]
 122-91. Commitment of criminal defendant for observation and treatment.

Article 12A.

Wright School for Treatment and Education of Emotionally Disturbed Children.

122-98.1. Department of Mental Health to continue to operate Wright School.

Article 15.

Advisory Council on Alcoholism.

122-108. Advisory Council on Alcoholism created.
 122-109. Purposes of Council.
 122-110. Annual report of Council.
 122-111. Council members' pay.

ARTICLE 1.

Organization and Management.

§ 122-1. **Creation of State Department of Mental Health; jurisdiction; transfer of proceedings, appropriations and records.**

Editor's Note.—

For comment on 1963 amendments, see 42 N.C.L. Rev. 340 (1964).

§ 122-1.4. **Business manager.**—The State Board of Mental Health shall appoint a general business manager to be in charge of the Business Administration Division of the Department of Mental Health. The said general business manager shall be a person of demonstrated executive and business ability who shall have had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and he shall be a person of good character and otherwise qualified to discharge his duties. The salary of the general business manager is to be fixed by the Governor subject to the approval of the Advisory Budget Commission. Subject to the supervision, direction and control of the Board of Mental Health, the general business manager shall perform the duties set out in this chapter and all other duties which the Board may prescribe. Under the direction of the Board of Mental Health, the general business manager shall have full supervision over the fiscal management, and over the management and control of all physical properties and equipment, of the institutions under the control of the Department of Mental Health.

All personnel or employees engaged in any aspect of the business management or supervision of the properties or equipment of any of the institutions under the control of the Department of Mental Health shall be responsible to and subject to the supervision and direction of the general business manager with respect to the performance or exercise of any duties or powers of business management or financial administration.

The Board of Mental Health shall provide the general business manager with such stenographic and clerical assistance as it may deem necessary. Upon request of the Board of Mental Health, the Department of Administration shall provide suitable office space in the city of Raleigh for the general business manager in conjunction with the office space provided for the Commissioner of Mental Health. (1963, c. 1166, s. 3; 1969, c. 1249, s. 1.)

Editor's Note.—The 1969 amendment deleted the former third paragraph, providing for the term of employment of the business manager and requiring him to devote his full time to the duties of his employment.

§ 122-1.5. Divisions of the Department; deputy directors.—The administration of the Department of Mental Health shall be divided into three (3) separate divisions, (1) Business Administration, (2) Mental Retardation, and (3) Regional Mental Health Services. The Commissioner of Mental Health with the approval of the State Board of Mental Health shall appoint a deputy director as head of the Division of Mental Retardation and deputy directors as regional heads of the Regional Mental Health Services. The deputy directors of Regional Mental Health Services shall be medical doctors duly licensed in North Carolina with approved training and experience in psychiatry. The deputy director of the Division of Mental Retardation shall be a medical doctor duly licensed in North Carolina with approved training and experience in psychiatry or pediatrics. (1963, c. 1166, s. 3; 1965, c. 378.)

Editor's Note. — The 1965 amendment so changed this section that a detailed comparison is not here practical.

§ 122-1.6. Applicability of Executive Budget Act, State Personnel Act and Merit System Act.—The State Department of Mental Health shall be subjected to the provisions of the Executive Budget Act and the State Personnel Act, articles 1 and 2 of chapter 143 of the General Statutes, respectively. Personnel of those local mental health clinics which choose to participate in the Federal Aid Grant Program shall be subject to the provisions of the Merit System Law, chapter 126 of the General Statutes of North Carolina. (1963, c. 1166, s. 3; 1965, c. 929, s. 1.)

Editor's Note. — The 1965 amendment substituted "subjected" for "subject" in the first sentence and deleted "Personnel of the Community Mental Health Services Division of the Department of Mental Health and eligible" formerly appearing at the beginning of the second sentence.

§ 122-4. Designation of regions for the several institutions under the North Carolina State Department of Mental Health.—It shall be the duty of the North Carolina State Department of Mental Health to designate regions for any State hospitals or institutions now or hereafter established for the admission of mentally disordered persons of the State, with authority to change said regions when deemed necessary. It shall notify the clerks of superior court of the counties of the regions designated and of any change of these regions. (C. S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 6; 1959, c. 1028, ss. 1, 3; 1963, c. 1166, s. 10; 1965, c. 800, s. 1.)

Editor's Note.—The 1965 amendment rewrote this section, deleting any reference to particular hospitals or to race.

§ 122-5: Repealed by Session Laws 1965, c. 800, s. 2.

§ 122-6: Repealed by Session Laws 1965, c. 800, s. 3.

§ 122-7.1. Other mental health facilities for treatment of alcoholism; State alcoholic rehabilitation program; community alcoholism programs.

Cross Reference.—As to rehabilitation of alcoholics, see also §§ 122-35.13 to 122-35.17.

§ 122-8.2. Commissioner authorized to receive research data; identification of persons prohibited; penalty.—The Commissioner of Mental Health or his authorized agent is hereby authorized to receive data from private or public agencies or agents for research and study in mental health. All data received shall be used by the Commissioner of Mental Health, or his authorized agent, for research and study, and program planning. No criminal or civil action may be brought against any person or agency who shall provide or submit to the Commissioner of Mental Health, or his authorized agent, said identifying data.

It is unlawful for the Commissioner of Mental Health or any person to disclose, release, or divulge any information identifying a reported or reporting person under the provisions of this section.

Violation of this section constitutes a misdemeanor, and upon conviction the defendant shall be punished by fine or imprisonment, or both, in the discretion of the court. (1965, c. 800, s. 4.)

§ 122-11.4. Monthly reports to Commissioner of Mental Health.—The superintendent or director of each of said facilities shall make monthly reports to the Commissioner of Mental Health in such manner and detail as the North Carolina State Department of Mental Health may prescribe. (1943, c. 136, s. 8; 1959, c. 1002, s. 10; 1963, c. 1166, s. 10; 1965, c. 800, s. 5.)

Editor's Note.—

The 1965 amendment inserted "or direc-

tor" following "superintendent" and substituted "facilities" for "institutions."

§ 122-20: Repealed by Session Laws 1965, c. 800, s. 6.

ARTICLE 2.

Officers and Employees.

§ 122-25. Superintendents and business managers of hospitals and residential centers for the retarded; personnel.—The Commissioner of Mental Health, with the approval of the State Board of Mental Health, shall appoint a medical superintendent for each hospital. The medical superintendent shall be a medical doctor duly licensed in North Carolina with approved training and experience in psychiatry. The appointment shall be for a term of six years. The Commissioner of Mental Health shall also, with the approval of the State Board of Mental Health, appoint for a term of six years a superintendent of each residential center for the retarded. Such superintendent shall be a medical doctor duly licensed by the State of North Carolina with approved training and experience in pediatrics or psychiatry.

The superintendent of each institution under the jurisdiction of the Department of Mental Health shall be responsible for the employment of all personnel at the said institution, subject to the approval of the Commissioner of Mental Health.

The business manager of each State mental hospital or residential center for the retarded shall be appointed by the superintendent of the institution, with the approval of the general business manager, Commissioner of Mental Health and the State Board of Mental Health. The business manager shall be responsible to and subject to the supervision and direction of the medical superintendent of the institution in the over-all administration of the institution. The business manager will keep the general business manager informed regarding the fiscal management of the institution and the management of physical properties and equipment and cooperate with the general business manager in the performance of his duties as pursuant to G.S. 122-1.4. The business manager of each institution should be a person of demonstrated executive ability who has had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and who is a person

of good character, and otherwise qualified to discharge his duties. (1899, c. 1, s. 69; Rev., s. 4561; 1917, c. 150, s. 1; C. S., s. 6173; 1963, c. 1166, s. 4; 1969, c. 1249, s. 2.)

Editor's Note.—

The 1969 amendment rewrote the second and third paragraphs.

§ 122-34. Oath of special policemen.

Cited in *State v. Propst*, 274 N.C. 62, 161 S.E.2d 560 (1968).

ARTICLE 2A.

Local Mental Health Clinics.

§ 122-35.2. Development of community mental health services.—Child-guidance clinics, adult clinics, all-purpose clinics (i.e., clinics serving both children and adults), and after-care treatment clinics, and a state-wide program of mental health education are to be developed and administered by the Department of Mental Health. The Department is designed to augment, promote, and improve, if necessary, the expansion of already existing services in general hospitals or clinics that help to conserve the mental health of the people of North Carolina. The Department will also encourage, implement, and provide assistance for research into various aspects of mental health by the local clinics. (1963, c. 1166, s. 6; 1965, c. 929, s. 2.)

Editor's Note. — The 1965 amendment substituted "Department" for "Division" at the beginning of the second and third sentences. Deleted "Community Mental Health Services Division of the" preceding "Department" at the end of the first sentence and

§ 122-35.3. Joint State and community operations of mental health clinics.—The Department of Mental Health is authorized to establish community mental health services within a framework of policies which provide for the joint operation of mental health clinics within local communities which agree to participate financially and otherwise in the program. This is to be a joint arrangement in which the Department of Mental Health represents the State of North Carolina and a local mental health authority represents the community. The Department of Mental Health is authorized to maintain standards for local mental health clinics, to advise agencies interested in community mental health, and co-operate with other local health services. (1963, c. 1166, s. 6; 1965, c. 929, s. 3.)

Editor's Note. — The 1965 amendment substituted "joint" for "partnership" near the beginning of the second sentence and deleted "through the Community Mental Health Services Division" following "Health" near the beginning of the third sentence.

§ 122-35.6. Establishment of local mental health clinics; establishment and operation of other clinics.—Any local mental health authority desiring to establish a mental health clinic shall submit an application to the Department of Mental Health. If the Department of Mental Health gives favorable consideration to the application, the Department of Mental Health may include the State's share of the cost of operating the proposed local clinic in its next budget request.

All local clinics are to be considered a joint undertaking by the Department of Mental Health representing the State and the local mental health authority representing the area served by the clinic.

All procedures regarding the establishment and operation of the clinics not covered under the provisions of this article may be prescribed by regulation of the State Board of Mental Health. (1963, c. 1166, s. 6; 1965, c. 796.)

Editor's Note. — The 1965 amendment deleted "or it may request an allotment of funds for this purpose from the Contin- agency and Emergency Fund" from the end of the second sentence.

§ 122-35.9. Physical property to be furnished by local or federal authorities.—All real estate, buildings, and equipment necessary to the operation of the local mental health clinic must be supplied from local or federal funds, or both, and such property shall be and remain the property of the local mental health authority. Provided, that where two or more local governmental units combine to establish joint mental health services in accordance with the provisions of § 122-35.5, the real estate, buildings, and equipment may by agreement be supplied from the funds of and remain the property of the local governmental unit in which they are located. (1963, c. 1166, s. 6; 1965, c. 800, s. 7.)

Editor's Note. — The 1965 amendment added the proviso.

§ 122-35.11. Local funds for mental health clinics.

Cross Reference. — As to capital public funds of counties, see §§ 153-142.22 to 153-142.26.

§ 122-35.12. Grants-in-aid to local mental health authorities.—From State and federal funds available to the Department of Mental Health, the Department is to make grants-in-aid to the local mental health authorities as follows: Two thirds of the first thirty thousand dollars (\$30,000.00) of the approved budget of the local mental health authority and one half of the remainder of the approved budget: Provided, that where two or more local governmental units combine to establish joint mental health services in accordance with the provisions of § 122-35.5, two thirds of the first thirty thousand dollars (\$30,000.00) of the share of each participating unit and one half of the remainder of the share of the unit shall be paid from State and federal funds. Where the actual expenditures of the local mental health authority are less than the approved budget, the State and federal grants-in-aid are to be determined on the basis of actual expenditures rather than the approved budget. For purposes of this section the terms approved budget and actual expenditures are not to include the items specified in G.S. 122-35.9. (1963, c. 1166, s. 6; 1965, c. 800, s. 8.)

Editor's Note. — The 1965 amendment added the proviso as to combining units at the end of the first sentence.

ARTICLE 2B.

Rehabilitation of Alcoholics.

§ 122-35.13. Appropriation to Department of Mental Health; establishment of division on alcoholism.—There is hereby appropriated from the general fund to the Department of Mental Health the sum of five hundred thousand dollars (\$500,000.00) for the biennium, 1967-1969, and during each biennium thereafter, which funds shall be expended for programs to be designated except that one hundred thousand dollars (\$100,000.00) of said appropriation by the Department of Mental Health for alcoholic rehabilitation on the local level shall be used by the Department of Mental Health for establishment of a division on alcoholism to direct and coordinate departmental alcoholism programs at the local level. (1967, c. 1240, s. 2.)

Cross Reference. — As to facilities and programs for treatment of alcoholism, see also § 122-7.1.

§ 122-35.14. Use of funds by local government agencies. — Said funds shall be made available to local government alcoholic rehabilitation agencies to be used by such agencies in accordance with the alcoholic rehabilitation program of the Department of Mental Health, for local programs of education, treatment of alcoholics, and to provide counseling and advisory services to alcoholics and their families, and to any person directly affected by alcoholics and alcoholism. (1967, c. 1240, s. 3.)

§ 122-35.15. **Local government agencies to match State funds.**—Before any funds shall be made available to any local government agency said agency shall have matched, on a dollar for dollar basis, the funds made available for the purposes herein stated. (1967, c. 1240, s. 4.)

§ 122-35.16. **Multi-city or multi-county governmental agency; prerequisites to receiving matching funds.**—Any local government unit, whether city or county, may combine with any other local government unit or units to form a multi-city, or multi-county governmental agency for the purposes herein set forth. Before such agency shall be eligible to receive matching funds for the purposes herein expressed, it must have first submitted a plan for alcoholic rehabilitation, education and counseling which shall have been approved by the Department of Mental Health as being in accordance with the state-wide program. It shall be a prerequisite to approval that at least fifty per cent (50%) of the total expenditure by any local agency shall be for programs of education in regard to alcoholism and for dissemination of facts regarding the use of beverage alcohol, and a portion of such fifty per cent (50%) of said funds shall be for counseling, advising and treating the spouses, members of the families of alcoholics, and any other persons directly affected by alcoholics and alcoholism when, in the opinion of the Department of Mental Health, such treatment of such persons would be necessary or advisable. (1967, c. 1240, s. 5.)

§ 122-35.17. **Construction of local alcoholic rehabilitation centers.**—Funds from the appropriation herein made may be expended for construction of local alcoholic rehabilitation centers, if matched for such purpose on a dollar for dollar basis, only if such construction shall have been approved by the Department of Mental Health, and express authorization shall have been granted by the General Assembly. (1967, c. 1240, s. 6.)

ARTICLE 3.

Admission of Patients; General Provisions.

§ 122-36. **Definitions.**—(a) The “county of residence” of an alleged mentally ill, mentally retarded, or inebriate person shall be the county of his actual residence at the time of his hospitalization, notwithstanding that such person may have been temporarily out of the county of his residence, in a hospital, or under court order a patient of some other state institution at the time of his hospitalization. A county of residence shall not have been changed by virtue of a person being temporarily out of his county, in a hospital, or confined under court order.

Editor’s Note.—

Subsection (a) is set out in this Supplement to correct a typographical error appearing in the 1964 Replacement Volume.

As the rest of the section was not affected, it is not set out.

For comment on 1963 amendments, see 42 N.C.L. Rev. 340 (1964).

§ 122-40. **Transfer of mentally ill citizens of North Carolina from another state to North Carolina.**—The State Department of Mental Health is authorized, upon being satisfied by report of residence investigation made by the State Board of Public Welfare that person hospitalized in a State Hospital for the mentally ill in another state is a resident of this State, to authorize such a person to be returned to the appropriate institution in this State at the expense of the sending state. The hospitalization of an alleged mentally ill person or an alleged inebriate in another state and the authorization by the State Department of Mental Health for his return shall be sufficient authority for the superintendent of the appropriate State hospital in this State to hold this patient for a reasonable period not to exceed thirty days. During this time hospitalization pro-

cedures for temporary observation and treatment may be initiated as provided for in article 7 of this chapter, without the removal of the patient from the hospital. (1945, c. 952, s. 34; 1947, c. 537, s. 19; 1959, c. 1002, ss. 20, 21; 1963, c. 1184, s. 1; 1965, c. 800, s. 9.)

Editor's Note. — The 1965 amendment inserted "by report of residence investigation made by the State Board of Public Welfare" near the beginning of the first sentence.

§ 122-41. Expenses to be paid by county of residence; penalty; recovery from estate of patient or inebriate.—Immediately upon the hospitalization of any alleged mentally ill person or alleged inebriate under article 7 of this chapter, a transcript of the proceedings shall be sent to the county in which he has residence and that county shall pay over to the county from which he was hospitalized all the cost of the examination and hospitalization proceedings, and if the board of commissioners of the county of residence shall fail to pay all proper expense of said examination and proceedings within sixty (60) days after the claim shall have been presented, they shall forfeit and pay to the county which hospitalized the alleged mentally ill person or alleged inebriate the sum of two hundred and fifty dollars (\$250.00), to be recovered by the commissioners of that county in a civil action brought in the superior court of the county from which the patient was hospitalized, against the commissioners of the county of residence of the alleged mentally ill patient or inebriate. The county of residence of the alleged mentally ill patient or inebriate may recover the cost of the examination and hospitalization proceedings of such mentally ill patient or inebriate if said mentally ill patient or inebriate has sufficient estate or property to bear the cost of such examination and hospitalization. (1899, c. 1, s. 16; Rev., s. 4583; C. S., s. 6205; 1963, c. 1184, s. 1; 1965, c. 642.)

Editor's Note.—The 1965 amendment added the last sentence.

§ 122-52: Repealed by Session Laws 1965, c. 800, s. 10.

ARTICLE 5.

Admission by Medical Certification.

§ 122-58. Admission on certification of physicians.

Stated in *Hagins v. Redevelopment Comm'n*, 275 N.C. 90, 165 S.E.2d 490 (1969).

ARTICLE 6.

Emergency Hospitalization.

§ 122-59. Temporary detention of persons becoming suddenly violent and dangerous to themselves or others; physician's statement; application for order of detention; subsequent proceedings.—Any person, who, by reason of the commission of overt acts, is believed to be suddenly violent and dangerous to himself or others, may be detained, physically and forcibly, for a period not to exceed twenty (20) days in the State hospital to which the clerk is authorized to hospitalize alleged mentally ill persons or alleged inebriates from his county, in a private hospital, county hospital or other suitable place of a nonpenal character.

Authorization for such detention may be given by any qualified physician in the form of a written statement that he has examined such person within 24 hours of the date of his statement and that it is his professional opinion, based upon such examination, that the person is homicidal or suicidal, or dangerous to himself or others. The physician's statement shall be sworn to before a person authorized to

take acknowledgments or witnessed by a peace officer, and shall constitute authority, without any court action, for the sheriff or any other peace officer to take custody of the alleged homicidal or suicidal person and transport him immediately to the appropriate State hospital or other suitable place of detention. It shall be the duty of the peace officer to whom such authorization is presented to effect such custody and transportation.

If such person has not been examined by a physician and it is believed that it would be dangerous to attempt to have him examined without restraint, authorization for detention may be given by the clerk of the superior court in the form of a written order directed to the sheriff or any other peace officer. The clerk may issue such order upon the application of any person having knowledge of the facts. The application must be in writing, signed and sworn to before the clerk, and must state that affiant believes the person to be homicidal or suicidal, the particulars as to his behavior, history and circumstances supporting such belief, that affiant is of the opinion that it would be dangerous to attempt to have the person examined by a physician without restraint, and it must include a request for the issuance of an order for detention and show the address of the affiant and his relationship, if any, to the alleged homicidal or suicidal person. In his order, the clerk may direct the officer to detain such person for an examination by a physician or to transport him immediately to the appropriate State hospital, as the facts and circumstances may warrant.

No person for whom detention has been authorized by a physician or a clerk of the superior court may be taken into custody after the expiration of 24 hours from the date of the examination by the physician or the issuance of the order by the clerk.

The detention provided for herein shall be for observation and treatment a period of not more than twenty (20) days. If involuntary hospitalization for mental illness is deemed necessary, a proceeding for judicial hospitalization may be instituted under the provision of article 7 of this chapter during the twenty-day period of detention. (1899, c. 1, s. 16; Rev., s. 4582; C. S., s. 6204; 1945, c. 952, s. 31; 1957, c. 1232, s. 20; 1959, c. 1002, ss. 18, 19; 1961, c. 511, s. 8; 1963, c. 1184, s. 2; 1967, c. 24, s. 19.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, substituted "violent" for "violently" near the beginning of the first

paragraph. Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

ARTICLE 7.

Judicial Hospitalization.

§ 122-60. Affidavit of mental illness or inebriety and request for examination.

Cited in *Chesson v. Pilot Life Ins. Co.*,
268 N.C. 98, 150 S.E.2d 40 (1966).

§ 122-62. Clerk to issue an order for examination.

Cross Reference. — As to civil liability for corruptly attempting hospitalization, see § 122-51.

§ 122-63. Clerk may commit for observation and treatment period or may order out-patient treatment.—When two qualified physicians have certified that the alleged mentally ill person or alleged inebriate is in need of observation and admission to the proper State hospital, the clerk shall hold an informal hearing. The clerk shall cause to be served on the alleged mentally ill person or alleged inebriate notice of the hearing. Such notice may be served by an officer of the law or some other person designated by the clerk of court. If the clerk designates a member of a hospital staff, a member of the staff of the county

department of public welfare, or a member of the staff of the county or district health department to serve the notice, no charge is to be made for such service. The clerk shall have the hearing without unnecessary delay and shall examine the certificates or affidavits of the physicians and any proper witnesses. At the conclusion of the hearing the clerk may dismiss the proceedings if he finds that the alleged mentally ill or inebriate person is not in need of observation and treatment in an appropriate hospital. If he finds that the alleged mentally ill or inebriate person is in need of observation and treatment, he is to issue an order for hospitalization on a form approved by the State Department of Mental Health. This order shall authorize the appropriate hospital to receive said person and there to examine him and observe his condition and give appropriate treatment for a period not exceeding one hundred and eighty (180) days. The clerk may authorize the transfer of such alleged mentally ill person or alleged inebriate to the proper hospital, when notified by the superintendent of the hospital that treatment facilities are available. If such person is not admitted to the appropriate State hospital within thirty (30) days of the date on which the clerk issued the order of hospitalization, the order shall be void and of no effect whatsoever. If the clerk deems it appropriate he may, with the approval of the examining physicians, order the alleged mentally ill person or alleged inebriate person to obtain out-patient care and treatment in a local facility or program providing clinical services approved by the North Carolina Department of Mental Health. This order shall remain in force for a period not to exceed 180 days and shall require a minimum weekly treatment and/or counseling period unless otherwise specified by the attending physician accepting responsibility for said care and treatment.

The clerk shall be advised of the alleged mentally ill or inebriate person's progress and compliance with the judicial order. Failure to comply with this order, or evidence that said out-patient treatment or program fails to meet the needs of the alleged mentally ill or inebriate person shall be sufficient reason for the clerk to have said mentally ill or inebriate person brought before him for other appropriate action.

If, at the initial hearing a period of in-patient treatment prior to commencing an out-patient program is recommended by the examining physicians, the clerk may direct the alleged mentally ill or inebriate person to obtain such treatment as a part of the order at such medical facility as may be recommended by the examining physicians.

The clerk shall transmit to the hospital information relevant to the physical and mental condition of the alleged mentally ill person or alleged inebriate. He shall certify as to the indigency of the person and any persons liable for the care of the person under G.S. 122-44 or G.S. 143-117 et seq., on forms approved by the State Department of Mental Health.

When a person has been admitted to one of the State hospitals under the provisions of this chapter for a period of observation and treatment, and when he has been carefully examined, if he is found to be not mentally ill or an inebriate, or not in need of care in a State hospital, the superintendent shall immediately report these findings to the clerk of the superior court of the county in which such person has residence, who shall order his discharge. The removal of said person from the State hospital shall be after the notice and in the manner prescribed in G.S. 122-67. (1899, c. 1, s. 15; Rev., s. 4578; 1915, c. 204, s. 1; C. S., s. 6193; 1923, c. 144, s. 1; 1945, c. 952, s. 22; 1947, c. 537, s. 15; 1953, c. 133; 1955, c. 887, ss. 4, 6; 1957, c. 1232, s. 17; c. 1257; 1959, c. 1002, s. 15; 1961, c. 511, ss. 3, 4; 1963, c. 1184, s. 2; 1969, c. 1127.)

Cross Reference.—

As to appointment of interpreters for deaf persons in commitment proceedings, see § 8A-1.

Editor's Note.—

The 1969 amendment added the last two

sentences of the first paragraph and added the second and third paragraphs.

Cited in Hagins v. Redevelopment Comm'n, 275 N.C. 90, 165 S.E.2d 490 (1969).

ARTICLE 7A.

Chronic Alcoholics.

§ 122-65.6. **Definitions.**—For the purposes of this article, the following definitions shall apply:

- (1) "Chronic alcoholic" shall mean any person who has been found by any court to have the illness or condition known as chronic alcoholism;
- (2) "Chronic alcoholism" shall mean the chronic and habitual use of alcoholic beverages by a person to the extent that he has lost the power of self-control with respect to the use of such beverages;
- (3) "Court" shall mean any trial court of this State, except a justice of the peace or mayor's court. (1967, c. 1256, s. 2.)

§ 122-65.7. **Jurisdiction of trial court over persons acquitted of public drunkenness by reason of chronic alcoholism.**—(a) Any court before which a person is acquitted of public drunkenness by reason of chronic alcoholism may retain jurisdiction over such person for purposes of treatment. Upon such acquittal the presiding judge may then take the action authorized by this article or may order the chronic alcoholic to return to court at a subsequent time before himself or another judge for action to be taken under the authority of this article. In the event that the chronic alcoholic does not comply with or is not responsive to the action prescribed by the court, the court may order him to return or be returned to court so that some other action may be taken. Jurisdiction over such chronic alcoholic may be retained for so long as appropriate for treatment but no longer than two years.

(b) If at the time of acquittal or upon later return to court the presiding judge determines that the chronic alcoholic is likely to endanger himself or others, the presiding judge may order him to be taken into custody and detained for not longer than five days in his own home, in a private or public hospital, or in any other suitable facility approved by the local health director for such detention, and returned to court for any further action to be taken under the authority of this article. (1967, c. 1256, s. 2.)

§ 122-65.8. **Procedures for treatment.** — Any court having jurisdiction over a chronic alcoholic pursuant to § 122-65.7 is authorized to take any one or more of the following actions:

- (1) Enter an order for the clerk of the superior court to commence the judicial hospitalization procedures in article 7 of this chapter; such order shall serve in lieu of and have the same effect as the affidavit and request for examination required in § 122-60;
- (2) Direct the chronic alcoholic in cooperation with any member of his family or other responsible person to make and follow plans for his treatment in a private facility or program approved by the North Carolina Department of Mental Health;
- (3) Refer the chronic alcoholic to a private physician or psychiatrist or to a hospital diagnostic center or to a private social or welfare organization;
- (4) Request the local department of public welfare or other appropriate local governmental agency or official to work with the chronic alcoholic and to make such reports as to his treatment or condition as requested by the court;
- (5) Make or approve any other plan or arrangement which may be appropriate for the treatment of the chronic alcoholic and require for so long as appropriate to treatment submission of periodic reports as to his treatment or condition, in the court's discretion. Provided that no person acquitted of public drunkenness by reason of chronic alcoholism shall be committed to any facility of the Department of Mental Health

by the court having jurisdiction over him in any manner other than pursuant to the procedure as provided in subdivision (1) above. (1967, c. 1256, s. 2; 1969, c. 469.)

Editor's Note. — The 1969 amendment added the proviso at the end of subdivision (5).

§ 122-65.9. **Article supplementary to other provisions.**—The provisions of this article are supplementary to, and not in substitution for, other provisions of this chapter except as expressly provided for herein. (1967, c. 1256, s. 2.)

ARTICLE 8.

Discharge of Patients.

§ 122-67. **Release of patients from hospital; responsibility of county.**

Defendant's discharge under this section terminated his confinement and he was, therefore, not confined for five years next preceding the institution of the action as required by § 50-5 (6). *Vaughan v. Vaughan*, 4 N.C. App. 253, 166 S.E.2d 530 (1969).

Periods of probation are permissible under § 50-5 (6) as well as under this section, and may be deemed not to have constituted an interruption of the confinement or a discharge from the hospital within the meaning of these statutes. *Vaughan v. Vaughan*, 4 N.C. App. 253, 166 S.E.2d 530 (1969).

Releases from hospital on periods of probation did not defeat party's right to divorce under § 50-5 (6). *Vaughan v. Vaughan*, 4 N.C. App. 253, 166 S.E.2d 530 (1969).

Release Not of Sufficient Duration to Cause Discharge.—Where defendant was released on probation on two different occasions, once for a period of ten days and another for a period of six months, these releases were not of a sufficient duration to cause a discharge under this section. *Vaughan v. Vaughan*, 4 N.C. App. 253, 166 S.E.2d 530 (1969).

ARTICLE 9.

Centers for Mentally Retarded.

§ 122-69.1. **Objects and aims of centers for mentally retarded.**

(9) Accept patients transferred to North Carolina under reciprocal agreements with other states and patients transferred under Interstate Mental Health Compact.

(10) Transfer patients out of North Carolina under reciprocal agreements with other states and under Interstate Mental Health Compact. (1963, c. 1184, s. 6; 1965, c. 800, s. 11.)

Editor's Note. — The 1965 amendment added subdivisions (9) and (10).

As the rest of the section was not affected by the amendment, it is not set out.

§ 122-70. **Admissions to centers for mentally retarded.**—Application for the admission of a resident person must be made by both the father and the mother if the father and mother are living together, and if not, by the parent having custody or person standing in loco parentis, or by a duly appointed guardian of the person. Otherwise, the State Department of Mental Health is authorized and empowered to promulgate rules, regulations and conditions of admission of children and adults to the centers. (1963, c. 1184, s. 6; 1965, c. 800, s. 12.)

Editor's Note. — The 1965 amendment rewrote the first sentence.

ARTICLE 10.

Private Hospitals for the Mentally Disordered.

§ 122-72. **Licensing and control of private mental institutions and homes.**—(a) It shall be unlawful for any person or corporation to establish or

maintain a private hospital, home or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without having a license therefor from the Department of Mental Health, or from the State Board of Public Welfare in accordance with subsection (e) of this section. Any person who carries on, conducts or attempts to carry on or conduct a private hospital, home, or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without having a license therefor from the Department of Mental Health or from the State Board of Public Welfare in accordance with subsection (e) of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this section shall be liable under the provisions of this section in the same manner and to the same extent as a private individual violating the law.

(b) Licenses shall be obtained annually. Every application for license hereunder shall be accompanied by a plan of the premises proposed to be occupied describing the capacities of the buildings for the uses intended, the extent and location of the grounds and the number of patients proposed to be received therein with such other information and in such form as the Department may require. The Board of Mental Health may by rules or regulations prescribe minimum standards of safety, sanitation, medical, nursing, and other facilities and equipment for each type of establishment which must be met by the applicant before a license will be granted by the Department.

(e) The authority to license nonmedical privately operated homes or other non-medical institutions (including religious facilities) for mentally ill persons, mentally retarded persons, and inebriates shall be the responsibility of the State Board of Public Welfare, and in such cases, in construing the provisions of subsections (b) and (c) herein, the words "State Board of Public Welfare" shall be substituted for every reference to the Department of Mental Health or the Board of Mental Health. (1899, c. 1; s. 60; Rev., s. 4600; C. S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954.)

Editor's Note.—

The 1965 amendment added "or from the State Board of Public Welfare in accordance with subsection (e) of this section" at the end of the first sentence in subsection (a) and following "Health" in the second sentence of that subsection. The amendment also rewrote subsection (e).

Section 4, c. 1178, Session Laws 1965, provides: "This act shall not apply where said homes or other nonmedical institutions or facilities care for no more than four

persons, all of whom are under the supervision of the United States Veterans Administration."

The 1969 amendment, effective July 1, 1969, deleted "first" preceding "having" and "obtained" following "having" in the first and second sentences of subsection (a), added the first sentence of subsection (b) and deleted a reference to subsection (d) in subsection (e).

As subsections (c) and (d) were not changed by the amendments, they are not set out.

§ 122-75. Placing mentally ill persons in private hospitals.

Cross Reference.—As to appointment of interpreters for deaf persons in commitment proceedings, see § 8A-1.

ARTICLE 11.

Mentally Ill Criminals.

§ 122-83. Mentally ill persons charged with crime to be committed to hospital.—All persons who may hereafter commit crime while mentally ill, and all who, being charged with crime, are adjudged to be mentally ill at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such per-

son is mentally ill and cannot plead, to Dorothea Dix Hospital, or to Cherry Hospital, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital. As a means of such care and treatment, the said board of directors may make rules and regulations under which the persons so committed to said institutions may be employed in labor upon the farms of said institutions under such supervision as said boards of directors may direct: Provided, that the superintendent and medical director of the hospital shall determine, in each case, that such employment is advantageous in the physical or mental treatment of the particular inmate to be so employed. Their confinement in said hospital shall not be regarded as punishment for any offense. (1899, c. 1, s. 63; Rev., s. 4617; C. S., s. 6236; 1923, c. 165, ss. 2, 3; 1927, c. 228; 1945, c. 952, s. 53; 1959, c. 1028, ss. 1, 2; 1963, c. 1184, s. 25; 1965, c. 929, s. 4.)

Cross Reference.—

As to appointment of interpreters for deaf persons in commitment proceedings, see § 8A-1.

Editor's Note.—

The 1965 amendment deleted "persons"

following "and all" near the beginning of the first sentence and deleted all references to race in hospital assignments therein.

For a note on a committed mental patient's right to treatment in public mental hospitals, see 45 N.C.L. Rev. 761 (1967).

§ 122-84. Persons acquitted of certain crimes or incapable of being tried, on account of mental illness, committed to hospital; return for trial; detention for treatment.

How Mental, etc.—

Ordinarily, it is for the court, in its discretion, to determine whether the circumstances brought to its attention are sufficient to call for a formal inquiry to determine whether defendant has sufficient mental capacity to plead to the indictment and conduct a rational defense. By virtue of this section and § 122-83, such determination may be made by the court with or without the aid of a jury. *State v. Propst*, 274 N.C. 62, 161 S.E.2d 560 (1968).

The test of mental responsibility is the capacity of defendant to distinguish between right and wrong at the time of and in respect to the matter under investigation. *State v. Propst*, 274 N.C. 62, 161 S.E.2d 560 (1968).

In determining a defendant's capacity to

stand trial, the test is whether he has the capacity to comprehend his position, to understand the nature and object of the proceedings against him, to conduct his defense in a rational manner, and to cooperate with his counsel to the end that any available defense may be interposed. *State v. Propst*, 274 N.C. 62, 161 S.E.2d 560 (1968).

When Determination of Mental Capacity to Be Made.—The defendant's capacity to enter upon a trial should be determined before he is put upon the trial; for the trial would amount to nothing if the defendant has not the required capacity to defend himself against the charge. *State v. Propst*, 274 N.C. 62, 161 S.E.2d 560 (1968).

Applied in *Bell v. Smith*, 263 N.C. 814, 140 S.E.2d 542 (1965).

§ 122-85. Convicts becoming mentally ill committed to hospital.—All convicts becoming mentally ill after commitment to any penal institution in this State shall be admitted to the hospital designated in § 122-83. The same hospitalization procedure as prescribed in article 7 of this chapter shall be followed except that temporary authority for admission of the convict may be given by the clerk of court of the county in which the prison is located, that the prisoner need not be removed from the prison for a hearing, and that the clerk of court of the county from which the convict was sentenced shall issue the order of hospitalization.

In case of the expiration of the sentence of any convicted mentally ill person, while such person is confined in said hospital, such person shall be kept in said hospital until transferred or discharged, as provided by §§ 122-65, 122-66.1, 122-67 and 122-68. (1899, c. 1, s. 66; Rev., s. 4619; C. S., s. 6238; 1923, c. 165, s. 5; 1945, c. 952, s. 55; 1955, c. 887, s. 14; 1957, c. 1232, s. 26; 1963, c. 1184, s. 27; 1965, c. 800, s. 13.)

Editor's Note.—

The 1965 amendment inserted the reference to § 122-65 in the second paragraph.

§ 122-89. Hospital authorities to receive and treat such patients.

Editor's Note.—

For a note on a committed mental patient's right to treatment in public mental hospitals, see 45 N.C.L. Rev. 761 (1967).

§ 122-90: Repealed by Session Laws 1969, c. 767, s. 1.

§ 122-91. Commitment of criminal defendant for observation and treatment.—Any alleged criminal indicted or charged with the commission of a felony may, on the order of the presiding or resident judge of the superior court or the chief district court judge, in or out of session, be committed to a State hospital for a period of not exceeding sixty days for observation and treatment. The order of commitment shall contain the name and address of the nearest responsible relative, if known, and shall also contain the address of the alleged criminal, if known. If at the end of the observation and treatment period herein provided the alleged criminal is found to be mentally incompetent of pleading to the charge against him, the superintendent of the State hospital concerned shall report his findings and recommendations to the clerk of superior court of the county from which the alleged criminal was committed. It shall be the duty of such clerk to bring the report to the attention of the presiding or residing judge of the superior court or the chief district court judge. It shall also be the duty of the clerk to notify the clerk of the superior court of the county in which the alleged criminal is hospitalized, and the duty of the clerk so notified to initiate proceedings to have the alleged criminal hospitalized for a minimum necessary period under the procedures prescribed in G.S. 122-65. If the alleged criminal shall be found competent, the superintendent of the State hospital concerned shall report his findings to the clerk of the superior court of the county from which such alleged criminal was committed and the clerk shall notify the sheriff who shall remove the alleged criminal from the State hospital and return him to the county for trial. (1945, c. 952, s. 60; 1951, c. 181; 1957, c. 1232, s. 27; 1961, c. 511, s. 12; 1963, c. 1184, s. 39; 1969, c. 767, s. 2.)

Editor's Note.—

The 1969 amendment inserted "or the chief district court judge" and substituted "session" for "term" in the first sentence and added "or the chief district court judge" at the end of the fourth sentence.

Applied in *State v. Hooks*, 271 N.C. 713,

157 S.E.2d 333 (1967); *State v. Old*, 272 N.C. 42, 157 S.E.2d 651 (1967).

Cited in *State v. Parrish*, 273 N.C. 477, 160 S.E.2d 153 (1968); *State v. Propst*, 274 N.C. 62, 161 S.E.2d 560 (1968); *State v. Willis*, 4 N.C. App. 641, 167 S.E.2d 518 (1969).

ARTICLE 12.

John Umstead Hospital.

§ 122-95. Ordinances and regulations for enforcement of article.—

The North Carolina State Department of Mental Health is authorized to make such rules and regulations and to adopt such ordinances, as it may deem necessary, to enforce the provisions of this article and to carry out its true purpose and intent, for the better administration of the John Umstead Hospital and any adjacent territory owned by it, and in particular may make ordinances and adopt rules and regulations dealing with and controlling the following subjects:

- (1) To regulate the use of streets, alleys, driveways, and to establish parking areas.
- (2) To promote the health, safety, morals and general welfare of those residing on, occupying, renting or using any property or facilities within its limits, and those visiting and patronizing the hospital by:
 - a. Regulating the height, number of stories and size of buildings or other structures, the percentage of lot to be occupied, the size of yards and courts and other open spaces, the density of population, and the location and use of buildings, structures for trade,

industry, residence or other purposes, to regulate markets, and prescribe at what place marketable products may be sold, and to at the expense of the owner, when dangerous to life, health or condemn and remove all buildings, or cause them to be removed, other property.

- b. To prohibit, restrict and regulate theatres, carnivals, circuses, shows, parades, exhibitions of showmen and all other public amusements and entertainments and recreations.
- c. To regulate, restrict or prohibit the operation of pool and billiard rooms and dance halls.
- d. To regulate and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, chickens and other animals and fowl of every description.
- e. To prevent and abate nuisances whether on public or private property.
- f. Regulating the subdivision of land. Such regulation shall be in accordance with the procedures and subject to the limitations set forth in Part 3A of article 18 of chapter 160. In applying said part, the North Carolina State Department of Mental Health shall be construed as standing in the place of a municipal legislative body.

Any rules and regulations adopted pursuant to this section shall apply to any, all or a portion of the original Camp Butner reservation as may be designated by the Department of Mental Health as acquired by the State, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1965, c. 933.)

Editor's Note.—

The 1965 amendment added paragraph f of subdivision (2) and the last paragraph in the section.

ARTICLE 12A.

Wright School for Treatment and Education of Emotionally Disturbed Children.

§ 122-98.1. **Department of Mental Health to continue to operate Wright School.**—The Department of Mental Health shall continue to operate the Wright School, Durham, North Carolina, for emotionally disturbed children. (1967, c. 151.)

ARTICLE 14.

Mental Health Council.

§ 122-105. **Creation of Council; membership; chairman.** — There is hereby created a Mental Health Council to be composed of the following persons: The Commissioner of Mental Health, the Chairman of the North Carolina Board of Mental Health, the Commissioner of Public Welfare, the Chief of the Psychological Services Section of the State Department of Public Welfare, the State Health Director, the Chief of the Mental Retardation and Development Evaluation Program of the North Carolina State Board of Health, a representative of the North Carolina Association of Clerks of Court, the State Superintendent of Public Instruction, the Commissioner of the State Department of Correction, the Director of the Division of Vocational Rehabilitation of the State Department of Public Instruction, a representative of the Medical Society of the State of North Carolina, a dentist licensed to practice in North Carolina appointed by the Governor, a representative of the North Carolina Neuropsychiatric Association, a representative of the North Carolina Mental Health Association, a representative of the department of psychiatry of each of the four-year medical schools in the State, a

representative of the North Carolina Psychological Association, a representative of the North Carolina Conference for Social Service, a representative of the State Congress of Parents and Teachers, a representative of the Eugenics Board, the Commissioner of Juvenile Correction, and the Director of the Special Education Section, Division of Instructional Services, North Carolina State Department of Public Instruction. The Mental Health Council is hereby empowered to invite additional organizations to name representatives to the Council. (1945, c. 952, s. 61; 1955, c. 486; 1957, c. 1357, s. 15; 1963, c. 326; c. 1166, s. 10; c. 1184, s. 13; 1965, c. 15; 1969, c. 900.)

Editor's Note.—

The 1969 amendment rewrote the first sentence, as previously amended in 1965.

The Mental Health Council is a creature of the State of North Carolina. *Hawkins v. North Carolina Dental Soc'y*, 355 F.2d 718 (4th Cir. 1966).

And the functions it serves are concededly public functions of the State. *Hawkins v. North Carolina Dental Soc'y*, 355 F.2d 718 (4th Cir. 1966).

ARTICLE 15.

Advisory Council on Alcoholism.

§ 122-108. **Advisory Council on Alcoholism created.**—There is hereby created an advisory council to be known as the "Advisory Council on Alcoholism to the North Carolina Board of Mental Health." The Council shall be composed of the following members:

- (1) The respective chairmen of the House and Senate Committees on Mental Health;
- (2) A judge of the superior court to be appointed by the Chief Justice of Supreme Court of the State of North Carolina to serve for a term of three years;
- (3) A member of the North Carolina State Bar to be appointed by the President of the North Carolina State Bar Association to serve for a term of three years;
- (4) Four members to be appointed by the executive committee of the alcoholism programs of North Carolina. The term of appointment shall be for three years except that two of the first four members appointed shall serve for only two years;
- (5) Four members to be appointed by the North Carolina Board of Mental Health. The term of appointment shall be for three years except that two of the first four members appointed shall serve for only two years;
- (6) The Council shall choose its own chairman. (1969, c. 676, s. 1.)

§ 122-109. **Purposes of Council.** — The Advisory Council shall study, evaluate and make recommendations to the State Board of Mental Health in areas as:

- (1) State and community treatment programs in alcoholism;
- (2) Ways and means of promoting public understanding of alcoholism and alcohol problems;
- (3) Public recognition and prevention of alcoholism through educational programs;
- (4) Educational programs on alcoholism and alcohol problems in public schools and higher education;
- (5) Research and evaluation of treatment and rehabilitation methods on State and local levels;
- (6) Training programs in the area of alcoholism;
- (7) The need for new State laws and programs in the field of alcohol problems;

- (8) Research and evaluation of the need for treatment and rehabilitation of alcoholic workers and executives in industry within the State. (1969, c. 676, s. 2.)

§ 122-110. **Annual report of Council.**—The Advisory Council shall make an annual report to the State Board of Mental Health with copies to the Governor and the General Assembly. (1969, c. 676, s. 3.)

§ 122-111. **Council members' pay.**—Members of the Council shall be paid from funds appropriated to State Department of Mental Health, the same per diem, subsistence and travel allowance as is now or may hereafter be prescribed for State boards and commissions generally. (1969, c. 676, s. 4.)

Chapter 122A.

North Carolina Housing Corporation.

Sec.		Sec.	
122A-1.	Short title.	122A-13.	Negotiable instruments.
122A-2.	Legislative findings and purposes.	122A-14.	Obligations eligible for investment.
122A-3.	Definitions.	122A-15.	Refunding obligations.
122A-4.	North Carolina Housing Corporation.	122A-16.	Annual reports.
122A-5.	General powers.	122A-17.	Officers not liable.
122A-6.	Credit of State not pledged.	122A-18.	Authorization to accept appropriated moneys.
122A-7.	Housing development fund.	122A-19.	Tax exemption.
122A-8.	Bonds and notes.	122A-20.	Conflict of interest.
122A-9.	Trust agreement or resolution.	122A-21.	Additional method.
122A-10.	Validity of any pledge.	122A-22.	Chapter liberally construed.
122A-11.	Trust funds.	122A-23.	Inconsistent laws inapplicable.
122A-12.	Remedies.		

§ 122A-1. **Short title.**—This chapter shall be known and may be cited as the "North Carolina Housing Corporation Act." (1969, c. 1235, s. 1.)

§ 122A-2. **Legislative findings and purposes.**—The General Assembly hereby finds and declares that as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods and as a result of actions involving highways, public facilities and urban renewal activities there exists in the State of North Carolina a serious shortage of decent, safe and sanitary residential housing available at low prices or rentals to persons and families of lower income. This shortage is severe in certain urban areas of the State, is especially critical in the rural areas, and is inimical to the health, safety, welfare and prosperity of all residents of the State and to the sound growth of North Carolina communities.

The General Assembly hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford, or to achieve the urgently needed rehabilitation of much of the present lower income housing. It is imperative that the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower income displaced by public actions or natural disaster be increased; and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout North Carolina.

The General Assembly hereby finds and declares further that the purposes of this chapter are to provide financing for development costs, land development and

residential housing construction, new or rehabilitated, for sale or rental to persons and families of lower income.

The General Assembly hereby finds and declares further that in accomplishing this purpose, the North Carolina Housing Corporation, a public agency and an instrumentality of the State, is acting in all respects for the benefit of the people of the State in the performance of essential public functions and serves a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the North Carolina Housing Corporation is empowered to act on behalf of the State of North Carolina and its people in serving this public purpose for the benefit of the general public. (1969, c. 1235, s 2.)

§ 122A-3. Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

- (1) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the Corporation under this chapter but shall not include any fund notes;
- (2) "Corporation" means the North Carolina Housing Corporation created by this chapter;
- (3) "Development Costs" means the costs approved by the Corporation as appropriate expenditures which may be incurred by sponsors, builders and developers of residential housing, prior to commitment and initial advance of the proceeds of a construction loan or of a mortgage, including but not limited to:
 - a. Payments for options to purchase properties on the proposed residential housing site, deposits on contracts of purchase, or, with prior approval of the Corporation, payments for the purchase of such properties,
 - b. Legal and organizational expenses, including payments of attorneys' fees, project manager, clerical and other staff salaries, office rent and other incidental expenses,
 - c. Payment of fees for preliminary feasibility studies and advances for planning, engineering and architectural work,
 - d. Expenses for tenant surveys and market analyses, and
 - e. Necessary application and other fees;
- (4) "Fund notes" means the notes authorized to be issued by the Corporation under the provisions of § 122A-7;
- (5) "Governmental agency" means any department, division, public agency, political subdivision or other public instrumentality of the State, the federal government, any other State or public agency, or any two or more thereof;
- (6) "Housing development fund" means the housing development fund created by § 122A-7;
- (7) "Insured construction loan" means a construction loan for land development or residential housing which is secured by a federally insured mortgage or which is insured by the United States or an instrumentality thereof, or for which there is a commitment by the United States or an instrumentality thereof to insure such a loan;
- (8) "Insured mortgage" or "insured mortgage loan" means a mortgage loan for residential housing insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage;
- (9) "Land development" means the process of acquiring land primarily for residential housing construction for persons and families of lower income and making, installing or constructing nonresidential housing improvements, including water, sewer and other utilities, roads, streets,

- curbs, gutters, sidewalks, storm drainage facilities and other installations or works, whether on or off the site, which the Corporation deems necessary or desirable to prepare such land primarily for residential housing construction;
- (10) "Obligations" means any bonds, bond anticipation notes or fund notes authorized to be issued by the Corporation under the provisions of this chapter;
- (11) "Persons and families of lower income" means persons and families deemed by the Corporation to require such assistance as is made available by this chapter on account of insufficient personal or family income, taking into consideration, without limitation, such factors as (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a lower income basis and (v) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing, and deemed by the Corporation therefore to be eligible to occupy residential housing constructed and financed, wholly or in part, with insured construction loans or insured mortgages, or with other public or private assistance;
- (12) "Residential housing" means a specific work or improvement undertaken primarily to provide dwelling accommodations for persons and families of lower income, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, and such other nonhousing facilities as may be incidental or appurtenant thereto; and
- (13) "State" means the State of North Carolina. (1969, c. 1235, s. 3.)

§ 122A-4. North Carolina Housing Corporation. — There is hereby created a body politic and corporate to be known as the "North Carolina Housing Corporation" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The Corporation shall be composed of nine members. The State Treasurer, Director of the Department of Administration, Director of the Department of Conservation and Development, Director of the Department of Local Affairs and the State Health Officer and their successors in office from time to time shall, by virtue of their incumbency in such offices and without further appointment or qualification, be members of the Corporation. The Governor shall appoint the other four members of the Corporation who shall be residents of the State and shall not hold other public office. One of such appointees shall have had experience in real estate, one shall have had experience in banking, one shall have had experience in mortgage finance and another shall have had experience in insurance. The four members of the Corporation thus appointed shall continue in office for terms of one, two, three and four years, respectively, as designated by the Governor, and until their successors shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of four years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Corporation shall be eligible for reappointment. Each member of the Corporation appointed by the Governor may be removed by the Governor for misfeasance, malfeasance or wilful neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each member of the Corporation appointed by the Governor before entering upon his duty shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall

designate a member of the Corporation to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a member of the Corporation or a date six months after the expiration of the then current term of the Governor designating such chairman. The Corporation shall annually elect one of its members as vice-chairman. The Corporation shall also elect or appoint, and prescribe the duties of, such other officers as the Corporation deems necessary or advisable, including an executive director and a secretary, and the Governor and the Advisory Budget Commission shall fix the compensation of such officers.

No part of the revenues or assets of the Corporation shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Corporation shall receive no compensation for their services but shall be entitled to receive, from funds of the Corporation, for attendance at meetings of the Corporation or any committee thereof and for other services for the Corporation reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and, only as to the members appointed by the Governor, such per diem as is allowed by law for members of other State boards, commissions and committees.

The executive director shall administer, manage and direct the affairs and business of the Corporation, subject to the policies, control and direction of the members of the Corporation. The secretary of the Corporation shall keep a record of the proceedings of the Corporation and shall be custodian of all books, documents and papers filed with the Corporation, the minute book or journal of the Corporation and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Corporation and to give certificates under the official seal of the Corporation to the effect that such copies are true copies, and all persons dealing with the Corporation may rely upon such certificates. Five members of the Corporation shall constitute a quorum and the affirmative vote of five members at a meeting of the members duly called and held shall be necessary for any action taken by the membership of the Corporation, except adjournment. No vacancy in the membership of the Corporation shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Corporation. (1969, c. 1235, s. 4.)

§ 122A-5. General powers.—The Corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

- (1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the Corporation that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
- (2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the Corporation that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
- (3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower income for residential housing where the Corporation has given approval prior to the initial making of such loan; provided, however, that any such purchase shall be made only upon the determination by the Corporation that mortgage loans were, at the time such approval was given, not

- otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
- (4) To make temporary loans from the housing development fund;
 - (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidences of indebtedness;
 - (6) To acquire on a temporary basis real property, or an interest therein, in its own name, by purchase, transfer or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the Corporation has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to rent or lease such property to a tenant pending such sale, transfer or conveyance;
 - (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage or temporary loan of any type permitted by this chapter;
 - (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
 - (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the Corporation is a party;
 - (10) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue its obligation as evidence of any such borrowing;
 - (11) To include in any borrowing such amounts as may be deemed necessary by the Corporation to pay financing charges, interest on the obligations for a period not exceeding two years from their date, consultant, advisory and legal fees and such other expenses as are necessary or incident to such borrowing;
 - (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
 - (13) To provide technical and advisory services to sponsors, builders and developers of residential housing and to residents thereof;
 - (14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;
 - (15) To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Corporation under this chapter, including contracts with any person, firm, corporation, governmental agency or other entity, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the Corporation to facilitate the purposes of this chapter;
 - (16) To receive, administer and comply with the conditions and requirements respecting any appropriation or any gift, grant or donation of any property or money;
 - (17) To sue and be sued in its own name, plead and be impleaded;
 - (18) To maintain an office in the city of Raleigh and at such other place or places as it may determine;
 - (19) To adopt an official seal and alter the same at pleasure;

- (20) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties; and
- (21) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the Corporation and to fix and pay their compensation from funds available to the Corporation therefor. (1969, c. 1235, s. 5.)

§ 122A-6. Credit of State not pledged.—Obligations issued under the provisions of this chapter shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues or assets of the Corporation. Each obligation issued under this chapter shall contain on the face thereof a statement to the effect that the Corporation shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

Expenses incurred by the Corporation in carrying out the provisions of this chapter may be made payable from funds provided pursuant to this chapter and no liability shall be incurred by the Corporation hereunder beyond the extent to which moneys shall have been so provided. (1969, c. 1235, s. 6.)

§ 122A-7. Housing development fund. — There is hereby created and established a special revolving loan fund to be known as the “housing development fund” and to be administered by the Corporation as a trust fund separate and distinct from any other moneys or funds administered by the Corporation.

The housing development fund shall be comprised of the proceeds of grants and contributions and of fund notes issued by the Corporation for the purpose of providing funds therefor. The Corporation is hereby authorized to receive and accept from any source whatever any grants or contributions for the housing development fund. The Corporation is further authorized to provide for the issuance, at one time or from time to time, of housing development fund notes for the purpose of providing funds for such fund; provided, however, that not more than five million dollars (\$5,000,000.00) fund notes shall be outstanding at any one time. The principal of and the interest on any such fund notes shall be payable solely from the housing development fund. The fund notes of each issue shall be dated, shall mature at such time or times not exceeding ten years from their date or dates, and may be made redeemable before maturity, at the option of the Corporation, at such price or prices and under such terms and conditions as may be determined by the Corporation. The Corporation shall determine the form and manner of execution of the fund notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State or any agent, including the lender. In case any officer whose signature or a facsimile of whose signature shall appear on any fund notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The fund notes may be issued in coupon or in registered form, or both, as the Corporation may determine, and provision may be made for the registration of any coupon fund notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon fund notes of any fund notes registered as to both principal and interest, and for the interchange of registered and coupon fund notes. Any such fund notes shall bear interest at such rate or rates as may be determined by the Corporation and may be sold in such manner, either

at public or private sale, and for such price as the Corporation shall determine to be for the best interest of the Corporation and best effectuate the purposes of this chapter.

The proceeds of any fund notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Corporation may provide in the resolution authorizing the issuance of such fund notes. The Corporation may provide for the replacement of any fund notes which shall become mutilated or shall be destroyed or lost.

Fund notes may be issued under the provisions of this section without obtaining the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this chapter and the provisions of the resolution authorizing the issuance of such fund notes.

The purpose of the housing development fund is to provide a source from which the Corporation may make temporary loans, and the Corporation is authorized to make temporary loans from the housing development fund, at such interest rate or rates as may be determined by the Corporation to be for the best interest of the Corporation and best effectuate the purposes of this chapter, and with such security for repayment as the Corporation deems reasonably necessary and practicable, to

- (1) Defray development costs of sponsors, builders and developers of residential housing, or
- (2) Provide to persons and families of lower income who are applying for mortgages, the amounts required to make down payments and pay closing costs, or
- (3) Make or participate in the making of construction loans which are not federally insured to sponsors, builders and developers of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the Corporation that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions; and provided further that no such loan shall be made unless
 - a. The United States or an instrumentality thereof has approved the subdivision planning and has agreed to insure the mortgage loan or loans, the proceeds of which shall be applied to the payment of all or any part of such construction loans, and
 - b. A North Carolina banking or lending institution has agreed to furnish not less than 20% of such construction loan, the security interest of the banking or lending institution under the loan to be subordinate in all respects to the Corporation's security interest in such loan.

No temporary loan shall be made by the Corporation from the housing development fund except in accordance with a written agreement which shall include, without limitation, the following terms and conditions:

- (1) The proceeds of such loan shall be used only for the purposes for which such loan shall have been made as provided in the agreement;
- (2) Such loan shall be repaid in full as provided in the agreement;
- (3) All repayments in connection with a loan to defray development costs shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage loan, as the case may be, or at such other times as the Corporation deems reasonably necessary or practicable; and
- (4) Such security for repayment shall be specified and shall be upon such terms and conditions as the Corporation deems reasonably necessary or practicable to insure all repayments.

No funds from the housing development fund shall be used to carry on propaganda or otherwise attempt to influence legislation. (1969, c. 1235, s. 7.)

§ 122A-8. Bonds and notes.—The Corporation is hereby authorized to provide for the issuance, at one time or from time to time, of not exceeding two hundred million dollars (\$200,000,000) bonds of the Corporation to carry out and effectuate its corporate purposes; provided, however, that not more than fifty million dollars (\$50,000,000) bonds shall be issued prior to June 30, 1971. In anticipation of the issuance of such bonds, the Corporation also is hereby authorized to provide for the issuance, at one time or from time to time, of bond anticipation notes; provided, however, that prior to June 30, 1971 the total amount of bonds and bond anticipation notes outstanding at any one time shall not exceed fifty million dollars (\$50,000,000.00) excluding therefrom any bond anticipation notes for the payment of which bonds shall have been issued. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or assets of the Corporation. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Corporation at such price or prices and under such terms and conditions as may be determined by the Corporation. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Corporation. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Corporation. The Corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Corporation may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the filing with the Local Government Commission of North Carolina of a resolution of the Corporation requesting that its bonds or notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as said Commission shall determine to be for the best interest of the Corporation and best effectuate the purposes of this chapter provided that such sale shall be approved by the Corporation.

The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Corporation may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

Prior to the preparation of definitive bonds, the Corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Corporation may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

Bonds or notes may be issued under the provisions of this chapter without obtaining, except as otherwise expressly provided in this chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. (1969, c. 1235, s. 8.)

§ 122A-9. Trust agreement or resolution.—In the discretion of the Corporation any obligations issued under the provisions of this chapter may be secured by a trust agreement by and between the Corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the Corporation, including, without limitation, mortgage loans, mortgage loan commitments, construction loans, temporary loans, contracts, agreements and other security or investment obligations, the fees or charges made or received by the Corporation, the moneys received in payment of loans and interest thereon and any other moneys received or to be received by the Corporation. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Corporation in relation to the purposes to which obligation proceeds may be applied, the disposition or pledging of the revenues or assets of the Corporation, the terms and conditions for the issuance of additional obligations, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of obligations, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Corporation. Any such trust agreement or resolution may set forth the rights and remedies of the holders of any obligations and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Corporation may deem reasonable and proper for the security of the holders of any obligations. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on obligations or from any other funds available to the Corporation. (1969, c. 1235, s. 9.)

§ 122A-10. Validity of any pledge.—The pledge of any assets or revenues of the Corporation to the payment of the principal of or the interest on any obligations of the Corporation shall be valid and binding from the time when the pledge is made and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Corporation, irrespective of whether such parties have notice thereof. Nothing herein shall be construed to prohibit the Corporation from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such obligations. (1969, c. 1235, s. 10.)

§ 122A-11. Trust funds.—Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this chapter shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee

of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Corporation may be invested as provided in G.S. 159-28.1. (1969, c. 1235, s. 11.)

§ 122A-12. **Remedies.**—Any holder of obligations issued under the provisions of this chapter or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such obligations, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Corporation pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such trust agreement or resolution to be performed by the Corporation or by any officer thereof. (1969, c. 1235, s. 12.)

§ 122A-13. **Negotiable instruments.**—Notwithstanding any of the foregoing provisions of this chapter or any recitals in any obligations issued under the provisions of this chapter, all such obligations and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State, subject only to any applicable provisions for registration. (1969, c. 1235, s. 13.)

§ 122A-14. **Obligations eligible for investment.** — Obligations issued under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1969, c. 1235, s. 14.)

§ 122A-15. **Refunding obligations.**—The Corporation is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Corporation, for any corporate purpose of the Corporation. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Corporation in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than

the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1965, c. 1235, s. 15.)

§ **122A-16. Annual reports.**—The Corporation shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Corporation during such year. The Corporation shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Corporation. (1969, c. 1235, s. 16.)

§ **122A-17. Officers not liable.**—No member or other officer of the Corporation shall be subject to any personal liability or accountability by reason of his execution of any obligations or the issuance thereof. (1969, c. 1235, s. 17.)

§ **122A-18. Authorization to accept appropriated moneys.** — The Corporation is authorized to accept such moneys as may be appropriated from time to time by the General Assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the Corporation. (1969, c. 1235, s. 18.)

§ **122A-19. Tax exemption.**—The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Corporation shall not be required to pay any tax or assessment on any property owned by the Corporation under the provisions of this chapter or upon the income therefrom.

Any obligations issued by the Corporation under the provisions of this chapter, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1969, c. 1235, s. 19.)

§ **122A-20. Conflict of interest.**—If any member, officer or employee of the Corporation shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the Corporation, including any loan to any sponsor, builder or developer, such interest shall be disclosed to the Corporation and shall be set forth in the minutes of the Corporation, and the member, officer or employee having such interest therein shall not participate on behalf of the Corporation in the authorization of any such contract. (1969, c. 1235, s. 20.)

§ **122A-21. Additional method.**—The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1969, c. 1235, s. 21.)

§ **122A-22. Chapter liberally construed.**—This chapter, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1969, c. 1235, s. 22.)

§ **122A-23. Inconsistent laws inapplicable.**—Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special laws,

or parts thereof, the provisions of this chapter shall be controlling. (1969, c. 1235, s. 24.)

Chapter 123A. Industrial Development.

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123A-12. Authorization of funds for initial expenditures.	123A-27. Inconsistent laws inapplicable.

§ 123A-1. **Short title.**—This chapter shall be known, and may be cited, as the “North Carolina Industrial Development Financing Act.” (1967, c. 535, s. 1.)

§ 123A-2. **Legislative findings and purposes.**—The General Assembly finds and determines that in order to meet the challenge of attracting new industry posed by the inducements to industry offered through legislative enactments in other jurisdictions and to continue the State’s progress in industrial development, it is necessary to establish a public agency and an instrumentality of the State to facilitate the provision of facilities promoting industrial development in the State and otherwise effectuating the purposes of this chapter, without the levy of any additional taxes therefor. The purposes of this chapter are to promote the industry and natural resources of the State, increase opportunities for gainful employment, increase purchasing power, improve living conditions, advance the general economy, expand facilities for research and development, increase vocational training opportunities and otherwise contribute to the prosperity and welfare of the State and its inhabitants by providing facilities for operation by private operators useful for industrial and research pursuits, such purposes being, and are hereby declared to be, public purposes. (1967, c. 535, s. 2.)

§ 123A-3. **Definitions.**—The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

- (1) “Authority,” the North Carolina Industrial Development Financing Authority created by this chapter.
- (2) “Bonds” or “revenue bonds” or “industrial revenue bonds,” the bonds authorized to be issued by the Authority under this chapter.
- (3) “Cost” as applied to any project shall embrace the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of construction,

the cost of engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing such project, administrative and other expenses necessary or incident to the construction of such project and the financing of the construction thereof, including reimbursement to any governmental agency or any lessee of such project for such expenditures, made with the prior approval of the Authority, that would be costs of the project hereunder had they been made directly by the Authority.

- (4) "Governing body," the board, commission or body in which the general legislative powers of any local unit are vested.
- (5) "Governmental agency," any department, division, public agency, political subdivision or other public instrumentality, including any economic development commission or local unit, of the State, any other state or local public agency, or any two or more thereof.
- (6) "Local unit," the city, town or, as to any project that shall be located outside the boundaries of any city or town, the county, in which any project shall be located, and as to any project that shall be located partly inside and partly outside the corporate boundaries of any city or town, both such city or town and the county thereof.
- (7) "Project," any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as a factory, mill, processing plant, assembly plant, fabricating plant, industrial distribution center or research and development facility, including facilities for industrial, medical, electronic and other types of research and development and facilities for manufacturing, processing, assembling, or handling of any manufactured, agricultural or animal products or products of mining and other natural resources, or any combination of the foregoing, and including also the sites thereof and all other rights in land, whether improved or unimproved, furnishings, machinery, equipment, landscaping and site preparation, and all appurtenances and incidental facilities such as headquarters or office facilities whether or not at the location of the remainder of the project, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, dockage, wharfage and other improvements necessary or convenient for the construction, maintenance and operation of any such building or structure, or addition thereto; provided that no retail or wholesale store and no office, storage or other commercial facility not incidental to said use of any such building or structure shall be included in any project.
- (8) "State," the State of North Carolina. (1967, c. 535, s. 3.)

§ 123A-4. North Carolina Industrial Development Financing Authority.—(a) There is hereby created a body politic and corporate to be known as the "North Carolina Industrial Development Financing Authority" which shall be constituted a public agency and an instrumentality of State for the performance of essential public functions. The Authority shall be composed of seven members. The State Treasurer and the chairman of the Department of Conservation and Development and their successors in office from time to time shall, by virtue of their incumbency in such offices and without further appointment or qualification, be members of the Authority. The Governor shall appoint the other five members of the Authority who shall be residents of the State and shall not hold other public office. One of such appointees shall have had experience in industrial real estate, one shall have had experience in county government in the capacity of an elected

officer thereof and another shall have had experience in municipal government in the capacity of an elected officer thereof and two of such appointees shall be selected at large. The five members of the Authority thus appointed shall continue in office for terms of one year, two, three, four and five years, respectively, as designated by the Governor, and until their successors shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of five years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Authority shall be eligible for reappointment. Each member of the Authority appointed by the Governor may be removed by the Governor for misfeasance, malfeasance or wilful neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each member of the Authority, other than the State Treasurer and the chairman of the Department of Conservation and Development, before entering upon his duty shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate a member of the Authority to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a member of the Authority or a date six months after the expiration of the then current term of the Governor designating such chairman. The Authority shall annually elect one of its members as vice chairman. The Authority shall also elect or appoint, and prescribe the duties of, such other offices [officers] as the Authority deems necessary or advisable, including an executive director and a secretary, and the Governor and the Advisory Budget Commission shall fix the compensation for such officers.

(b) The members of the Authority shall be entitled to receive, from funds of the Authority, for attendance of meetings of the Authority or any committee thereof and for other services for the Authority reimbursement for actual expenses as may be incurred for travel and subsistence in the performance of official duties and, as to only the members appointed by the Governor, such per diem as is allowed by law for members of other State boards, commissions and committees. The executive director shall administer, manage and direct the affairs and business of the Authority, subject to the policies, control and direction of the Authority. The secretary of the Authority shall keep a record of the proceedings of the Authority and shall be custodian of all books, documents and papers filed with the Authority, the minute book or journal of the Authority and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Authority and to give certificates under the official seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely upon such certificates. Four members of the Authority shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by the Authority, except adjournment. No vacancy in the membership of the Authority shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Authority. (1967, c. 535, s. 4.)

Editor's Note.—The word "officers" in (a) is suggested as a correction of "offices," brackets in the last sentence of subsection which appears in the 1967 Session Laws.

§ 123A-5. **General powers.**—The Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office in the city of Raleigh and at such other place or places as it may determine;

- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
- (6) To make and execute agreements of lease, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Authority under this chapter, including contracts with persons, firms, corporations, governmental agencies and others, and governmental agencies are hereby authorized to enter into contracts and otherwise cooperate with the Authority to facilitate the financing and construction of any project;
- (7) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project; provided that no project shall be financed hereunder unless the Authority shall, in acquiring the site thereof, obtain thereby at least a leasehold interest, sufficient for the purpose, terminating not earlier than 25 years from the final maturity date of the bonds that shall be initially issued to pay any part of the cost of such project;
- (8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (9) To pledge or assign any money, rents, charges, fees or other revenues and any proceeds derived from sales of property, insurance or condemnation awards by the Authority;
- (10) To issue industrial revenue bonds of the Authority for the purpose of providing funds to pay all or any part of the cost of any project and any revenue refunding bonds;
- (11) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip projects and to pay all or any part of the costs thereof from the proceeds of bonds of the Authority or from any contribution, gift or donation or other funds made available to the Authority for such purpose;
- (12) To fix, charge and collect rents, fees and charges for the use of any project; and
- (13) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the Authority and to fix and pay their compensation from funds available to the Authority therefor. (1967, c. 535, s. 5.)

§ 123A-6. Criteria and requirements.—In undertaking any project pursuant to this chapter, the Authority shall be guided by and shall observe the following criteria and requirements; provided that the determination of the Authority as to its compliance with such criteria and requirements shall be final and conclusive:

- (1) The project, in the determination of the Authority, shall make a significant contribution to the economic growth of the local unit in which it shall be located, shall provide gainful employment and shall serve a public purpose by advancing the economic prosperity and the public welfare of the State and its people;
- (2) The project shall not involve the relocation of an industrial or research facility existing in the State to some other part of the State unless the Authority determines that there is a clear and justifiable reason therefor;
- (3) No project shall be leased to any lessee which is not financially responsible and fully capable and willing to fulfill its obligations under

the agreement of lease, including the obligation to pay rent in the amounts and at the times required, the obligation to operate, repair and maintain at its own expense the project leased and to serve the purposes of the chapter and such other responsibilities as may be imposed under the lease, and in determining the financial responsibility of such lessee consideration shall be given to the lessee's ratio of current assets to current liabilities, net worth, earnings trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee, financially and otherwise, to fulfill its obligations consistently with the purposes of this chapter;

- (4) The local unit in which the project is to be located, in the determination of the Authority, will be able to cope satisfactorily with the impact of such project and will be able to provide, or cause to be provided, when needed the public facilities, including utilities, and public services that will be necessary for the construction, operation, repair and maintenance of the project and on account of any increases in population resulting therefrom; and
- (5) Adequate provision shall be made for the operation, repair and maintenance of the project at the expense of the lessee and for the payment of principal of and interest on the bonds and for reserves therefor. (1967, c. 535, s. 6.)

§ 123A-7. **Procedural requirements.**—(a) Any one or more governmental agencies may submit to the Authority a proposal for financing a project, using such forms and following such instructions as may be prescribed by the Authority. Such proposal shall set forth the type and location of the project and may include other information and data, available to the governmental agency or agencies submitting the proposal, respecting the project, the proposed lessee, if any, and the extent to which such project conforms to the criteria and requirements set forth in this chapter. The Authority shall promptly consider every project and cooperate with any governmental agency submitting any such proposal. The Authority may request governmental agencies to provide such information and data as the Authority may deem pertinent, and governmental agencies are authorized to provide to the Authority any information or data available to them and otherwise to render assistance to and cooperate with the Authority in carrying out the purposes of this chapter. The Authority may also request any proposed lessee of any project to provide information and data respecting the project and such lessee. The Authority is authorized to make or cause to be made, in cooperation with governmental agencies to the fullest extent feasible, such investigations, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project contributes to the development and advancement of the prosperity and economic welfare of the State, and, as to the proposed lessee, the experience, background, past and present financial condition, record of earnings, credit standing, present and future markets and prospects and the integrity and capability of the management of such lessee, the extent to which the project or such proposed lessee otherwise conform to the criteria and requirements of this chapter, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this chapter.

(b) If the Authority determines that the project is feasible and desirable and that the criteria and requirements of this chapter may be complied with in undertaking and financing such project, the Authority shall promptly notify the local unit in which the project is to be located and request the approval of the project by the governing body of the local unit. For the purpose of determining whether to approve the project, the governing body of such local unit may in its

discretion or shall, at the request of the Authority, hold a public hearing within the boundaries of the local unit after giving notice of such hearing by one publication thereof, in a newspaper of general circulation in the local unit, at least 10 days before such hearing. The governing body of the local unit and a representative or representatives of the Authority shall attend such public hearing to provide information and otherwise hear and consider the comments and suggestions made at such hearing. No further action respecting such project shall be taken by the Authority unless the governing body of the local unit shall adopt (after the public hearing, if one shall be held) a resolution approving the project and requesting the Authority to finance and carry out the project. (1967, c. 535, s. 7.)

§ 123A-8. **Agreements of lease.**—No project financed under the provisions of this chapter shall be operated by the Authority or any other governmental agency; provided, that the Authority may temporarily operate or cause to be operated all or any part of a project to protect its interest therein pending any leasing of such project in accordance with this chapter. The Authority shall lease a project or projects to one or more persons, firms or private corporations for operation and maintenance in such manner as shall effectuate the purposes of this chapter, under an agreement of lease in form and substance not inconsistent herewith. Any such agreement of lease may provide, among other provisions, that:

- (1) The lessee shall, at its own expense, operate, repair and maintain the project or projects leased thereunder;
- (2) The rent payable under the lease shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and redemption premiums, if any, on the bonds that shall be issued by the Authority to pay the cost of the project or projects leased thereunder;
- (3) The lessee shall pay all other costs incurred by the Authority in connection with the financing, construction and administration of the project or projects leased, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the bond resolution authorizing such bonds and any trust agreement securing the bonds and the fees and expenses of trustees, paying agents, attorneys, consultants and others;
- (4) The term of the lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the Authority in connection with the project or projects leased thereunder shall be paid in full, including interest, principal and redemption premiums, if any, or adequate funds for such payment shall be deposited in trust; and
- (5) The lessee's obligation to pay rent shall not be subject to cancellation, termination or abatement by the lessee until such payment of the bonds or provision for such payment shall be made. Such agreement of lease may contain such additional provisions as in the determination of the Authority are necessary or convenient to effectuate the purposes of this chapter, including provisions for extensions of the term and renewals of the lease and vesting in the lessee an option to purchase the project or projects leased thereunder pursuant to such terms and conditions consistent with this chapter as shall be prescribed in the lease; provided, that, except as may otherwise be expressly stated in the agreement of lease to provide for any contingencies involving the destruction or condemnation of the project or projects leased, or any substantial portion thereof, such option to purchase may not be exercised until the expiration of a period of not less than 10 years from the date the final installment of the first year's rent under the lease shall be paid by the lessee and until all bonds issued for such project or projects, including all interest and redemption interest and re-

demption premiums, if any, and all other obligations incurred by the Authority in connection with such project or projects shall have been paid in full or sufficient funds shall have been deposited in trust for such payment; and provided further that the purchase price of such project or projects shall not be less than the increase, if any, from the date the lease becomes legally effective to the date of the lessee's exercise of the option in the value of all of the Authority's interest in the site or sites of such project or projects, whether such interest be in fee, a leasehold or other lesser estate, as determined for the purposes of and in conformity with the provisions of the next succeeding section [§ 123A-9]. (1967, c. 535, s. 8.)

§ 123A-9. Tax exemption; payments in lieu of taxes.—(a) The exercise of the powers granted by this chapter in all respects will be for the benefit of the people of the State, for the increase of their industry and prosperity, for the provision of gainful employment and for the improvement of their health and living conditions and will constitute the performance of essential public functions, and the Authority shall not be required to pay any taxes on any project or any other property owned by the Authority under the provisions of this chapter or upon the income therefrom, and the bonds issued under the provisions of this chapter, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. Nothing in this section, however, shall be construed as exempting from taxation or assessments the leasehold interest of any lessee in any project or any other property or interest owned by any lessee.

(b) The agreement for the Authority's leasing of any project shall require that the lessee thereunder shall pay each year, in addition to all other obligations, an amount equal to the total amount of ad valorem taxes that would otherwise be levied upon the property owned and leased by the Authority thereunder which is exempted from taxation. The agreement of lease shall require the lessee to covenant and agree that, for the purposes of this section and during the term of such lease, the amount of such annual payment in lieu of taxes, the time, method and place of payment thereof, its apportionment to the various local government taxing units entitled thereto, the procedures and the rights of review and appeal of the lessee shall, to the fullest extent appropriate, be deemed to be the same as if such payment were an ad valorem tax payment and as if the property of the Authority leased by the lessee thereunder were actually owned by the lessee and legally subject to ad valorem taxation under applicable law, including particularly the Machinery Act, G.S. §§ 105-271 to 105-398, inclusive, as amended, and further to covenant and agree that the lessee shall file a tax list, listing such property in the name of, and as if owned by, the lessee (referring expressly therein to this section) in the form and manner and at the place or places and at the time or times required under said Machinery Act for the listing of real and personal property in the local unit subject to ad valorem taxation. Upon the execution of any such agreement of lease, the property of the Authority leased thereunder to the lessee during the term of such lease shall be treated (but only for the purposes of this section) as if it were subject to ad valorem taxation and, pursuant to the Machinery Act, said property shall be listed, appraised, assessed and revalued and shall be subject to the imposition of an amount in lieu of taxes equal to the ad valorem taxes that would otherwise be levied against such property if it were actually owned by the lessee and the lessee shall be deemed to be, for the purposes hereof, the owner of such property and to have such rights of review and appeal respecting such property as are vested in owners of property subject to ad valorem taxation under applicable law. The amount imposed in lieu of taxes against such property shall constitute the amount of

payment in lieu of taxes required to be made by the lessee hereunder and such amount shall be imposed and collected in the same manner and at such time as ad valorem taxes under said Machinery Act, and shall be apportioned and made available to the local government taxing units that would have been entitled thereto if such payment were a tax payment on such property, and may be used for the same purposes for which ad valorem property tax proceeds may be lawfully used by such taxing units, to be expended pro rata for purposes for which the unit levies property taxes. (1967, c. 535, s. 9.)

§ 123A-10. Construction contracts.—Contracts for the construction of the project may be awarded by the Authority in such manner as in its judgment will best promote free and open competition, including advertisement for competitive bids in a newspaper of general circulation in the local unit in which the project is to be located; provided, however, that if the Authority shall determine that the purposes of the chapter will thereby be more effectively served, the Authority in its discretion may award contracts for the construction of any project, or any part thereof, upon a negotiated basis as determined by the Authority. The Authority shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The Authority may by written contract engage the services of the lessee or prospective lessee of any project in the construction of such project and may provide in such contract that the lessee or prospective lessee may act as an agent of, or an independent contractor for the Authority for the performance of the functions described therein, subject to such conditions and requirements, consistent with the provisions of this chapter, as shall be prescribed in such contract, including such functions as the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project, or any part thereof, directly by such lessee or prospective lessee, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the Authority. Any such contract may provide that the Authority may, out of proceeds of bonds, make advances to or reimburse the lessee or prospective lessee for its costs incurred in the performance of such functions and shall set forth the supporting documents required to be submitted to the Authority and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this chapter and such contract. (1967, c. 535, s. 10.)

§ 123A-11. Conflict of interest.—No officer, member, agent or employee of the Authority, the State or any local unit shall be interested either directly or indirectly in any contract with the Authority or in the sale of property, real or personal, to the Authority for the purposes of the project; provided, however, that this section shall not apply to any interest which the Authority determines is so minor as not to be within the purview of the purpose of this section. If any such officer, member, agent or employee shall have any interest in real property acquired prior to the determination of the location of any project, such interest shall immediately be disclosed to the Authority and shall be set forth in the minutes of the Authority, and the officer, member, agent or employee having any interest therein shall not participate on behalf of the Authority in the acquisition of such property by the Authority. (1967, c. 535, s. 11.)

§ 123A-12. Authorization of funds for initial expenditures. — In order to enable the Authority to organize and commence its operations under the chapter, the Governor and the Council of State are authorized to transfer to the Authority out of the Contingency and Emergency Fund not otherwise obligated

such amount or amounts as the Governor and the Council of State shall deem necessary to enable the Authority to organize and to pay the expenses of administration during the first two years of the Authority's operations. (1967, c. 535, s. 12.)

§ 123A-13. Credit of State not pledged.—(a) Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this chapter shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

(b) Expenses incurred by the Authority in carrying out the provisions of this chapter may be made payable from funds provided pursuant to this chapter and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been so provided. (1967, c. 535, s. 13.)

§ 123A-14. Bonds.—(a) The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of industrial revenue bonds of the Authority for the purpose of paying all or any part of the cost of any project or projects. The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "North Carolina Industrial Development Financing Authority Revenue Bonds, Series," inserting in the blank space the name of the local unit in which shall be located the project for which the bonds are to be issued. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this chapter.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or portion or portions thereof, for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter men-

tioned securing the same. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency, and, unless otherwise provided in the bond resolution or in the trust agreement, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, such excess shall be deposited to the credit of the sinking fund for such bonds, or, if so provided in such resolution or trust agreement, may be applied to the payment of the cost of any additional project or projects.

(c) Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

(d) Bonds may be issued under the provisions of this chapter without obtaining, except as otherwise expressly provided in this chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same. (1967, c. 535, s. 14.)

Issuance of Bonds Held Not for Public Purpose.—The issuance of revenue bonds by the Industrial Development Financing Authority, pursuant to this chapter, in order to acquire sites and to construct and equip buildings and other facilities thereon for lease to private industry, such bonds to

be retired by the rental payments, is not a public use or purpose for which State tax funds may be appropriated to enable the Authority to commence its operations. *Mitchell v. North Carolina Indus. Dev. Financing Authority*, 273 N.C. 137, 159 S.E.2d 745 (1968).

§ 123A-15. Trust agreement. — In the discretion of the Authority any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the fees, rents, charges, proceeds from the sale of any project, or part thereof, insurance proceeds, condemnation awards and other funds and revenues to be received therefor, but shall not convey or mortgage any project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the project or projects in connection with which such bonds shall have been authorized, the fees, rents and other charges to be fixed and collected, the sale of any project, or part thereof, or other property, the terms and conditions for the issuance of additional bonds, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of

the cost of the project or projects in connection with which bonds are issued or as an expense of administration of such project or projects, as the case may be. (1967, c. 535, s. 15.)

§ **123A-16. Revenues.**—(a) The Authority is hereby authorized to fix and to collect fees, rents and charges for the use of any project or projects, and any part or section thereof, and to contract with any person, partnership, association or corporation respecting the use thereof. The Authority may require that the lessee or users of any project, or any part thereof, shall operate, repair and maintain the project and shall bear the cost thereof and other costs of the Authority in connection with the project or projects leased, as may be provided in the agreement of lease or other contract with the Authority, in addition to other obligations imposed under such agreement or contract.

(b) The fees, rents and charges shall be so fixed as to provide a fund sufficient, with such other funds as may be made available therefor, to pay the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. The fees, rents and charges and all other revenues and other proceeds derived from the project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, rents, charges and other revenues and moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1967, c. 535, s. 16.)

§ **123A-17. Trust funds.**—Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds, sale of property, insurance or condemnation awards, or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution or trust agreement may provide. (1967, c. 535, s. 17.)

§ **123A-18. Remedies.**—Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, pro-

tect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution authorizing the issuance of such bonds, or under any agreement of lease or other contract executed by the Authority pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such trust agreement or resolution to be performed by any lessee or the Authority or by any officer thereof, including the fixing, charging and collecting of fees, rents and charges. (1967, c. 535, s. 18.)

§ 123A-19. **Negotiable instruments.** — Notwithstanding any of the foregoing provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all such bonds and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. (1967, c. 535, s. 19.)

§ 123A-20. **Bonds eligible for investment.** — Bonds issued by the Authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1967, c. 535, s. 20.)

§ 123A-21. **Revenue refunding bonds.** — (a) The Authority is hereby authorized to provide by resolution for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for either or both of the following additional purposes:

- (1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued, and
- (2) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect to the same shall be governed by the provisions of this chapter which relate to the issuance of revenue bonds, insofar as such provisions may be appropriate therefor.

(b) Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Revenue refunding bonds may be issued, in the determination of the Authority, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by,

the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1967, c. 535, s. 21.)

§ 123A-22. **Reversion to local unit.**—When all revenue bonds issued for any project by the Authority under the provisions of this chapter, including interest and redemption premiums, if any, and other costs incurred by the Authority therefor shall have been paid, or a sufficient amount for such payment shall have been deposited in trust for the benefit of the holders of such bonds and others entitled thereto, the Authority shall convey by quitclaim deed to the local unit in which such project is located, with the consent of the governing body of such local unit, all of the interest of the Authority in such project, subject to any agreement of lease, including renewal and option to purchase provisions therein, and any other covenants, limitations, liens and other encumbrances affecting the project. Any property so conveyed may be administered and used by the local unit for the purposes of this chapter or any other lawful purpose. (1967, c. 535, s. 22.)

§ 123A-23. **Annual reports.**—The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each such report shall set forth a complete operating and financial statement covering the operations of the Authority during such year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants and the cost thereof may be treated as a part of the cost of construction of a project, to the extent such audit covers the construction of the project, or otherwise as part of the expense of administration of the project covered by such audit. (1967, c. 535, s. 23.)

§ 123A-24. **Officers not liable.**—No member or other officer of the Authority shall be subject to any personal liability or accountability by reason of his execution of any bonds or the issuance thereof. (1967, c. 535, s. 24.)

§ 123A-25. **Additional method.**—The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1967, c. 535, s. 25.)

§ 123A-26. **Chapter liberally construed.**—This chapter, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1967, c. 535, s. 26.)

§ 123A-27. **Inconsistent laws inapplicable.**—Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this chapter shall be controlling. (1967, c. 535, s. 28.)

Chapter 125.

Libraries.

Article 2.

Interstate Library Compact.

- Sec. .
 125-12. Compact enacted into law; form.
 125-13. Political subdivisions to comply with laws governing capital outlay and pledging of credit.
 125-14. "State library agency" defined.

- Sec.
 125-15. State and federal aid to interstate library districts.
 125-16. Compact administrator and deputies.
 125-17. Withdrawal from compact.

ARTICLE 1.

State Library.

§ 125-3. Board of trustees.

(c) Compensation.—The members of the board of trustees shall serve without salary, but they shall be paid the same per diem and allowances authorized for members of State boards, commissions and committees in G.S. 138-5 while attending to their official duties.

(1965, c. 536.)

Editor's Note. — The 1965 amendment rewrote subsection (c). the amendment, the rest of the section is not set out.

As only subsection (c) was changed by

ARTICLE 2.

Interstate Library Compact.

§ 125-12. Compact enacted into law; form.—The Interstate Library Compact is hereby enacted into law and entered into by this State with all states legally joining therein in the form substantially as follows:

INTERSTATE LIBRARY COMPACT.

ARTICLE I. POLICY AND PURPOSE.

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis, and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

ARTICLE II. DEFINITIONS.

As used in this compact: (a) "Public library agency" means any unit or agency of local or State government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

ARTICLE III. INTERSTATE LIBRARY DISTRICTS.

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

- (1) Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.
- (2) Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.
- (3) Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.
- (4) Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.
- (5) Sue and be sued in any court of competent jurisdiction.
- (6) Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.
- (7) Construct, maintain and operate a library, including any appropriate branches thereof.
- (8) Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

ARTICLE IV. INTERSTATE LIBRARY DISTRICTS, GOVERNING BOARD.

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

ARTICLE V. STATE LIBRARY AGENCY COOPERATION.

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

ARTICLE VI. LIBRARY AGREEMENTS.

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

- (1) Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.
- (2) Provide for the allocation of costs and other financial responsibilities.
- (3) Specify the respective rights, duties, obligations and liabilities of the parties.
- (4) Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

ARTICLE VII. APPROVAL OF LIBRARY AGREEMENTS.

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or

its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

ARTICLE VIII. OTHER LAWS APPLICABLE.

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

ARTICLE IX. APPROPRIATIONS AND AID.

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

ARTICLE X. COMPACT ADMINISTRATOR.

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

ARTICLE XI. ENTRY INTO FORCE AND WITHDRAWAL.

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1967, c. 190, s. 1.)

§ 125-13. Political subdivisions to comply with laws governing capital outlay and pledging of credit.—No county, municipality, or other political subdivision of this State shall be party to a library agreement which provides for

the construction or maintenance of a library pursuant to Article III, subdivision (c) (7) of the compact, nor pledge its credit in support of such a library, or contribute to the capital financing thereof, except after compliance with any laws applicable to such counties, municipalities, or other political subdivisions relating to or governing capital outlays and the pledging of credit. (1967, c. 190, s. 2.)

§ 125-14. "State library agency" defined.—As used in the compact, "state library agency," with reference to this State, means the North Carolina State Library. (1967, c. 190, s. 3.)

§ 125-15. State and federal aid to interstate library districts.—An interstate library district lying partly within this State may claim and be entitled to receive State aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this State. For the purposes of computing and apportioning State aid to an interstate library district, this State will consider that portion of the area which lies within this State as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly. Subject to any applicable laws of this State, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible. (1967, c. 190, s. 4.)

§ 125-16. Compact administrator and deputies. — The State Librarian shall be the compact administrator pursuant to Article X of the compact. The State Librarian may appoint one or more deputy compact administrators pursuant to said article. (1967, c. 190, s. 5.)

§ 125-17. Withdrawal from compact.—In the event of withdrawal from the compact the Governor shall send and receive any notices required by Article XI (b) of the compact. (1967, c. 190, s. 6.)

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

- Sec.
- 126-1. Purpose of chapter; application to local employees.
- 126-2. State Personnel Board.
- 126-3. State Personnel Department established; administration and supervision; appointment, compensation and tenure of Director.
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Competitive Service.

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Article 5.

Political Activity of Employees.

- 126-13. Appropriate political activity of State employees defined.
- 126-14. Promise or threat to obtain political contribution or support.
- 126-15. Disciplinary action for violation of article.

ARTICLE 1.

State Personnel System Established.

§ 126-1. **Purpose of chapter; application to local employees.**—It is the intent and purpose of this chapter to establish for the government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry. It is also the intent of this chapter that this system of personnel administration shall apply to local employees paid entirely or in part from federal funds, except to the extent that local governing boards are authorized by this chapter to establish local rules, local pay plans, and local personnel systems. (1965, c. 640, s. 2.)

Editor's Note.—Session Laws 1965, c. 640, s. 1, effective July 1, 1965, repealed former chapter 126, consisting of 17 sections, and enacted the present chapter 126, consisting of §§ 126-1 to 126-12, in its

stead. The repealed chapter was entitled "Merit System Council" and derived from Session Laws 1941, c. 378, as amended by 1947, cc. 598, 781, 933; 1949, cc. 492, 718; 1957, cc. 100, 1004, 1037; 1959, c. 1233.

§ 126-2. **State Personnel Board.**—(a) There is hereby established the State Personnel Board (hereinafter referred to as "the Board").

(b) The Board shall consist of seven (7) members who shall be appointed by the Governor on July 1, 1965, or as soon thereafter as is practicable. Two members of the Board shall be chosen from employees of the State subject to the provisions of this chapter; two members shall be appointed from a list of individuals nominated by the North Carolina association of county commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be appointed from the public at large. Of the initial members of the Board, two shall be appointed to serve for terms of two years, two shall be appointed to serve for terms of four years, and three shall be appointed to serve for terms of six years. Their successors shall be appointed by the Governor for terms of six years. Any vacancy occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(c) A member of the Board shall not be considered a public officer, or as holding an office or place of trust or profit within the meaning of article XIV, § 7, of the Constitution of this State, but shall be deemed a commissioner for a special purpose.

(d) The Governor may at any time after notice and hearing remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(e) Members of the Board who are employees of the State subject to the provisions of this article shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Board.

(f) Five members of the Board shall constitute a quorum.

(g) The Governor shall designate one member of the Board as chairman.

(h) The Board shall meet quarterly, and at other times at the call of the chairman. (1965, c. 640, s. 2.)

§ 126-3. **State Personnel Department established; administration and supervision; appointment, compensation and tenure of Director.**—There is hereby established the State Personnel Department (hereinafter referred to as "the Department"). The Department shall be separate and distinct from the Department of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as "the Director") appointed by the Board and subject to its supervision. The salary of the Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve at the pleasure of the State Personnel Board. (1965, c. 640, s. 2.)

§ 126-4. **Powers and duties of State Personnel Board.**—Subject to the approval of the Governor, the State Personnel Board shall establish policies and rules governing each of the following:

- (1) A position classification plan which shall provide for the classification and reclassification of all positions subject to this chapter according to the duties and responsibilities of the positions.
- (2) A compensation plan which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this chapter.
- (3) For each class of positions, reasonable qualifications, as to age, character, physical condition, and other attributes pertinent to the work to be performed.
- (4) A recruitment program to attract applicants to public employment and determine the relative fitness of applicants for the respective positions.
- (5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment.
- (6) The appointment, promotion, transfer, demotion, suspension, and separation of employees.
- (7) Cooperation with the Department of Public Instruction, the State Board of Education, the Board of Higher Education, and the colleges and universities of the State in developing pre-service and in-service training programs.
- (8) The evaluation of employee performance, the granting of salary increments, and a program of meritorious service awards, which may include cash awards to be paid from savings resulting from the adoption of the employee suggestions, but in no case shall the cash award exceed ten per cent (10%) of the savings resulting during the first year following adoption, or a maximum of one thousand dollars (\$1,000.00).
- (9) Hearing of appeals of applicants, employees, and former employees and the issuing of advisory recommendations in all appeal cases.
- (10) Such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration. (1965, c. 640, s. 2.)

§ 126-5. **Employees subject to chapter; exemptions.**—(a) The provisions of this chapter shall apply to all State employees not herein exempt, and to employees of local welfare departments, public health departments, mental health clinics, and local civil defense agencies which receive federal grant-in-aid funds; and the provisions of this chapter may apply to such other county employees as the several boards of county commissioners may from time to time determine.

(b) The provisions of this chapter shall not apply to the following persons or employees: Public school superintendents, principals, teachers, and other public school employees; instructional and research staff, physicians and dentists of the educational institutions of the State; business managers of the University of North Carolina and its several campuses, East Carolina University, and Appalachian State University; members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis, constitutional officers of the State and except as to salaries, their chief administrative assistants; employees of the General Assembly and its agencies and temporary employees of activities ancillary to the General Assembly; officials and employees whose salaries are fixed by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State or the Advisory Budget Commission; officials or employees whose salaries are fixed by statute or by virtue of a specific statutory method other than the method provided by this chapter, and explicitly pertaining to such officials or employees. In case of dispute as to whether an employee is subject to the provisions of this chapter, the question shall be investigated by the State Personnel Department and decided by the State Per-

sonnel Board, subject to the approval of the Governor, and such decision shall be final. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143.)

Editor's Note. — Session Laws 1967, c. 24, originally effective Oct. 1, 1967, corrected an error by eliminating a redundant clause in subsection (b). Session Laws 1967, c. 1078, amends Session Laws 1967, c. 24, so as to make it effective July 1, 1967.

Session Laws 1967, c. 1038, substituted "East Carolina University" for "East Carolina College" and "Appalachian State University" for "Appalachian State Teachers College" in subsection (b).

Session Laws 1967, c. 1143, effective July 1, 1967, amended the list of excluded employees in subsection (b) by deleting "Physicians and dentists on the staff of hospitals, mental institutions, reformatories and correctional institutions of the State, deputy directors, director of professional training and director of research of the State Department of Mental Health" and inserting "physicians and dentists" preceding "of the educational institutions of the State."

§ 126-6. **Policies continued; powers, etc., transferred.**—(a) All classifications, grades, salaries, conditions of work, and rules and regulations established prior to July 1, 1965, by the State Personnel Council, the State Personnel Director, or the North Carolina Merit System Council shall remain in force until amended, repealed, or superseded by the Board, acting under the authority of this chapter.

(b) The State Personnel Board and the State Personnel Director herein provided shall be the successors of the State Personnel Council, the State Personnel Director, North Carolina Merit System Council, and the Merit System Supervisor. All records and property in the custody of these agencies and individuals are hereby transferred to the State Personnel Board and the State Personnel Department, effective July 1, 1965.

(c) Any status of employment or privilege previously attained by an employee in accordance with the State Personnel Act or the State Merit System Act shall continue under the provisions of this chapter. (1965, c. 640, s. 2.)

ARTICLE 2.

Salaries and Leave of State Employees.

§ 126-7. **Automatic and merit salary increases for State employees.**—It shall be considered a part of the personnel policy of this State that salary increases as provided in the compensation plan shall be granted in accordance with a standard of efficiency as established by the State Personnel Board. Each employee whose performance merits his retention in service shall be granted a salary increase in an amount corresponding to the increments between steps of the applicable salary range at least once each year until he reaches the intermediate salary step nearest to, but not exceeding, the middle of the salary range established for the class to which his position is assigned. Prior to July 1, 1965, each agency, board, commission, department, or institution of State government subject to the provisions of this article shall file with the State Personnel Director a written description of the plan or method it is currently following in awarding or allocating efficiency or merit salary increments. At the same time, each such agency, board, commission, department, or institution shall cause a copy thereof to be distributed to each employee. The State Personnel Director, with the approval of the State Personnel Board, shall modify, alter or disapprove any such plan submitted to it which it deems not to be in accordance with the provisions of this article. Within the limit of available funds, each employee meeting higher standards may be granted increases up to but not exceeding the maximum of the salary range established for the class to which his position is assigned. If, in addition to the salary ranges, the State Personnel Board shall establish uniform provisions for a system of payments over and above the standard salary ranges on a basis combining longevity in service and merit in the performance of duties, that plan of payments shall not be considered in applying this policy governing annual salary increments. The head of each department, bureau, agency, or commission, when

making his budget request for the ensuing biennium, shall anticipate the funds which will be required during the biennium for the purpose of paying salary increments and shall include those amounts in his budget request. In no case shall the amount estimated for increments above the step nearest but not exceeding the middle of the range exceed two thirds of the sum which would be required to grant increments to all the personnel of the agency then receiving or who will receive during the first year of the biennium a salary equal to or above the intermediate step of the salary range. With the approval of the State Personnel Board, State departments, bureaus, agencies, or commissions with twenty-five or less employees subject to the provisions of this chapter may exceed the two-thirds restriction herein provided. (1965, c. 640, s. 2.)

§ 126-8. **Minimum leave granted State employees.**—The amount of vacation leave granted to each full-time State employee subject to the provisions of this chapter shall be at a rate not less than one and one fourth days per calendar month, cumulative to at least thirty days. Sick leave allowed as needed to such State employees shall be at a rate not less than ten days for each calendar year, cumulative from year to year. (1965, c. 640, s. 2.)

ARTICLE 3.

Local Discretion as to Local Government Employees.

§ 126-9. **County or municipal employees may be made subject to rules adopted by local governing body.**—(a) When a board of county commissioners adopts rules and regulations governing annual leave, sick leave, hours of work, holidays, and the administration of the pay plan for county employees generally and the county rules and regulations are filed with the State Personnel Director, the county rules will supersede the rules adopted by the State Personnel Board as to the county employees otherwise subject to the provisions of this chapter.

(b) No county employees otherwise subject to the provisions of this chapter may be paid a salary less than the minimum nor more than the maximum of the applicable salary range adopted in accordance with this chapter without approval of the State Personnel Board. Provided, however that subject to the approval of the State Personnel Board, a board of county commissioners may adjust the salary ranges applicable to employees who are otherwise subject to the provisions of this chapter, in order to cause the level of pay to conform to local financial ability and fiscal policy. The State Personnel Board shall adopt policies and regulations to ensure that significant relationships within the schedule of salary ranges are maintained.

(c) When two or more counties are combined into a district for the performance of an activity whose employees are subject to the provisions of this chapter, the boards of county commissioners of the counties may jointly exercise the authority hereinabove granted in subsections (a) and (b) of this section.

(d) When a municipality is performing an activity by or through employees which are subject to the provisions of this chapter, the governing body of the municipality may exercise the authority hereinabove granted in subsections (a) and (b) of this section. (1965, c. 640, s. 2.)

§ 126-10. **Personnel services to local governmental units.**—The State Personnel Board may make the services and facilities of the State Personnel Department available upon request to the political subdivisions of the State. The State Personnel Board may establish reasonable charges for the service and facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit of the general fund. (1965, c. 640, s. 2.)

§ 126-11. **Local personnel system may be established.**—The board of county commissioners of any county which shall establish and maintain a personnel

system for all employees of the county subject to its jurisdiction, which system is found from time to time by the State Personnel Board to be substantially equivalent to the system established under article 1 of this chapter for employees of local welfare departments, public health departments, and mental health clinics, may include employees of these local agencies within the terms of such system. Employees covered by that system shall be exempt from the provisions of article 1 of this chapter. (1965, c. 640, s. 2.)

ARTICLE 4.

Competitive Service.

§ 126-12. Governor and Council of State to determine competitive service.—The Governor, with the approval of the Council of State, shall from time to time determine for which, if any of the positions subject to the provisions of article 1 of this chapter, appointments and promotions shall be based on a competitive system of selection. (1965, c. 640, s. 2.)

Cross Reference.—See Editor's note to § 126-1.

ARTICLE 5.

Political Activity of Employees.

§ 126-13. Appropriate political activity of State employees defined.—As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary State employee shall:

- (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;
- (2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in a partisan election involving candidates for office or party nominations, or affect the results thereof. (1967, c. 821, s. 1.)

Editor's Note. — Section 3 of the act adding this article makes it effective July 1, 1967.

§ 126-14. Promise or threat to obtain political contribution or support.—No State employee or official shall use any promise of personal preferential treatment or threat of loss to encourage or coerce any State employee subject to the Personnel Act or temporary State employees to support or contribute to any political issue, candidate, or party. (1967, c. 821, s. 1.)

§ 126-15. Disciplinary action for violation of article. — Failure to comply with this article is grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office. (1967, c. 821, s. 1.)

Chapter 127.

Militia.

Article 7.

Pay of Militia.

Sec.

127-82. Pay and care of soldiers and airmen disabled in service.

127-82.1. Proceedings against third party injuring or killing guardsman.

Article 11.

General Provisions.

127-106.2. Immunity of guardsmen from civil and criminal liability.

Article 14.

National Guard Mutual Assistance Compact.

127-118. Purposes.

Sec.

127-119. Entry into force and withdrawal.

127-120. Definitions; mutual aid.

127-121. Delegation.

127-122. Limitations.

127-123. Construction and severability.

127-124. Payment of liability to responding state.

127-125. Status, rights and benefits of forces engaged pursuant to compact.

127-126. Injury or death while going to or returning from duty.

127-127. Authority of responding state required to relieve from assignment or reassign officers.

ARTICLE 1.

Classification of Militia.

§ 127-1. **Composition and classes of militia.**—The militia of the State shall consist of all able-bodied citizens of the State and of the United States who are not exempt by reason of aversion to bearing arms, from religious scruples; together with all other able-bodied persons who are, or have or shall have declared their intention to become, citizens of the United States, subject to such qualifications as may be hereinafter prescribed, who shall voluntarily enlist or accept commission, appointment or assignment to duty therein; provided, no female citizen shall be subject to draft into the militia of the State. The militia shall be divided into five classes: The national guard, the naval militia, historical military commands, the State defense militia, and the unorganized militia. (1917, c. 200, s. 1; C. S., s. 6791; 1949, c. 1130, s. 1; 1957, c. 1043, s. 1; 1963, c. 1016, s. 2; 1967, c. 563, s. 1.)

Editor's Note.—

The 1967 amendment rewrote the first sentence.

§ 127-3.1. **Composition of historic military commands.**—Historic military commands are those historic groups which remain active by meeting at least once a month and which follow military procedures. Only such groups as may be designated by the Governor shall fall within this branch of the militia. The maximum age limit prescribed by G.S. 127-2, G.S. 127-4 or G.S. 127-111 shall not be applicable to members of historic military commands. (1957, c. 1043, s. 2; 1967, c. 563, s. 2.)

Editor's Note.—The 1967 amendment substituted "G.S. 127-2, G.S. 127-4 or G.S. 127-111" for "G.S. 127-1" in the last sentence.

ARTICLE 2.

General Administrative Officers.

§ 127-14. **Adjutant General's department.**—There shall be an Adjutant General's department. The Adjutant General shall be the head of the department and as such subordinate only to the Governor in matters pertaining thereto. He

shall make such returns and reports to the National Guard Bureau and Secretary of the Navy or to such officers as the National Guard Bureau and Secretary of the Navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make a biennial report to the Governor and to the General Assembly on or before the 30th day of June of each biennium, including a detailed statement of all expenditures made for military purposes during that period. He shall cause to be prepared and issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the State. The Adjutant General shall perform such other duties not herein specified as may be required by the military laws and regulations or by the Governor. The Adjutant General shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The Adjutant General may appoint an assistant, which appointment may carry with it the rank of brigadier general, and such clerks and employees as may be prescribed by the Governor. An officer detailed as such assistant shall be a full-time employee of the Adjutant General's department and shall receive during the period of such service such compensation as may be authorized by the Governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard. The Adjutant General may appoint an assistant adjutant general for air national guard, which appointment may carry with it the rank of brigadier general. (1917, c. 200, s. 13; C. S., s. 6803; 1927, c. 217, s. 4; 1957, c. 136, s. 2; 1959, c. 218, s. 2½; 1963, c. 1016, s. 2; 1967, c. 563, s. 3; 1969, c. 623, s. 1.)

Editor's Note.—

The 1967 amendment rewrote the fifth sentence and deleted the former sixth sentence, which provided for a biennial report to the General Assembly.

The 1969 amendment inserted, in the second-from-the-last sentence, "be a full-time employee of the Adjutant General's department and shall."

ARTICLE 3.

National Guard.

§ 127-23.1. **Commissions by brevet for retired officers and enlisted men.**—The Governor is authorized to confer commissions by brevet in the North Carolina national guard upon officers and enlisted men of the North Carolina national guard who have been retired and who may hereafter be retired from any reserve component of the armed forces of the United States under the authority of Title III, Public Law 810, 80th Congress, 2nd Session, (Army and Air Force, Vitalization and Retirement Equalization Act of 1948), and who have satisfactorily served as an active member of the North Carolina national guard for a period of ten years. The commissions by brevet shall be in grade as follows: A commissioned officer shall be commissioned by brevet in a grade one grade higher than the highest grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict or in the Vietnamese conflict, or while serving actively as a federally recognized officer of the North Carolina national guard; a warrant officer shall be commissioned by brevet in the grade of captain or in a grade one grade higher than the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict or in the Vietnamese conflict, or while serving actively as a federally recognized member of the North Carolina national guard; an enlisted man shall be commissioned by brevet in the grade of first lieutenant or in a grade one grade higher than the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict or in the Vietnamese conflict, or while serving actively as a federally recognized member of the North Carolina

national guard. No officer shall be commissioned by brevet in a grade higher than that of lieutenant general.

For the purpose of computing national guard service within the meaning of this section, such service shall include extended active duty in the armed forces of the United States by any officer, warrant officer, or enlisted man, who was a member of a federally recognized unit of North Carolina national guard at the time of his induction into federal service.

The provisions of this section shall apply to officers and enlisted men of the North Carolina national guard who have been or who may hereafter be honorably retired from any component of the armed forces of the United States by reason of disability, who have attained the age of 60 years, and who have satisfactorily served as an active member of the North Carolina national guard for a period of 10 years. (1955, c. 255, s. 1; 1957, c. 1003; 1963, c. 1016, s. 2; 1969, c. 623, s. 2.)

Editor's Note.—

The 1969 amendment rewrote the second sentence of the first paragraph.

§ 127-37. **Authority to wear service medals.**—The officers and enlisted men of the North Carolina national guard are hereby authorized to wear, as a part of the official uniform service medals to be approved by the advisory board created by G.S. 127-18. (1939, c. 344; 1959, c. 218, s. 16; 1967, c. 563, s. 4.)

Editor's Note.—

The 1967 amendment substituted “ap-

proved” for “selected” near the end of the section.

ARTICLE 7.

Pay of Militia.

§ 127-79. **Rate of pay for service.** — The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted man of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted man shall be paid out of the appropriations made to the Adjutant General's Department. Such officer and enlisted man shall receive the same pay as officers and enlisted men of the same grade and like service of the regular service, provided that no such officer or enlisted man shall receive less than eight dollars (\$8.00) per day; but officers when on duty in connection with examining boards, efficiency boards, advisory boards, and courts of inquiry shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers serving on general or special courts-martial shall receive the base pay of their rank. No staff officer who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; C. S., s. 6865; 1935, c. 451; 1949, c. 1130, s. 4; 1959, c. 218, s. 18; 1963, c. 1019, s. 1; 1969, c. 986.)

Editor's Note.—

The 1969 amendment inserted in the second sentence “provided that no such of-

ficer or enlisted man shall receive less than eight dollars (\$8.00) per day.”

§ 127-82. **Pay and care of soldiers and airmen disabled in service.** — A member of the national guard, the State defense militia, or the naval militia who without fault or negligence on his part is disabled through illness, injury, or disease contracted or incurred while on duty or by reason of duty in the service of the State or while reasonably proceeding to or returning from such duty shall receive the actual necessary expenses for care and medicine and medical attention at the expense of the State and if such shall temporarily incapacitate him for pursuing his usual business or occupation he shall receive during such incapacity the pay and allowances as are provided for the same grade and rating in like circumstances in the active armed forces of the United States. If such member is permanently disabled, he

shall receive the pensions and rewards that persons under similar circumstances in the military service of the United States receive from the United States. In case any such member shall die as a result of such injury, illness, or disease within one year after it has been incurred or contracted, the widow, minor children, or dependent parents of the member shall receive such pension and rewards as persons under similar circumstances receive from the United States.

The cost incurred by reason of this section shall be paid out of the Contingency and Emergency Fund, or such other fund as may be designated by law.

The Adjutant General, with the approval of the Governor, shall make and publish such regulations pursuant to this section as may be necessary for its implementation. Before the name of any person is placed on the disability or pension rolls of the State under this section, proof shall be made in accordance with such regulations that the applicant is entitled to such care, pension, or reward.

Nothing herein shall in any way limit or condition any other payment to such member as by law may be allowed; provided, however, any payments made under the provisions of chapter 97 of the General Statutes or under federal statutes as now or hereafter amended shall be deducted from the payments made under this section. (1917, c. 200, s. 54; C. S., s. 6868; 1959, c. 218, s. 19; c. 763; 1965, c. 1058.)

Editor's Note.—

The 1965 amendment rewrote this section.

§ 127-82.1. Proceedings against third party injuring or killing guardsman.—(a) The right to compensation and other benefits under G. S. 127-82 shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the State to pay damages therefor, such person hereinafter being referred to as the "third party." The respective rights and interests of the guardsman under this article, and the State, if any, in respect of the common-law cause of action against such third party and the damages recovered shall be as set forth in this section.

(b) The guardsman, or his personal representative if he be dead, shall have the exclusive right to proceed to enforce the liability of the third party by appropriate proceedings if such proceedings are instituted not later than 12 months after the date of injury or death, whichever is later. During said 12-month period, and at any time thereafter if summons is issued against the third party during said 12-month period, the guardsman or his personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of such injury or death, subject to the provisions of (h) below.

(c) If settlement is not made and summons is not issued within said 12-month period, then all rights of the guardsman, or his personal representative if he be dead, against the third party shall pass by operation of law to the State upon the expiration of said 12-month period. All such rights shall then remain in the State until 60 days before the expiration of the period fixed by the statute of limitations applicable to such rights and if the State shall not have settled with or instituted proceedings against the third party within such time, then all such rights shall revert to the guardsman or his personal representative 60 days before the expiration of the applicable statute of limitations.

(d) The person in whom the right to bring such proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by (h) below. A proceeding so instituted by the person having the right shall be brought in the name of the guardsman or his personal representative and the State shall not be a necessary or proper party thereto. If the guardsman or his personal representative should refuse to cooperate with the State by being the party plaintiff,

then the action shall be brought in the name of the State and the guardsman or his personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of such injury or death shall not be admissible in evidence in any proceeding against the third party. If the third party defending such proceeding, by answer duly served on the State, sufficiently alleges that actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in such case as to whether actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death. The State shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though he were a party although not named or joined as a party to the proceeding. Such issue shall be the last of the issues submitted to the jury. If the verdict shall be that actionable negligence of the State did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the State would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the guardsman or his personal representative free of any claim by the State and the third party shall have no further right by way of contribution or otherwise against the State, except any right which may exist by reason of an express contract of indemnity between the State and the third party, which was entered into prior to the injury to the guardsman.

(f) (1) Any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of such injury or death shall be disbursed by order of the court for the following purposes and in the following order of priority:

- a. First to the payment of actual court costs taxed by judgment.
- b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and such fee shall not exceed one third of the amount obtained or recovered of the third party.
- c. Third to the reimbursement of the State for all benefits by way of compensation or medical treatment expense paid or to be paid by the State pursuant to G.S. 127-82.
- d. Fourth to the payment of any amount remaining to the guardsman or his personal representative.

(2) The attorney fee paid under (f) (1) shall be paid by the guardsman and the State in direct proportion to the amount each shall receive under (f) (1) c and (f) (1) d hereof and shall be deducted from such payments when distribution is made.

(g) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of his interest under (f) hereof upon any payment made by the third party by reason of such injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and such lien may be enforced against any person receiving such funds. Neither the guardsman or his personal representative nor the State shall make any settlement with or accept any payment from the third party without the written consent of the other and no release or agreement with the third party shall be valid or enforceable for any purpose unless both State and guardsman or his personal representative join therein; provided, that this sentence shall not apply if the State is made whole for all benefits paid or to be paid by him under this chapter less attorney's fees as provided by (f) (1) and (2) hereof and the release to or agreement with the third party is

executed by the guardsman. The Attorney General shall have the right on behalf of the State to reduce by compromise its claim.

(h) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this chapter, shall not in any way or manner affect any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other. (1967, c. 1081, s. 1.)

Editor's Note. — Section 3 of Session Laws 1967, c. 1081, makes this section effective as to any actions arising on or after July 1, 1967.

ARTICLE 8.

Privilege of Organized Militia.

§ 127-84. **Contributing members.**—Each organization of the national guard and naval militia may, besides its regular and active members, enroll twenty-five contributing members on payment in advance by each person desiring to become such contributing member of not less than ten dollars per annum, which money shall be paid into the company treasury. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership. (1917, c. 200, s. 90; C. S., s. 6871; 1967, c. 218, s. 3.)

Editor's Note. — The 1967 amendment certificate shall exempt the holder from deleted, at the end of the section, "which jury duty."

ARTICLE 9.

Care of Military Property.

§ 127-91. **Equipment and vehicles.**—Equipment and vehicles issued by the Department of Defense to the national guard or State defense militia shall be used solely for military purposes, except in those specific cases where nonmilitary use is authorized by the Department of Defense and/or the Governor. Necessary expense in maintaining such equipment and vehicles, not provided for by the federal government shall be a proper charge against State funds appropriated for the national guard: Provided such expense shall be specifically authorized by the Governor and certified by the Adjutant General. (1917, c. 200, s. 41; C. S., s. 6878; 1921, c. 120, s. 9; 1959, c. 218, s. 23; 1963, c. 1019, s. 4; 1967, c. 563, s. 5.)

Editor's Note.—

The 1967 amendment inserted the word "State" in the second sentence.

ARTICLE 10.

Support of Militia.

§ 127-102. **Allowances made to different organizations and personnel.**

(c) There shall be allowed annually to the supply sergeant of each company, battery, troop, detachment, and similar organizations, a sum of money not to exceed the sum of one hundred dollars (\$100.00).

(1967, c. 563, s. 6.)

Editor's Note.—

The 1967 amendment inserted "a sum of money not to exceed" in subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.

ARTICLE 11.

General Provisions.

§ 127-106.2. **Immunity of guardsmen from civil and criminal liability.**— (a) A member of the North Carolina national guard or State defense militia in active State service, while acting in aid of civil authorities and in the line of duty shall have the immunities of a law-enforcement officer.

(b) Whenever members of the North Carolina national guard or State defense militia are called into active State service to execute the laws, engage in disaster relief, suppress or prevent actual or threatened riot or insurrection, repel invasion, apprehend or disperse any snipers, rioters, mob or unlawful assembly, they shall have the immunities of a law-enforcement officer. (1969, c. 969.)

ARTICLE 13.

Municipal and County Aid for Construction of Armory Facilities.

§ 127-116. **Elections on questions of levying taxes.**—Notwithstanding any limitation provided by any general or special law, taxes may be levied by the governing body of a county or municipality for the purpose of financing the appropriations authorized in §§ 127-112 and 127-113 or for improving, equipping, maintaining and operating armory facilities for the North Carolina national guard and the special approval of the General Assembly is hereby given for the levying of taxes for such special purposes; provided, that the levy of such taxes shall be approved by the majority vote of the qualified voters of such county or municipality, who shall vote on the question of levying such taxes in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the governing body of the municipality and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Armory Construction Facility Tax," or "For Armory Facility Improvement, Equipment, Maintenance and Operation Tax" and "Against Armory Construction Facility Tax," and "Against Armory Facility Improvement, Equipment, Maintenance and Operation Tax," as the case may be, with squares in front of each proposition, in one of which squares the voter may make a cross mark (X). Any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section. Such elections as to counties may be held at the same time and in the same manner as elections held under article 9, of chapter 153, of the General Statutes, the same being designated as the County Finance Act. Such elections as to cities and towns may be held under the Municipal Finance Act, the same being article 28 of chapter 160, of the General Statutes. Such elections may be held at any time fixed by the governing body of the county or municipality concerned. The question of levying a tax for the purposes of this article may be submitted at the same time the question of issuing bonds is submitted as provided in this article, or the question of a levy of taxes may be submitted in a separate election according to the discretion and judgment of the governing body of the county or municipality concerned. (1955, c. 1181, s. 5; 1965, c. 1020, s. 1.)

Editor's Note.— The 1965 amendment deleted "constitutional limitation or" which formerly preceded "limitation" near the beginning of the first sentence, and added the provisions pertaining to improving, equipping, maintaining and operating armory facilities in the first and second sentences.

Section 2 of the amendatory act provides: "Any steps and proceedings heretofore taken by any county or municipality

in connection with submitting to the voters thereof the question of levying a tax for the purposes set forth in article 13 of chapter 127 of the General Statutes and any election hereafter held pursuant to such steps and proceedings heretofore taken and any election heretofore held for such purposes are hereby in all respects ratified, approved, confirmed and validated."

ARTICLE 14.

National Guard Mutual Assistance Compact.

§ 127-118. **Purposes.**—(a) Provide for mutual aid among the party states in the utilization of the national guard to cope with emergencies.

(b) Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.

(c) Maximize the effectiveness of the national guard in those situations which call for its utilization under this compact.

(d) Provide protection for the rights of national guard personnel when serving in other states on emergency duty. (1969, c. 674, s. 1.)

Editor's Note. — Session Laws 1969, c. 674, s. 3, makes the act effective July 1, 1969.

§ 127-119. **Entry into force and withdrawal.**—(a) This compact shall enter into force when enacted into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. (1969, c. 674, s. 1.)

§ 127-120. **Definitions; mutual aid.**—(a) As used in this article:

- (1) "Emergency" means an occurrence or condition, temporary in nature, in which police and other public safety officials and locally available national guard forces are, or may reasonably be expected to be, unable to cope with substantial and imminent danger to the public safety.
- (2) "Requesting state" means the state whose Governor requests assistance in coping with an emergency.
- (3) "Responding state" means the state furnishing aid, or requested to furnish aid.

(b) Upon request of the Governor of a party state for assistance in an emergency, the Governor of a responding state shall have authority under this compact to send without the borders of his state and place under the temporary command of the appropriate national guard or other military authorities of the requesting state all or any part of the national guard forces of his state as he may deem necessary, and the exercise of his discretion in this regard shall be conclusive.

(c) The Governor of a party state may withhold the national guard forces of his state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) Whenever national guard forces of any party state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges and immunities as members of national guard forces in such other state. The requesting state shall save members of the national guard forces of responding states harmless from civil liability for acts or omissions in good faith which occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether the responding forces are serving the requesting state within its borders or are in transit to or from such service.

(e) Subject to the provisions of subsections (f), (g) and (h) of this article, all liability that may arise under the laws of the requesting state, the responding state, or a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(f) Any responding state rendering aid pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost

of the materials, transportation and maintenance of national guard personnel and equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense or other cost.

(g) Each party state shall provide, in the same amounts and manner as if they were on duty within their state, for the pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact. Such pay and allowances shall be deemed items of expense reimbursable under subsection (f) by the requesting state.

(h) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state, shall provide for the payment of compensation and death benefits in the same manner and on the same terms in case such members sustain injury or are killed while rendering aid pursuant to this compact. Such compensation and death benefits shall be deemed items of expense reimbursable pursuant to subsection (f) of this article. (1969, c. 674, s. 1.)

§ 127-121. **Delegation.**—Nothing in this compact shall be construed to prevent the Governor of a party state from delegating any of his responsibilities or authority respecting the national guard, provided that such delegation is otherwise in accordance with law. For purposes of this compact, however, the Governor shall not delegate the power to request assistance from another state. (1969, c. 674, s. 1.)

§ 127-122. **Limitations.**—Nothing in this compact shall:

- (1) Expand or add to the functions of the national guard, except with respect to the jurisdictions within which such functions may be performed;
- (2) Authorize or permit national guard units to be placed under the field command of any person not having the military or national guard rank or status required by law for the field command position in question. (1969, c. 674, s. 1.)

§ 127-123. **Construction and severability.**—This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1969, c. 674, s. 1.)

§ 127-124. **Payment of liability to responding state.**—Upon presentation of a claim therefor by an appropriate authority of a state whose national guard forces have aided this State pursuant to the compact, any liability of this State pursuant to G.S. 127-120 (f) of the compact shall be paid out of the general fund. (1969, c. 674, s. 1.)

§ 127-125. **Status, rights and benefits of forces engaged pursuant to compact.**—In accordance with G.S. 127-120 (h) of the compact, members of the national guard forces of this State shall be deemed to be in State service at all times when engaged pursuant to this compact, and shall be entitled to all rights and benefits provided pursuant to the laws of this State. (1969, c. 674, s. 1.)

§ 127-126. **Injury or death while going to or returning from duty.**—All benefits to be paid under § 127-120 (h) of the foregoing compact shall include any injury or death sustained while going to or returning from such duty. (1969, c. 674, s. 1.)

§ 127-127. **Authority of responding state required to relieve from assignment or reassign officers.**— Nothing in the foregoing compact shall authorize or permit state officials or military officers of the requesting state to relieve from assignment or reassign officers or noncommissioned officers of national guard units of the responding state without authorization by the appropriate authorities of the responding state. (1969, c. 674, s. 1.)

Chapter 128.

Offices and Public Officers.

ARTICLE 1.

General Provisions.

§ 128-1. **No person shall hold more than one office.**—No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly; provided, that nothing herein contained shall extend to officers in the militia, notaries public, commissioners of public charities, or commissioners for special purposes, or to city or county building inspectors, electrical inspectors, plumbing inspectors, fire prevention inspectors, or similar local governmental inspectors. (Const., art. 14, s. 7; Rev., s. 2364; C. S., s. 3200; 1967, c. 24, s. 24; 1969, c. 1070.)

I. GENERAL CONSIDERATION.

Editor's Note.— The 1967 amendment, originally effective Oct. 1, 1967, substituted "notaries public" for "justices of the peace." Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

The 1969 amendment added at the end of the section "or to city or county building inspectors, electrical inspectors, plumbing inspectors, fire prevention inspectors, or similar local governmental inspectors."

§ 128-6. Persons admitted to office deemed to hold lawfully.

Elected and Qualifying City Councilman Is De Facto Officer Until Removed.— Upon his election, and after having been sworn in as a member of a city council, a person is a de facto councilman until he is removed

from such office in a quo warranto proceeding or otherwise removed therefrom as provided by law. *Armstrong v. McInnis*, 264 N.C. 616, 142 S.E.2d 670 (1965).

§ 128-8. Officers and employees responsible for cash or property to be surety bonded.

Editor's Note.— Session Laws 1969, c. 844, amended §§ 53-92, 58-7, 74A-2, 88-14, 90-159, 106-434, 130-192, 134-72, 134-99, 136-4.1, 143-3.2, 143-246 and 147-57 so as to provide that the bonds required by those sections be made as part of the

blanket bond. Section 14 of the 1969 act provides: "It is the intent and purpose of this act that all officers and employees of State departments, institutions and agencies be covered by the blanket bond provided for in G.S. 128-8."

§ 128-15. **Employment preference for veterans and their wives or widows.**— Hereafter, in all examinations of applicants for positions with this State or any of its departments, institutions or agencies, a preference rating of ten (10)

points shall be awarded to all the citizens of the State who served the State or the United States honorably in either the army, navy, marine corps, nurses' corps, air corps, air force, or any of the armed services in time of war, including the Korean war or conflict and including all citizens of the State who served in any of the armed services at any time between January 31, 1955, and the end of hostilities in Vietnam in which the United States is involved.

All the departments, or institutions of the State, or their agencies, shall give preference in appointments and promotional appointments to qualified veteran applicants as enumerated in this section in filling vacant positions in construction or maintenance of public buildings and grounds, construction of highways or any other employment under the supervision of the State or its departments, institutions, or agencies; provided, that the provisions of this section shall apply to the widows of such veterans and to the wives of disabled veterans. No State department, officer, institution or agency of the State shall bar or prohibit any veteran or person named in this section from employment because of age if such veteran or person is otherwise qualified.

In all promotional examinations a preference rating of one point for each year, or greater fraction thereof, of service in time of war, including the Korean conflict, and including service in any of the armed forces at any time between January 31, 1955, and the end of hostilities in Vietnam in which the United States is involved, shall be awarded in all departments of this State, institutions or agencies, to the veterans or persons named in this section; provided, that such points shall not exceed a total of 5 points. (1939, c. 8; 1953, c. 1332; 1967, c. 536.)

Editor's Note.—

The 1967 amendment inserted in the first and third paragraphs the provisions

as to service between January 31, 1955, and the end of hostilities in Vietnam.

ARTICLE 2.

Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.

Local Modification.—Onslow: 1965, c. 753.

Purpose of Statute.—

In accord with original. See *State v. Hockaday*, 265 N.C. 688, 144 S.E.2d 867 (1965).

This section does not purport to create a criminal offense, nor does any provision of chapter 128, article 2, provide for prosecution by indictment or otherwise for any criminal offense. *State v. Hockaday*, 265 N.C. 688, 144 S.E.2d 867 (1965).

And a proceeding under this section is not a criminal prosecution for punishment but is a civil proceeding. *State v. Hockaday*, 265 N.C. 688, 144 S.E.2d 867 (1965).

Justices Not Exempt from Prosecution for Violation of § 14-230.—It may not be reasonably implied that, by bringing jus-

tices of the peace within the provisions of this section, the General Assembly intended to exempt justices of the peace from indictment and prosecution for the criminal offenses defined in G.S. 14-230. *State v. Hockaday*, 265 N.C. 688, 144 S.E.2d 867 (1965).

Section 7-115 and this article are not in pari materia. *State ex rel. Swain v. Creasman*, 260 N.C. 163, 132 S.E.2d 304 (1963).

Procedure for Removing Justice under § 7-115 Differs from This Article.—Section 7-115, relating to the removal of a justice of the peace by the resident judge appointing him, is restricted in its scope and provides a procedure different from that specified in this article. *State ex rel. Swain v. Creasman*, 260 N.C. 163, 132 S.E.2d 304 (1963).

§ 128-17. Petition for removal; county attorney to prosecute.

Sections 128-17 to 128-20 prescribe the procedure for the removal from office of a justice of the peace (or other officer named therein) for a cause specified in G.S. 128-

16. *State v. Hockaday*, 265 N.C. 688, 144 S.E.2d 867 (1965).

Stated in *State ex rel. Swain v. Creasman*, 260 N.C. 163, 132 S.E.2d 304 (1963).

§ 128-20. Precedence on calendar; costs.

Provisions as to Time for Hearing Do Not Apply to Removal of Justice under §

7-115.—Where a petition for removal from office of a justice of the peace was heard

by the resident judge who appointed him, and the judgment recites that the petition was heard under the provisions of § 7-115, and the judge heard the proceeding in chambers after notice to the justice of the peace, instead of fixing the hearing at the next term after the petition was filed, it was held that the proceeding was under § 7-115 and not under this article. State ex

rel. Swain v. Creasman, 260 N.C. 163, 132 S.E.2d 304 (1963).

Nor Do Provisions as to Costs and Attorney's Fees.—The provisions of this section, relating to the recovery of costs and attorney's fees are not applicable to a proceeding under § 7-115. State ex rel. Swain v. Creasman, 260 N.C. 163, 132 S.E.2d 304 (1963).

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

(5) "Average final compensation" shall mean the average annual compensation of a member during the five consecutive calendar years, within the last ten calendar years of his creditable service, producing the highest such average.

(1965, c. 781.)

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover should be stricken from the replacement volume.

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote subdivision (5).

As the rest of the section was not affected by the amendment, it is not set out.

Session Laws 1947, c. 926, mentioned in

the note in the replacement volume, was amended by Session Laws 1965, c. 575.

Charlotte Firemen's Retirement System.

—For act exempting from this article the uniformed employees of the fire department of the city of Charlotte, see Session Laws 1947, c. 926, amended by Session Laws 1949, c. 734, Session Laws 1951, c. 387, Session Laws 1965, c. 575, and Session Laws 1969, c. 132.

§ 128-22. Name and date of establishment.

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover

should be stricken from the replacement volume.

§ 128-24. Membership.

(1) All employees entering or re-entering the service of a participating county, city, or town after the date of participation in the retirement system of such county, city, or town, except that law enforcement officers, as defined in subsection (m) of § 143-166 of the General Statutes, may elect to become members of the Law Enforcement Officers' Benefit and Retirement Fund or the North Carolina Local Governmental Employees' Retirement System. On and after July 1, 1965, new extension service employees in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees who are required to accept a federal Civil Service appointment may elect in writing on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the local Retirement System.

(1a) Should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member.

(2) All persons who are employees of a participating county, city, or town except those who shall notify the board of trustees in writing, on or

before ninety days following the date of participation in the retirement system by such county, city or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of county welfare and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation. Any member on or after July 1, 1969 may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.

(3a) No person who becomes an employee as the term is defined in this chapter, shall thereby become a member of the Retirement System who is elected, appointed, employed or reemployed after he has attained the age of 62 years: Provided, however, that this will not apply to any member whose account is active upon his return to service.

(4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27 (b1) as in effect at the date of such separation from service.

a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than death or retirement for disability as provided in G.S. 128-27, subsection (c), after completing twenty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of sixty years, or if a uniformed policeman or fireman upon the date he shall have attained the age of fifty-five years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27, subsection (b), paragraphs (1), (2) and (3).

b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than death or retirement for disability as provided in G.S. 128-27, subsection (c), after completing thirty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon written application to the board of trustees setting forth at what time,

not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within sixty days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age sixty years, or if a uniformed policeman or fireman at the attainment of age fifty-five years, upon proper application therefor.

- c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of sixty-two years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 128, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in G.S. 128-28; provided that, should such restoration occur on or after the time he shall have attained the age of fifty-five years, or if a uniformed policeman or fireman after the time he shall have attained the age of fifty years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.
 - d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance and earnings from employment by a unit of the Retirement System for any year will not exceed the member's annual rate of compensation when he retired. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21 (3).
- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of sixty (60) years for any reason other than death or retirement for disability as provided in G.S. 128-27, subsection (c), after completing fifteen (15) or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of sixty (60) years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or

- more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of § 128-27, subsection (b1); provided that such benefits will be computed in accordance with subsection (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969.
- b. In lieu of the benefits provided in paragraph a of this subdivision (5), any member who separates from service on or after July 1, 1965, and prior to the attainment of the age of sixty (60) years, for any reason other than death or retirement for disability as provided in G.S. 128-27, subsection (c), after completing twenty (20) or more years of creditable service and after attaining the age of fifty (50) years, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of sixty (60) years upon proper application therefor.
- c. The provisions of paragraph c and d of the preceding subdivision (4) shall apply equally to this subdivision (5). (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, added the last sentence in subdivision (1), inserted the first paragraph in subdivision (4), and added subdivision (5)

The 1967 amendment, effective July 1, 1967, deleted the second sentence of subdivision (5), added the second proviso to the first sentence of paragraph a of that subdivision, inserted the second sentence in paragraph a of that subdivision, and deleted the second proviso at the end of the first sentence of paragraph b of that subdivision.

The 1969 amendment, effective July 1, 1969, substituted, in subdivision (1a), "eight" for "six" and "seven" for "five," added the last sentence of subdivision (2), added subdivision (3a), rewrote the first sentence of paragraph c of subdivision (4), added paragraph d of subdivision (4), added, at the end of paragraph a of subdivision (5), "but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969" and inserted "and d" in paragraph c of subdivision (5).

As the rest of the section was not affected by the amendments, it is not set out.

§ 128-26. Allowance for service.—(a) Under such rules and regulations as the board of trustees shall adopt each member who was an employee at any time during the year immediately preceding the date of participation of his employer, and who becomes a member during the first year thereafter, shall file a detailed statement of all service as an employee rendered by him to his employer prior to such date of participation for which he claims credit.

An employer may allow additional prior service credit on account of earlier service in the employ of any other political subdivision of the State of North Carolina. Upon participation of an employer, prior service credits may be allowed to a former employee who earlier transferred to the service of a participating employer. Upon transfer of an employee from a nonparticipating political subdivision of North Carolina to a participating employer, the participating employer may allow prior service and membership service credits for such earlier employment to the same extent as for employees in service on date of participation.

With respect to members retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the armed forces of the United States; provided the person returned to the service of his employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such armed services; provided further that notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1969, one month of credit for each 20 days or portion thereof, but sick leave shall not be counted in computing creditable service for the purposes of G.S. 128-24 (5) a.

(1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6.)

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover should be stricken from the replacement volume.

The 1969 amendment, effective July 1, 1969, added at the end of subsection (e) the provisions as to sick leave.

As the rest of the section was not changed by the amendments, only subsections (a) and (e) are set out.

Editor's Note.—

The 1967 amendment, effective July 1, 1967, added the second and third paragraphs of subsection (a).

§ 128-27. Benefits.

(b) Service Retirement Allowance of Persons Retiring on or After July 1, 1959, but Prior to July 1, 1965.—Upon retirement from service on or after July 1, 1959, but prior to July 1, 1965, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of sixty five (65) years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty-five (65) years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of
 - a. Six and twenty-five hundredths per centum (6.25%) of his compensation if such certificate is a Class A certificate, or
 - b. Five per centum (5%) of his compensation if such certificate is a Class B certificate, or
 - c. Four per centum (4%) of his compensation if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Persons Retiring on or After July 1, 1965, but prior to July 1, 1967.—Upon retirement from service on or after July 1, 1965, but prior to July 1, 1967, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth (65) birthday, such allowance shall be equal to the sum of (i) one per centum (1%) of the portion of his average final compensation not

in excess of forty-eight hundred dollars (\$4800.00), plus one and one half per centum ($1\frac{1}{2}\%$) of the portion of such compensation in excess of forty-eight hundred dollars (\$4800.00) multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one per centum (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5600.00) plus one and one half per centum ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5600.00), multiplied by the number of years of his creditable service rendered after January 1, 1966.

- (2a) If the member's service retirement date occurs on or after his sixtieth (60) birthday but before his sixty-fifth (65) birthday, his service retirement allowance shall be computed as in (1) above but shall be reduced by five-twelfths of one per centum ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth (65) birthday.
- (2b) If the member's service retirement date occurs before his sixtieth (60) birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of sixty (60) years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27 (b).

(b2) Service Retirement Allowances of Persons Retiring on or after July 1, 1967, but Prior to July 1, 1969.—Upon retirement from service on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter per centum ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of five thousand six hundred dollars (\$5,600.00) plus one and one-half per centum ($1\frac{1}{2}\%$) of the portion of such compensation in excess of five thousand six hundred dollars (\$5,600.00), multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of sixty years as computed in (2a) above.
- (3) Notwithstanding the foregoing provision, any member whose creditable service commenced prior to July 1, 1965, and policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27 (b).

(b3) Service Retirement Allowances of Persons Retiring on or After July 1, 1969.—Upon retirement from service on or after July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter per cen-

tum ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600.00) plus one and one-half per centum ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600.00), multiplied by the number of years of his creditable service.

- (2a) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of sixty years as computed in (2a) above.
- (3a) If the member's service retirement date occurs before his sixty-second birthday but on or after his sixtieth birthday and on or after completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.
- (3b) If the member's service retirement date occurs before his sixtieth birthday but on or after completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of sixty years as computed in (3a) above.
- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27 (b).

(c) Disability Retirement Benefits.—Upon the application of a member or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees on the first day of any calendar month, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired.

(d) Allowance on Disability Retirement of Persons Retiring Prior to July 1, 1965.—Upon retirement for disability, in accordance with subsection (c) above, prior to July 1, 1965, a member shall receive a service retirement allowance if he has attained the age of sixty (60) years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;
- (2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of sixty-five (65) years had the member continued in service to the age of sixty-five (65) years without further change in compensation.

Supplemental disability benefits heretofore provided are hereby made a perma-

ment part of disability benefits after age sixty-five, and shall not be discontinued at age sixty-five.

(d1) Allowance on Disability Retirement of Persons Retiring on or After July 1, 1965 but Prior to July 1, 1969.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1965 but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of sixty (60) years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of sixty (60) years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27 (d).

(d2) Allowance on Disability Retirement of Persons Retiring on or After July 1, 1969.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of sixty-five years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27 (d).

(f) Return of Accumulated Contributions.—Should a member cease to be an employee except by death or retirement under the provisions of this chapter, he shall upon submission of an application be paid, not earlier than 60 days from receipt of an acceptable application, the sum of his contributions and one half of the accumulated regular interest thereon, provided that he has not in the meantime returned to service; provided that, if the member at the time of separation from service shall have attained the age of sixty years or is otherwise entitled to a retirement allowance under this chapter, he shall be paid the amount of his accumulated contributions plus the full amount of his accumulated regular interest thereon. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the board of trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, if such person or persons is living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death. Notwithstanding any other provision of chapter 128, there shall be deducted from any amount otherwise payable hereunder any amount due any participating employer by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any participating employer; provided that, notwithstanding any

other provisions of this chapter, even if the member fails to demand the return of his accumulated contributions within ninety days from the day he ceases to be an employee, any amount due such participating employer by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such participating employer upon demand; provided, further, that such participating employer shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such participating employer nor for any failure by the Retirement System for any reason to make such deductions.

(g) Election of Optional Allowance.—With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or his first retirement check has been cashed.

Option one. (a) In the Case of a Member Who Retires Prior to July 1, 1965.—If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees or, if none, to his legal representative.

(b) In the Case of a Member Who Retires on or After July 1, 1965.—If he dies within ten (10) years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth (1/120th) thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits.—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option one above.

Option five. The member may elect to receive a reduced retirement allowance during his life, with some other benefit payable after his death; provided that the benefit shall be approved by the board of trustees.

(i) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired

member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(j) Increase in Benefits to Those Persons Who Were in Receipt of Benefits Prior to July 1, 1967.—From and after July 1, 1967, the monthly benefits, to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
Year 1962	9%
Year 1961	10%
Year 1960	11%
Year 1959	12%
Year 1958	13%
Year 1957	14%
Year 1956	15%
Year 1955	16%
Year 1954	17%
Year 1953	18%
Year 1952	19%
Year 1951	20%
Year 1950	21%
Year 1949	22%
Year 1948	23%
Year 1947	24%
Year 1946	25%

The minimum increase pursuant to this subsection (j) shall be five dollars (\$5.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the board and shall be applicable to a retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(k) Post Retirement Increases in Allowances.—As of December 31, 1969 the ratio of the consumer price index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum, each beneficiary receiving a retirement allowance as of December 31, 1968 shall be entitled to have his allowance increased three per centum effective July 1, 1970.

As of December 31st of each year after 1969, the ratio of the consumer price index to such index one year earlier shall be determined.

(1) If such ratio indicates an increase that equals or exceeds three per centum, each beneficiary receiving a retirement allowance as of the end of the preceding year shall be entitled to have his allowance increased three per centum effective on July 1st of the year following the date of determination, provided that any such increase in allowances shall be contingent upon the total fund providing sufficient investment gains to cover the additional actuarial liabilities on account of such increase.

(2) If such ratio indicates an increase of less than three per centum for any year, the index at the end of such year will be compared to the index at the end of 1968, or if later, at the end of the last year when an increase of three per centum or more was indicated.

If such comparison indicates an increase of three per centum or more, each beneficiary receiving an allowance at the beginning of the

period encompassed by the comparison shall be entitled to have his allowance increased three per centum effective on July 1st of the year following such period, subject to the proviso stated in (1) above.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the consumer price index, and shall be included in determining any subsequent increase.

For purposes of this subsection, consumer price index shall mean the consumer price index (all items—United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(1) Death Benefit.—The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System.

Upon receipt of proof, satisfactory to the board of trustees, of the death, in service, of a member who had completed at least one full calendar year of membership in the System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the compensation earned by the member during the calendar year preceding the year in which his death occurs but not to exceed the sum of fifteen thousand dollars (\$15,000.00). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions on his death pursuant to the provisions of subsection (f) of this § 128-27. For purposes of this subsection (1), a member shall be deemed to be in service at the date of his death if his last day of actual service occurred not more than 90 days before the date of his death; provided that he shall not have retired or that payment of a refund of his contributions shall not have been issued by the Retirement System.

The death benefit provided in this subsection (1) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After June 30, 1969 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65.

Notwithstanding the above provisions, the board of trustees may and is specifically authorized to purchase a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, which policy contract or contracts shall provide death benefits upon the life of each member according to the terms and conditions otherwise appearing in this subsection. To that end the board of trustees is authorized and empowered to investigate the feasibility of utilizing group life insurance for the purpose of providing a death benefit for members comparable to the death benefits provided for herein.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of twelve consecutive months. For all other purposes in this subsection, "calendar year" shall mean the twelve months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

- a. When employment has been terminated (except by retirement), the last day the member actually worked.
- b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.

(3) A member shall be deemed to have retired on the day he becomes eligible to receive monthly retirement benefits.

(4) A member in service who has filed an early election of option, without designating a date of retirement, is deemed to have retired on the first day of the month following the date of his death.

(m) Early Election of Option.—Any member in service, after attainment of age 55 or completion of 30 years of creditable service, may elect one of the following options which would become effective and remain in effect until a final election has been made:

(1) Designation of a single beneficiary who would receive the monthly benefit provided by Option 2 of subsection (g) above. Such benefit would be computed by assuming that the member had retired on the first day of the month following the date of his death.

(2) Designation of a single beneficiary who would have the right upon the member's death to elect to receive either the benefit under (1) of this subsection or a lump sum return of the member's accumulated contributions.

Such elections would become effective under the conditions stated if a form provided for this purpose by the board of trustees is executed and filed with the Retirement System 30 days or more before the member's death. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898.)

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover should be stricken from the replacement volume.

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote subsections (b), (b1), and (d), added subsection (d1), rewrote the third sentence in subsection (f), rewrote the first paragraph of subsection (g) and in the same subsection rewrote the provisions of "Option one" and substituted "the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit" for "he attains age sixty-five (65)" at the end of the first sentence of "Option four."

The 1967 amendment, effective July 1, 1967, inserted "but prior to July 1, 1967" near the beginning of subsection (b1), inserted subsection (b2), added the second paragraph of subsection (d), substituted "of one of the Options set forth below" for "set forth in Options one, two, three, or four below" at the end of the first sentence of subsection (g), added a former proviso at the end of that sentence, added Option five to subsection (g), and added subsection (j).

Session Laws 1969, c. 442, effective July 1, 1969, added "but Prior to July 1, 1969" in the catchline and opening paragraph of subsection (b2), added subsection (b3), deleted "in service" near the beginning of subsection (c), inserted in subsection (c) "on the first day of any calendar month" and "that such incapacity was incurred at the time of active employment and has been continuous thereafter," inserted "but prior to July 1, 1969" in the catchline and opening paragraph of subsection (d1), added subsection (d2), rewrote the portion of the first sentence of subsection (f) preceding the semicolon, deleted the former second sentence and two provisos to the first sentence of subsection (g) and added subsections (k), (l) and (m).

Session Laws 1969, c. 898, amended Session Laws 1969, c. 442, so as to delete the former last sentence of the first paragraph of subsection (g).

Subsection (i) is set out in this Supplement to correct a typographical error appearing in the replacement volume.

Only the subsections added or changed by the amendments are set out.

§ 128-28. Administration and responsibility for operation of System.

(c) **Members of Board.**—The board shall consist of the board of trustees of the Teachers' and State Employees' Retirement System, and two local governmental officials designated by the Governor. One local governmental official shall be a mayor, a member of the governing body, or a full-time officer of a city or town participating in the Retirement System, and one local governmental official shall be a county commissioner or a full-time officer of a county participating in the Retirement System. The Governor shall designate these two local governmental officials on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the two local governmental officials designated by the Governor shall serve on the board in addition to the regular duties of their city, town, or county office: Provided that if for any reason any local governmental official so designated vacates the city, town, or county office which he held at the time of this designation, the Governor shall designate some other local governmental official to serve until the next regular date for the designation of local governmental officials to serve on the board.

(h) **Officers and Other Employees, Salaries and Expenses.**—The board of trustees shall elect from its membership a chairman, and shall, by a majority vote of all the members, appoint a director, who may be, but need not be, one of its members. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the board of trustees, and all other expenses of the board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the board of trustees shall approve.

(l) **Medical Board.**—The board of trustees shall designate a medical board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(p) On the basis of such tables and interest assumption rate as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this chapter. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781; 1969, c. 442, s. 15.)

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover should be stricken from the replacement volume.

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "director" for "secretary" in the first sentence of subsection (h), and in subsection (l) substituted "not less than three nor more than five" for "three" in the first sentence.

The 1969 amendment, effective July 1, 1969, inserted "and interest assumption rate" in subsection (p).

Subsection (c) is set out in this Supplement to correct a typographical error appearing in the replacement volume.

As the rest of the section was not affected by the amendments, it is not set out.

§ 128-29. Management of funds.—(a) **Vested in Board of Trustees.**—The board of trustees shall be the trustee of the several funds created by this article as provided in G.S. 128-30, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Cooperatives, Federal Land Banks, International Bank for Reconstruction and Development, and Inter-American Development Bank;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services; and
- (7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States government, or by some other agency of the United States government.
- (8) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(1967, c. 978, s. 8.)

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover should be stricken from the replacement volume.

Editor's Note.—

The 1967 amendment, effective July 1, 1967, added "International Bank for Re-

construction and Development, and Inter-American Development Bank" at the end of subdivision (2) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 128-29.1. Authority to invest in certain common and preferred stocks.

- (8) That the total value of common and preferred stocks shall not exceed fifteen per centum of the total value of all invested funds of the Retirement System; provided, further:
 - a. Not more than one and one-half per centum of the total value of such funds shall be invested in the stock of a single corporation, and provided further:
 - b. The total number of shares in a single corporation shall not exceed eight per centum of the issued and outstanding stock of such corporation, and provided further;
 - c. As used in this subdivision (8), value shall consist of the par value or unpaid balance of all unmaturred or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments.

(1965, c. 415, s. 2.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "fifteen per centum" for "ten per centum" near the beginning of subdivision (8), deleted former paragraph c. of that subdivision, providing that not more than 1½% of the total value of such

funds should be invested in stocks during any year, and designated former paragraph d as paragraph c.

As only subdivision (8) was changed by the amendment, the rest of the section is not set out.

§ 128-30. Method of financing.

(b) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

- (1) Prior to July 1, 1951, each participating employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member or a Class C member, and four per centum (4%) in the case of a Class B member; provided, however, that with respect to any member who is covered under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his actual compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty (60) years and has completed thirty-five (35) years of service. In determining the amount earned by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer monthly, or at least quarterly, each year as to the amount of fees received by such member as compensation during the period, and each month, or at least quarterly, such member shall pay to his employer the proper per centum of such compensation received from fees, which shall be considered as deductions by the employer as provided in subdivisions (1) and (2) of this subsection.

Notwithstanding the foregoing, effective July 1, 1965, with respect to the period of service commencing on July 1, 1965, and ending December 31, 1965, the rates of such deductions shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars (\$4800.00) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars (\$4800.00); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deduction shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5600.00) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5600.00); and

with respect to the period of service commencing July 1, 1967, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of five thousand six hundred dollars (\$5,600.00) and six per centum (6%) of the portion of compensation in excess of five thousand six hundred dollars (\$5,600.00). Such rates shall apply uniformly to all members of the Retirement System, irrespective of class; provided, however, that with respect to uniformed policemen or firemen not covered under the Social Security Act, commencing July 1, 1965, the rate of such deductions shall be six per centum (6%) of compensation.

(2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(3) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings funds by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this article, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity, which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not to exceed one half of his average final compensation at age sixty. Such additional amounts so deposited shall become a part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(g) Collection of Contributions.—

(1) The collection of members' contributions shall be as follows:

- a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the Retirement System the contributions payable by such member as provided in this article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.
- b. The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this article and shall transmit monthly, or at such time as the

board of trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the board of trustees. The secretary-treasurer of the board of trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said board of trustees for use according to the provisions of this article.

- (2) The collections of employers' contributions shall be made as follows: Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection (d) of this section.
- (3) If within 90 days after request therefor by the board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the board to the State Treasurer that such employer is no longer in default.

(1965, c. 781; 1967, c. 978, ss. 9, 10.)

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover should be stricken from the replacement volume.

Editor's Note.—

The 1965 amendment, effective July 1, 1965, added the last paragraph in subdivision (1) of subsection (b).

The 1967 amendment, effective July 1, 1967, inserted "and ending June 30, 1967,"

near the middle of the second paragraph of subdivision (1) of subsection (b), added the provisions with respect to the period of service commencing July 1, 1967, at the end of the first sentence of that paragraph, and added subdivision (3) at the end of subsection (g).

As the rest of the section was not affected by the amendments, it is not set out.

§ 128-36. Local laws unaffected; when benefits begin to accrue.

Local Modification. — By virtue of Session Laws 1965, c. 882, New Hanover

should be stricken from the replacement volume.

Chapter 129.

Public Buildings and Grounds.

Article 4.

Heritage Square and Commission.

Sec. 129-18 to 129-25. [Repealed.]

Article 6.

North Carolina Capital Planning Commission.

129-31. Commission created; membership; secretary.

Sec.

- 129-32. Transfer of certain records to Commission.
- 129-33. General powers and duties of Commission.
- 129-34. Advisory committee.
- 129-35. Exclusions from article.
- 129-36. Employees.
- 129-37. Per diem and allowances.
- 129-38. Expenses of Commission.
- 129-39. Duration of Commission.

Article 7.

North Carolina Capital Building Authority.
Sec.

- 129-40. Creation of North Carolina Capital Building Authority.
- 129-41. Documents of North Carolina Capital Planning Commission to be made available to Authority.
- 129-42. General powers and duties of Authority.
- 129-42.1. Agencies and institutions.
- 129-42.2. Selection of architects or engineers.
- 129-43. Professional service.
- 129-44. Employees.
- 129-45. Per diem allowance of Authority.
- 129-46. Expenses of Authority.
- 129-47. Duration of Authority.
- 129-48, 129-49. [Reserved.]

Article 8.

State Construction Finance Authority.

- 129-50. Creation of Authority.
- 129-51. Purpose of article.
- 129-52. Definitions.
- 129-53. Revenue bonds not debts.

Sec.

- 129-54. General powers of Authority.
- 129-55. Issuance of revenue bonds and bond anticipation notes.
- 129-56. Leases of projects.
- 129-57. Trust agreement; money received deemed trust funds; insurance; remedies.
- 129-58. Sinking fund; pledge of revenues.
- 129-59. Refunding bonds.
- 129-60. Sale of bonds; sale or exchange of refunding bonds.
- 129-61. Exemption from taxation; bonds eligible for investment or deposit.
- 129-62. Transfer of State property.
- 129-63. Conveyance of property by the Authority to the State.
- 129-64. Authorization to accept appropriated moneys.
- 129-65. Annual reports.
- 129-66. Officers not liable.
- 129-67. Additional method.
- 129-68. Article liberally construed.
- 129-69. Constitutional construction.
- 129-70. Inconsistent laws inapplicable.

ARTICLE 1.

General Services Division.

§ 129-4. Powers and duties of Director.

(4a) Any motor vehicle parked in a State-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in violation of the "Rules and Regulations Governing State-Owned Parking Lots" dated September 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of such vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such lots pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage.

(1969, c. 627.)

Editor's Note. — The 1969 amendment added subdivision (4a).
As the rest of the section was not

changed by the amendment, only subdivision (4a) is set out.

ARTICLE 3.

State Legislative Building Commission.

§ 129-15. Right of eminent domain.

Cited in *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

ARTICLE 4.

Heritage Square and Commission.

§§ 129-18 to 129-25: Repealed by Session Laws 1965, c. 1002, s. 1, effective July 1, 1965.

ARTICLE 6.

North Carolina Capital Planning Commission.

§ 129-31. **Commission created; membership; secretary.**—There is hereby created the North Carolina Capital Planning Commission which shall consist of the following: The Governor of North Carolina, who shall serve as chairman; a member of the Senate who shall serve as vice-chairman, to be appointed by the Lieutenant-Governor; a member of the House of Representatives, to be appointed by the Speaker of the House; all members of the Council of State; the Attorney General; and a representative of the city of Raleigh to be designated by the City Council of Raleigh to serve a two-year term to expire at same date city council members' terms expire, subject to reappointment by the city council. Public officers who are made members of this Commission shall be deemed to serve ex officio. The Director of the Department of Administration shall serve as secretary to the Commission. (1965, c. 1002, s. 1.)

Editor's Note. — Section 11 of the act from which this article was codified makes it effective July 1, 1965.

§ 129-32. **Transfer of certain records to Commission.**—The minutes, records, plans and all other documents of public record of the State Capital Planning Commission and the Heritage Square Commission shall be turned over to the North Carolina Capital Planning Commission. (1965, c. 1002, s. 2.)

§ 129-33. **General powers and duties of Commission.**—The North Carolina Capital Planning Commission shall have the following powers and duties:

- (1) To obtain and maintain up-to-date building requirements for State governmental agencies in the city of Raleigh and its environs.
- (2) To formulate a long-range capital improvement program as required for State central governmental agencies in the city of Raleigh and its environs and maintain this program up-to-date.
- (3) To recommend the acquisition of land as required.
- (4) To select the locations for State government buildings, monuments, memorials and improvements in the city of Raleigh and its environs.
- (5) To submit a report of its activities to each session of the General Assembly. (1965, c. 1002, s. 3.)

Opinions of Attorney General. — Mr. W.L. Turner, Director of Administration, 7/28/69.

§ 129-34. **Advisory committee.**—The Commission may select an advisory committee of engineers, architects, or other professional people as the Commission may find advisable. (1965, c. 1002, s. 4.)

§ 129-35. **Exclusions from article.**—North Carolina State University, Dorothea Dix Hospital and the Governor Morehead School are excluded from the provisions of this article. (1965, c. 1002, s. 5.)

§ 129-36. **Employees.**—The Director of the Department of Administration shall employ as directed by this Commission, such architects, engineers and other persons as may be necessary to assist the Commission in the execution of its duties. (1965, c. 1002, s. 6.)

§ 129-37. **Per diem and allowances.**—The members of the North Carolina Capital Planning Commission and the Advisory Committee, except for the salaried officials and employees of the State of North Carolina, and the city of Raleigh, shall receive for their services the same per diem and allowances as are granted the members of State boards generally. (1965, c. 1002, s. 7.)

§ 129-38. **Expenses of Commission.**—There is hereby appropriated out of the general fund of the State, the sum of thirty-five thousand dollars (\$35,000.00) for each year of the biennium, 1965-66 and 1966-67, to defray the expenses of the Commission. The Commission may when necessary request additional funds from the Contingency and Emergency Fund. Any funds remaining at the end of each biennium shall revert to the general fund of the State. (1965, c. 1002, s. 8.)

§ 129-39. **Duration of Commission.**—The North Carolina Capital Planning Commission shall continue until abolished by the General Assembly. (1965, c. 1002, s. 9.)

ARTICLE 7.

North Carolina Capital Building Authority.

§ 129-40. **Creation of North Carolina Capital Building Authority.**—There is hereby created the North Carolina Capital Building Authority which shall consist of the following: A member of the Senate to be appointed by the Lieutenant Governor; a member of the House of Representatives to be appointed by the Speaker of the House; the Attorney General; the State Treasurer; the Director of the Department of Administration who shall serve as chairman; and two members to be appointed by the Governor of North Carolina. The Governor shall serve as ex officio member. The vice-chairman shall be elected at the first meeting of the Authority. The Director of the Department of Administration may designate a member of his department to serve as secretary to the Authority. All appointed members shall serve for a period of two years or until their successor has been named. (1967, c. 994, s. 1.)

Editor's Note.—Section 10, c. 994, Session Laws 1967, makes this article effective on and after July 1, 1967.

§ 129-41. **Documents of North Carolina Capital Planning Commission to be made available to Authority.**—The minutes, records, plans and other documents of the North Carolina Capital Planning Commission shall be made available to the North Carolina Capital Building Authority. (1967, c. 994, s. 2.)

§ 129-42. **General powers and duties of Authority.**—The North Carolina Capital Building Authority shall have the following powers and duties:

- (1) To select and employ architects, engineers, and other consultants in accordance with established State policy to plan and supervise the construction of buildings and other capital improvement projects in accordance with plans developed by the North Carolina Capital Planning Commission for those projects for which the North Carolina General Assembly may make appropriations, and all other agencies which may be brought under this article or which may come under this article by choice;
- (2) The Department of Administration shall receive bids and with the approval of the North Carolina Capital Building Authority award the contracts for the construction of all such buildings and projects;
- (3) To submit an annual report of its activities to the North Carolina Capital Planning Commission;

- (4) To submit a report to the North Carolina Capital Planning Commission on completion of all major projects. (1967, c. 994, s. 3; 1969, c. 112, s. 1.)

Editor's Note. — The 1969 amendment added "and all other agencies which may be brought under this article or which may come under this article by choice" at the end of subdivision (1).

Opinions of Attorney General. — Mr. W.L. Turner, Director of Administration, 7/28/69.

§ 129-42.1. **Agencies and institutions.** — The North Carolina Capital Building Authority shall exercise those powers and duties set forth in G.S. 129-42 for the following agencies and institutions of the State of North Carolina and any other State agency or institution which may come under this article by choice and upon notification to the Authority in writing: the North Carolina Department of Correction, the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, the Governor Morehead School, the North Carolina Department of Motor Vehicles, the North Carolina Sanatorium System including Western North Carolina Sanatorium, North Carolina Sanatorium at McCain, the Gravelly Sanatorium, and the Eastern North Carolina Sanatorium, and all State agencies in the city of Raleigh and its environs with the exception of North Carolina State University and Dorothea Dix Hospital. (1969, c. 112, s. 2.)

§ 129-42.2. **Selection of architects or engineers.** — State agencies and institutions in the selection of architects or engineers shall select not less than three persons or firms for each project to be designed for that institution. This selection of not less than three firms or individuals shall be forwarded to the Director of the Department of Administration, and the final selection shall be made from this group by the North Carolina Capital Building Authority. (1969, c. 1157.)

§ 129-43. **Professional service.** — The Authority may call upon the Department of Administration for technical and professional services as may be required to expedite the work of this Authority. (1967, c. 994, s. 4.)

§ 129-44. **Employees.** — The Director of the Department of Administration shall employ as directed by this Authority all persons as may be necessary to assist this Authority in the execution of its duties. (1967, c. 994, s. 5.)

§ 129-45. **Per diem allowance of Authority.** — The members of the North Carolina Capital Building Authority shall receive for their services the same per diem and allowances as are granted the members of State boards generally. Salaried officials and employees of the State of North Carolina will receive no per diem allowance. (1967, c. 994, s. 6.)

§ 129-46. **Expenses of Authority.** — There is hereby appropriated out of the general fund of the State the sum of five thousand dollars (\$5,000.00) for each year of the biennium 1967-68 and 1968-69 to defray the expenses of the Authority. The Council of State may upon request of this Authority allot additional funds from the Contingency and Emergency Fund when in the opinion of the Governor and Council of State such additional funds as are required for the operation of this Authority. Any funds remaining at the end of each biennium shall revert to the general fund of the State. (1967, c. 994, s. 7.)

§ 129-47. **Duration of Authority.** — The North Carolina Capital Building Authority shall continue until abolished by the General Assembly of North Carolina. (1967, c. 994, s. 8.)

§§ 129-48, 129-49: Reserved for future codification purposes.

ARTICLE 8.

State Construction Finance Authority.

§ 129-50. **Creation of Authority.**—There is hereby created a body corporate and politic and constituting an agency of the State government to be known as the North Carolina State Construction Finance Authority. It shall consist of five members, all of whom shall serve *ex officio*: the Governor, the Director of the Department of Administration, the State Treasurer, the State Auditor, and the Lieutenant Governor. The Governor shall serve as chairman unless he elects to designate some other member as chairman. The members of the Authority shall receive no compensation for their services in that capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.

Three members of the Authority shall constitute a quorum for the transaction of business, and in the absence of a quorum one or more members may adjourn from time to time. The Authority shall elect a secretary and a treasurer who need not be members of the Authority, each of whom shall serve at the pleasure of the Authority and, if not members of the Authority, receive such compensation as the Governor and the Advisory Budget Commission shall determine. The treasurer shall give such bond as the Authority shall prescribe. (1969, c. 1048, s. 1.)

§ 129-51. **Purpose of article.**—The purpose of this article is to provide a method of financing, through the Authority, the acquisition or construction of buildings and other facilities authorized by the General Assembly for the operation of the State government and its departments, institutions and agencies, without a pledge of the faith and credit or the taxing power of the State. (1969, c. 1048, s. 2.)

§ 129-52. **Definitions.**—As used in this article, the following words shall have the following meanings, unless another or different meaning or intent shall be clearly indicated by the context:

- (1) The word "Authority" shall mean the North Carolina State Construction Finance Authority.
- (2) The word "bonds" shall mean bonds or revenue refunding bonds of the Authority issued under the provisions of this article.
- (3) The word "cost" as applied to a project shall include the cost of acquisition or construction, the cost of acquisition of all property, both real and personal, or interests therein, the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost, administrative expenses, and such other expenses as may be necessary or incident to the acquisition or construction of the project and the financing of such acquisition or construction. Any obligation or expense incurred by the State or the Authority prior to the issuance of bonds under the provisions of this article in connection with any of the foregoing items of cost may be regarded as a part of such cost.
- (4) The word "project" shall mean any building, structure or other facility authorized by the General Assembly to be acquired, constructed, enlarged, extended, remodelled or improved by the Authority for the operation of the State government or any department, agency or institution thereof, and such authorization shall state the maximum au-

thorized cost thereof, and any such project may include any necessary land, furnishings and equipment and parking facilities, utilities and landscaping. (1969, c. 1048, s. 3.)

§ 129-53. **Revenue bonds not debts.**—Revenue bonds issued pursuant to this article shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues as herein defined and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds hereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor. (1969, c. 1048, s. 4.)

§ 129-54. **General powers of Authority.**—The Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the following powers:

- (1) To sue and be sued;
- (2) To make contracts;
- (3) To adopt and use a common seal and to alter the same as may be deemed expedient;
- (4) To acquire by purchase or otherwise (including the power of condemnation by the exercise of the right of eminent domain under the eminent domain laws of the State), construct, complete, remodel, enlarge, extend, improve and equip any project;
- (5) To acquire property of any and every kind and description, real, personal, or mixed, by gift, purchase or otherwise, including property of the State or of any department, board, commission, or other agency of the State transferred to the Authority as herein authorized;
- (6) To lease any project to, and to charge and collect rents from, any officer, department, board, commission or other agency of the State for the use of any such project;
- (7) In the event of nonpayment of rents under any such lease, to maintain and operate any such project or lease such project to others for any suitable purpose or dispose of any such project, all as hereinafter provided;
- (8) To borrow money and to issue bonds or notes or other obligations as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;
- (9) To fix and revise and charge and collect rents and other charges for the use of any project;
- (10) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in the judgment of the Authority, and to fix their compensation;
- (11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
- (12) To receive and accept from any federal, State or other public agency or from any private agency, person or other entity donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any project or projects, and to agree to apply and

use the same in accordance with the terms and conditions under which the same are provided; and

- (13) To do all acts and things necessary or convenient to carry out the powers granted by this article. (1969, c. 1048, s. 5.)

§ 129-55. Issuance of revenue bonds and bond anticipation notes.— The Authority is hereby authorized to issue, at one time or from time to time, revenue bonds of the Authority for the purpose of paying all or any part of the cost of any project or projects. The bonds of each issue shall be dated and shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. Any such bonds shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Authority. The Authority shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than the cost of a project or projects for which such bonds shall have been issued, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

Any resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds thereunder as the Authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued by the Authority under this article and other powers vested in the Authority under this article may be exercised by the Authority without obtaining the consent of any department,

division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article.

In anticipation of the issuance of bonds for any project the Authority may borrow money at the lowest rate of interest obtainable and execute and issue notes of the Authority for the payment of any of the costs of such project. The provisions of this article relating to bonds of the Authority and the proceeds thereof shall govern as to any bond anticipation notes issued hereunder and the proceeds thereof insofar as such provisions may be made applicable thereto. To the extent that any such notes shall not have been retired from revenues received by the Authority on account of the project for which they were issued or from other sources, such notes shall be paid from the proceeds of the bonds of the Authority issued for such project. (1969, c. 1048, s. 6.)

§ 129-56. Leases of projects.—The Authority and the department, board, Commission or other agency of the State or the State Treasurer on behalf of the State government are authorized and empowered to enter into a lease or leases with respect to any project or projects financed by the Authority hereunder for such department, board, commission or other agency of the State or the State government, as the case may be, any such lease to be payable solely from appropriations to be made by the General Assembly for the payment of the rent therein provided to be paid. Any such lease may be entered into contemporaneously with or at any time after the financing by the Authority of the project described in such lease, and payments under the lease may begin at any time after execution of such lease. Any such lease shall extend only for the biennium in which it is executed, and shall be automatically renewed for the succeeding biennium, effective on the first day thereof, unless the General Assembly shall fail to make an appropriation or appropriations for the payment of the rent therein provided to be paid during such succeeding biennium.

The rents provided for in the lease with respect to any project shall be sufficient at all times to pay the principal of and the interest on the bonds issued therefor and a proportion of the administrative expenses of the Authority as provided for by such lease and such reserves as may be required by the resolution authorizing the issuance of such bonds.

In the event any such lease is not renewed the Authority may maintain and operate the project described therein, or lease all or any part of such project to any other person, firm or corporation for any purpose deemed by the Authority to be suitable, or sell or otherwise dispose of such project in any manner and on such terms and conditions as the Authority shall determine to be for the best interest of the State, the Authority and the holders of bonds or other obligations of the Authority issued to finance such project or payable in whole or in part from the revenues thereof. Any fees, rents or charges on the part of the Authority or any such lessee shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. (1969, c. 1048, s. 7.)

§ 129-57. Trust agreement; money received deemed trust funds; insurance; remedies.—In the discretion of the Authority, any revenue bonds issued under this article may be secured by a trust agreement by and between the Authority and a corporate trustee which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign all or any part of the revenues to be received, but shall not convey or mortgage any project or projects or any part thereof. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation

to the acquisition, construction or provision of any project or projects; the maintenance, repair, operation and insurance of any project or projects; rents, charges or fees to be fixed and collected, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the bonds and the rights, remedies and immunities of the trustee or trustees, if any, and may restrict the individual right of action by such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of such holders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as an administrative expense of the Authority or as a part of the cost of the project or projects for which such bonds are issued or as an expense of operation of such project or projects, as the case may be.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The Authority may provide for the payment of the proceeds of the sale of the bonds and the revenues, or part thereof, to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine, and may provide for the temporary investment thereof pending such disbursement. Any officer with whom or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such requirements as are provided in this article and in the resolution or trust agreement authorizing or securing such bonds.

Notwithstanding the provisions of any other law the Authority may carry insurance on any project or projects in such amounts and covering such risks as it may deem advisable.

Any holder of bonds issued under this article or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Authority or by any officer thereof. (1969, c. 1048, s. 8.)

§ 129-58. Sinking fund; pledge of revenues.—Any resolution or trust agreement providing for the issuance of and securing bonds hereunder shall provide that all revenues derived from or on account of the leasing of any project, except such part thereof as may be necessary to pay administrative costs of the Authority and the cost of maintenance, repair and operation of any project during any operation thereof by the Authority and reserves for the payment of such cost, shall be set aside in a sinking fund or funds which shall be and are hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption or purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the fees, rents and charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties

have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same. (1969, c. 1048, s. 9.)

§ 129-59. Refunding bonds.—The Authority is hereby authorized to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds or revenue refunding bonds issued by the Authority under this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Authority is further authorized to issue from time to time revenue refunding bonds for the combined purpose of

- (1) Refunding any such revenue bonds or revenue refunding bonds issued by the Authority under this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and
- (2) Paying all or any part of the cost of acquiring or constructing any additional project or projects.

The issuance of such refunding bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the Authority with respect to the same, shall be governed by the foregoing provisions of this article insofar as the same may be applicable. (1969, c. 1048, s. 10.)

§ 129-60. Sale of bonds; sale or exchange of refunding bonds.—Upon the filing with the Local Government Commission of North Carolina of a resolution of the Authority so requesting, bonds authorized to be issued hereunder shall be sold on behalf of the Authority by the Local Government Commission in such manner, at public or private sale, and for such price as the Local Government Commission may determine to be for the best interest of the Authority and the State, provided that such sale shall be approved by the Authority.

Refunding bonds may be sold or exchanged by the local Government Commission on behalf and with the approval of the Authority for outstanding bonds of the Authority issued under this article and, if sold, the proceeds thereof may be applied to the purchase, redemption or payment of such outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1969, c. 1048, s. 11.)

§ 129-61. Exemption from taxation; bonds eligible for investment or deposit.—Any bonds issued under this article, including any of such bonds constituting a part of the surplus of any bank, trust company or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any), and all property of the Authority, shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the

State or by any county, political subdivision, agency or other instrumentality of the State.

Bonds issued by the Authority under the provisions of this article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1969, c. 1048, s. 12.)

§ 129-62. **Transfer of State property.**—Any department, board, commission, agency or officer of the State may transfer jurisdiction of or title to any property under its or his control to the Authority when such transfer is approved in writing by the Governor as being advantageous to the State. (1969, c. 1048, s. 13.)

§ 129-63. **Conveyance of property by the Authority to the State.**—Upon the final payment of all obligations of the Authority on account of any project financed hereunder the Authority shall convey such project, without charge, to the State or to the appropriate agency thereof. (1969, c. 1048, s. 14.)

§ 129-64. **Authorization to accept appropriated moneys.**—The Authority is authorized to accept such moneys as may be appropriated from time to time by the General Assembly for effectuating the purposes of this article, including, without limitation, the payment of expenses of administration and operation of the Authority or of any project, lease payments, and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the Authority. (1969, c. 1048, s. 15.)

§ 129-65. **Annual reports.**—The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Authority during such year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Authority. (1969, c. 1048, s. 16.)

§ 129-66. **Officers not liable.**—No member or other officer of the Authority shall be subject to any personal liability or accountability by reason of his execution of any obligations or the issuance thereof. (1969, c. 1048, s. 17.)

§ 129-67. **Additional method.** — The foregoing sections of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1969, c. 1048, s. 18.)

§ 129-68. **Article liberally construed.**—This article, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1969, c. 1048, s. 19.)

§ 129-69. **Constitutional construction.**—The provisions of this article are severable, and if any of its provisions shall be held unconstitutional by any

court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. (1969, c. 1048, s. 20.)

§ 129-70. **Inconsistent laws inapplicable.**—Insofar as the provisions of this article are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this article shall be controlling. (1969, c. 1048, s. 21.)

Chapter 130. Public Health.

Article 7.

Vital Statistics.

Sec.

- 130-36. State Registrar.
- 130-37. Duties of State Registrar.
- 130-38. Registration districts.
- 130-39. Control of State Registrar over local districts.
- 130-40. Appointment and removal of local registrars.
- 130-41. Appointment of deputy and sub-registrars.
- 130-42. Burial-transit permits; permits for disinterment and reinterment.
- 130-43. Fetal death registration.
- 130-44. Contents of death certificate.
- 130-45. Death without medical attendance; duty of funeral directors and officials; approval required before cremation.
- 130-46. Death registration.
- 130-47. Interment without burial-transit permit forbidden.
- 130-48. Registration of divorces and annulments.
- 130-49. Registration of marriage certificates; duty of registers of deeds; forms; furnishing copies; copies as evidence.
- 130-50. Birth registration.
- 130-51. Registration of birth certificate more than five days and less than four years after birth.
- 130-52. Registration of birth four years or more after birth.
- 130-52.1, 130-52.2. [Repealed.]
- 130-53. Register of deeds may perform notarial acts.
- 130-54. Contents of birth certificate.
- 130-55. Validation of irregular registration of birth certificates.
- 130-56. Institutions to keep records of inmates.
- 130-57. Certificate of identification in lieu of birth certificate where parentage cannot be established.
- 130-58. Certificate of identification for child of foreign birth.

Sec.

- 130-58.1. Investigations and petitions involving certain neglected illegitimate children; hearings; disposition of children.
- 130-59. State Registrar to supply blanks; to perfect and preserve birth and death certificates.
- 130-60. Amendment of birth and death certificate.
- 130-61. Birth certificate as evidence.
- 130-62. Clerk of court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.
- 130-63. Duties of local registrars as to birth and death certificates; reports; copies to be forwarded by State Registrar.
- 130-64. Register of deeds to preserve copies of birth and death records.
- 130-64.1. [Repealed.]
- 130-65. Pay of local registrars.
- 130-66. Certified copies of records; fee.
- 130-67. Information furnished to officers of any veterans' organization.
- 130-68. Registers of deeds to issue birth certificates without cost to persons entering military forces.
- 130-69. Violations of article; penalty.
- 130-69.1. [Repealed.]
- 130-70. Duties of registrars and others in enforcing this article.
- 130-71. Local systems abrogated.
- 130-72. Establishing fact of birth by person without certificate.
- 130-73. Establishing facts relating to birth of abandoned children.
- 130-74 to 130-79.1. [Repealed.]

Article 12.

Sanitary Districts.

- 130-138. Bonds; bond anticipation notes; advances on loans from federal government.
- 130-144.1. Liens for sewer service charges in sanitary districts not operating water distribution system; collection of charges; disconnection of sewer lines.

Article 13B.

Solid Waste Disposal.

Sec.

- 130-166.16. Definitions.
- 130-166.17. Solid waste unit in State Board of Health.
- 130-166.18. Solid waste disposal program.
- 130-166.19. Receipt and distribution of funds.
- 130-166.20. Single agency designation.

Article 14A.

Sanitation of Shellfish and Crustacea.

- 130-169.01. Board of Health to make regulations relating to sanitation of shellfish and crustacea.
- 130-169.02. Agreements between Board of Health and Department of Conservation and Development
- 130-169.03. Construction of article.

Article 14B.

Sanitation of Scallops.

- 130-169.04. Board of Health to make regulations relating to sanitation of scallops.
- 130-169.05. Agreements with other agencies.
- 130-169.06. Construction of article.

Article 14C.

Swimming Pools.

Article 17.

Cancer Control Program.

- 130-184.2. Immunity of persons who report cancer.

Article 17A.

North Carolina Cancer Study Commission.

- 130-186.1. Commission created; appointment, qualifications and terms of members; vacancies; officers.
- 130-186.2. Duties.
- 130-186.3. Per diem and expenses.

Article 21.

Chief Medical Examiner; Postmortem Medicolegal Examinations.

Sec.

- 130-192. Chief Medical Examiner; appointment; vacancy.
- 130-193. Central and district offices and laboratories.
- 130-194. Assistants and employees.
- 130-195. Certain salaries and expenses paid by State.
- 130-196. Additional services and facilities.
- 130-197. County medical examiners; appointment; term of office and vacancies.
- 130-198. Medical examiners to be notified of certain deaths.
- 130-199. Duties of medical examiners upon receipt of notice; reports; fees.
- 130-200. When autopsies and other pathological examinations to be performed.
- 130-201. Rules and regulations.
- 130-202. Reports and records received as evidence.
- 130-202.1. When medical examiner's permission necessary before embalming, burial and cremation.
- 130-202.2. Coroner to hold inquests.

Article 25.

State Air Hygiene Program.

- 130-221 to 130-226. [Repealed.]
- 130-227 to 130-229. [Reserved.]

Article 26.

Regulation of Ambulance Services.

- 130-230. Permit required to operate ambulance.
- 130-231. Advisory Committee on Ambulance Service created.
- 130-232. State Board of Health to adopt standards for equipment; inspection of medical equipment and supplies required for ambulances.
- 130-233. Certified ambulance attendant required.
- 130-234. Exemptions.
- 130-235. Violation declared misdemeanor.

ARTICLE 1.

General Provisions.

§ 130-3. **Definitions, as used in this chapter.**—(a) "Ambulance" includes any privately or publicly owned vehicle that is specially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for the transportation upon the streets or highways in this State of persons who are sick, injured, wounded or otherwise incapacitated or helpless.

(b) "Board" or "State Board" means "State Board of Health."

(c) "Funeral director" means a person licensed in accordance with the provisions of article 13 of chapter 90 of the General Statutes of North Carolina.

(d) "Licensed physician" means a physician licensed to practice medicine in North Carolina.

(e) "Local board of health" includes district board of health, county board of health, city board of health, and city-county board of health.

(f) "Local health department" includes district health department, county health department, city health department, and city-county health department.

(g) "Local health director" includes local health officer, county health officer, district health officer, city health officer, city-county health officer, county superintendent of health, county health director, or any other title by which the administrative head of a local health department is designated.

(h) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(i) "State Health Director" means the executive officer of the State Board of Health. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6; 1967, c. 343, s. 2; c. 1257, s. 1.)

Local Modification.—Cumberland: 1965, c. 1152, s. 1.

The second 1967 amendment deleted the last sentence of subsection (a) as added by the first 1967 amendment, relating to the exclusion of rescue vehicles from the definition.

Editor's Note.—

The first 1967 amendment added present subsection (a) and redesignated former subsections (a) through (h) as (b) through (i).

ARTICLE 2.

Administration of Public Health Law.

§ 130-4. **State Board of Health created; membership.**—There is hereby created a State Board of Health. The Board shall consist of nine members, four of whom shall be elected by the Medical Society of the State of North Carolina and five of whom shall be appointed by the Governor. One of the members appointed by the Governor shall be a licensed pharmacist, one a reputable dairyman, one a licensed dentist, and one a licensed veterinarian.

The members of the Board shall receive no pay, except that each member may receive the amount of per diem provided by G.S. 138-5 and necessary traveling and subsistence expenses when on actual duty in attending the meetings of the Board or of the executive committee or in pursuing special investigations in the State; but when attending meetings beyond the limits of the State, only actual traveling and subsistence shall be allowed.

The executive office of the Board shall be in the capital city of the State of North Carolina. (1957, c. 1357, s. 1; 1969, c. 445, s. 4.)

Editor's Note. — The 1969 amendment substituted "the amount of per diem provided by G.S. 138-5" for "ten dollars (\$10.00) per diem, unless the Biennial Ap-

ropriations Act specifically provides otherwise" near the beginning of the second paragraph.

ARTICLE 3.

Local Health Departments.

§ 130-13. **County health departments.**—Each county is hereby authorized to operate a health department. The policy-making body for the county health department shall be a county board of health composed of three or more ex officio and four public members. The ex officio members are the chairman of the board of county commissioners; the mayor of the city or town which is the county seat (if there is no such mayor, then the clerk of the superior court of the

county) and the mayors of all other incorporated cities within the jurisdiction of the county health department which have a population in excess of 15,000 according to the latest decennial census; and the county superintendent of schools. The public members, heretofore selected for staggered four-year terms by the ex officio members, are to include a licensed physician, a licensed pharmacist, a licensed dentist, and a public-spirited citizen. Provided, that the ex officio members are authorized and directed, when requested by the board of county commissioners, to appoint two additional members to the county board of health who shall be public-spirited citizens and who shall not be of the same profession or occupation as any of the other public members. Beginning with January, 1958, the ex officio members shall hold a meeting the first week in January of each year for the purpose of electing or appointing a public member to fill the vacancy created by the expiration of the term of a public member. When any of the three specified public members, namely a physician, a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, such place shall be filled with a public-spirited citizen. The terms of all members of a county board of health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified. If a vacancy shall arise among the public members, a majority of the ex officio members may call a meeting of all the ex officio members for the purpose of selecting such public members as may be necessary to fill the said vacancies, and such selection of public members shall be by majority vote of the ex officio members of the county board.

Upon the formation of a new county health department, the ex officio members shall name the four public members; one of the public members of the county board of health shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years; thereafter, all appointments shall be for a term of four years. The county board of health shall elect its own chairman. The county health director shall act as secretary to the county board of health, and a majority of the members of the county board of health shall constitute a quorum.

Those counties which now have special city-county boards of health, as authorized by any Private, Local, or Public-Local Act of the General Assembly, for the purpose of carrying on a joint health program, shall be exempted from the terms of this section, unless the special city-county board of health shall vote by a two-thirds majority of all members to dissolve said special board of health, and shall so notify the State Health Director, in writing; in which event, the provisions of this section shall apply.

All vacancies in the membership of the public members of the county board of health shall be filled by the ex officio members at the next meeting of the county board of health following the creation of the vacancy. In case any public member is a public official or officer, his duties as a member of said county board of health shall be deemed to be ex officio. Public members of any county board of health shall be eligible for reelection or reappointment.

Employees of a county health department shall be deemed county employees. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7064; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1.)

Cross Reference. — As to capital public health and mental health center reserve funds of counties, see §§ 153-142.22 to 153-142.26.

Editor's Note.—

The 1967 amendment added the last paragraph.

The 1969 amendment added the fifth sentence.

§ 130-14. **District health departments.**—Under rules and regulations established by the State Board of Health, district health departments including more than one county may be formed in lieu of county health departments for each of the counties involved when the following condition or conditions exist:

- (1) When the funds derived from the tax levy made under the authority of G.S. 130-21 or such greater rate as the county may levy, plus available State and other funds, are insufficient to provide a minimum standard health department of one medical officer, two nurses, one sanitarian, one clerk, and a regular dental program, or
- (2) When, in the opinion of the State Board of Health, special problems or special projects arise which can be handled more advantageously on a district basis and the consolidation is approved by the State Board of Health and the board of health of each county involved.

Where two or more counties are combined into a district health department, the policy-making body for the district health department shall be a district board of health composed of three or more ex officio members and four public members. The ex officio members shall be selected by the State Health Director. At last one of the ex officio members must come from each participating county, and the ex officio members shall include at least one chairman of a board of county commissioners, one mayor of a town which is the county seat, and one county superintendent of schools. The ex officio members shall be appointed during the first week of each December following the general election in which members of the General Assembly are elected and shall serve for a period of two years from and after the date of appointment. The public members are to serve four-year, staggered terms, with one member being elected by the ex officio members at an annual meeting during the first week of January of each year. One of the public members shall be a licensed dentist, one a licensed physician, one a licensed pharmacist, and the other shall be a public-spirited citizen. At least one public member must reside in each county, but not more than one half of the public membership may come from one county. The ex officio members are authorized and directed, when requested by the boards of county commissioners of each county composing the district, to appoint two additional members to the district board of health who shall be public-spirited citizens and who shall not be of the same profession or occupation as any of the other public members. Where any of the three specified public members, namely, a physician, a dentist, or a pharmacist, cannot be elected because there is no such person resident in the counties, such place shall be filled with a public-spirited citizen. The terms of all members of a district board of health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members, their successors shall be elected or appointed for the terms specified above and until their successors have been duly elected or appointed and have qualified.

Upon the formation of a new district health department, the public members shall be appointed by the chairmen of the boards of county commissioners of the counties within the district, meeting jointly; one for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years. All appointments of the public members thereafter shall be made by the ex officio members and said appointments shall be for a term of four years. In cases where more than three counties are combined into a district, there shall be at least one ex officio member, who is a chairman of the board of county commissioners, a mayor of the town which is the county seat, or a county superintendent of schools from each county.

The district board of health shall elect its chairman. A majority of the members of the district board of health shall constitute a quorum and the district health director shall act as secretary to such board of health.

All vacancies in the ex officio membership of a district board of health caused by death, resignation, or any reason other than expiration of a term, shall be filled by appointments made by the State Health Director. Such appointments shall be made from any of the public officers or officials specified above, and the duties of such public officials as members of said district board of health shall be ex officio duties. Appointments to fill vacancies of ex officio members shall be for the unexpired term of the member or members causing the vacancy or vacancies and shall extend until the time for the next regular appointments of ex officio members. All vacancies in membership of the public members of a district board of health shall be filled by the ex officio members at the next meeting of the district board of health following the creation of the vacancy. A member appointed to fill a vacancy of a public member shall be from the same county as the member causing the vacancy. In case any public member is a public officer or official, his membership and duties on the district board of health as a public member shall be deemed to be ex officio.

In lieu of district boards of health as herein described, upon approval of the board of commissioners of each county in the district, counties forming or which have formed district health departments may establish and maintain separate county boards of health, organized as prescribed in G.S. 130-13, to perform for their respective counties the functions in relation to the district health department which would have been performed by the district board of health had one been created, and each such board may maintain a separate budget. (1957, c. 1357, s. 1; 1969, c. 719, s. 2.)

Editor's Note. — The 1969 amendment substituted the present eighth sentence of the second paragraph, relating to appointment of two additional members to the district board of health by the ex officio

members, for the former eighth sentence, authorizing the appointment of an additional public member for each county in excess of four.

§ 130-16. Compensation of board members.

Local Modification.—Edgecombe: 1969, c. 422.

§ 130-20. Abatement of nuisances.

Applied in Buncombe County Bd. of Health v. Brown, 271 N.C. 401, 156 S.E.2d 708 (1967).

§ 130-22. Municipal health departments.—The governing authorities of each city and town in North Carolina shall have the power and authority to appropriate annually and from time to time public monies for the maintenance and operation of a health department, including those which have heretofore been created and are existing as a joint city and county department of health, and to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter such health department; expenditures for all of these purposes are hereby declared to be necessary expenses, and the special approval of the General Assembly to levy special taxes therefor is hereby given. Employees of a municipal health department shall be deemed municipal employees. (1957, c. 1357, s. 1; 1967, c. 1224, s. 2.)

Editor's Note. — The 1967 amendment added the second sentence.

ARTICLE 7.

Vital Statistics.

§ 130-36. State Registrar.—The State Health Director shall be State Registrar of Vital Statistics and shall have general supervision over the Central

Office of Vital Statistics, which is hereby established. (1913, c. 109, s. 2; C. S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

Revision of Article.—Session Laws 1969, c. 1031, effective Oct. 1, 1969, revised and rewrote this article, substituting the present thirty-eight sections for the former forty-nine sections. No attempt has been made to point out the changes effected by the 1969 act, but, where appropriate, the historical citations to the former sections have been added to corresponding sections of the new article.

§ 130-37. Duties of State Registrar.—The State Registrar shall have charge of the registration of births and deaths, shall prepare the necessary instructions, forms and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each local registration district as constituted in the succeeding section [§ 130-38], and in the Central Office of Vital Statistics at the capital of the State. The State Registrar shall be charged with the uniform and thorough enforcement of the provisions of this article throughout the State, and shall from time to time recommend to the General Assembly any additional legislation that may be necessary for this purpose. The State Registrar is authorized to make reasonable rules and regulations for the administration of this article. (1913, c. 109, s. 1; C. S., s. 7086; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-38. Registration districts.—For the purposes of this article, the State shall be divided into local registration districts as follows: Each county, and each area served by a local health department, or any combination of the above governmental units, as designated by the State Registrar. (1913, c. 109, s. 3; C. S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-39. Control of State Registrar over local districts.—The State Registrar shall have the authority to abolish or consolidate existing registration districts, and/or create new districts when economy and efficiency and the interests of the public service may be promoted thereby. (1933, c. 9, s. 3; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-40. Appointment and removal of local registrars.—(a) The State Registrar shall appoint a local registrar for each registration district. The State Registrar shall have the authority and power to designate and appoint the local health director or administrator as registrar for the area over which he has jurisdiction, or any fractional part or parts thereof. The fees accruing from the vital statistics registration service, where such service is performed by the local health director or administrator under such appointment, shall be used by the local health department for health services. The State Registrar shall direct, supervise, and control the activities of local registrars.

(b) The State Registrar may remove a local registrar for reasonable cause. (1913, c. 109, s. 4; 1915, c. 20; C. S., ss. 7089, 7090; 1955, c. 951, s. 6; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-41. Appointment of deputy and subregistrars.—Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, disability, or removal, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. When it may appear necessary, the local registrar is hereby authorized, with the approval of the State Registrar, to appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive certificates and to issue burial-transit permits in and for such portions of the district as may be designated; and each subregistrar shall enter the date the certificate was received by him and shall forward all certificates to the local registrar of the district within seven days, and in all cases before the third day of the following month: Provided, that each subregistrar shall

be subject to the supervision and control of the State Registrar and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the State Registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; C. S., s. 7091; 1955, c. 951, s. 8; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-42. Burial-transit permits; permits for disinterment and reinterment.—(a) The funeral director or person acting as such who first assumes custody of a dead body or fetus shall obtain a burial-transit permit prior to final disposition or removal from the State of the body or fetus and within seventy-two hours after death. Such burial-transit permit shall be issued by the local registrar of the district where the death or fetal death occurred. A burial-transit permit issued under the law of another state which accompanies a dead body or fetus brought into this State shall be authority for final disposition of the body or fetus in this State.

(b) A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by regulation or otherwise provided by law. Such permit shall be issued by the local registrar to a licensed funeral director, embalmer, or other person acting as such, upon proper application.

(c) The State Registrar may promulgate rules and regulations to provide for the issuance of a burial-transit permit prior to the filing of a certificate of death or fetal death in cases in which compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S., s. 7092; 1955, c. 951, s. 9; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-43. Fetal death registration.—(a) A fetal death certificate for each fetal death (stillbirth) which occurs in this State after gestation period of twenty completed weeks or more shall be filed with the local registrar of the district in which the delivery occurred within seventy-two hours after such delivery and prior to final disposition of the fetus or removal from the State. If the place of fetal death is unknown, a fetal death certificate shall be filed in the registration district in which a dead fetus was found within seventy-two hours after the occurrence. If a fetal death occurs on a moving conveyance, a fetal death certificate shall be filed in the registration district in which the fetus was first removed from such conveyance.

(b) The funeral director or person acting as such who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such person, the physician in attendance at or after the delivery shall file the certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death and other required medical information from the person responsible therefor. The medical certification and other required medical information shall be completed and signed within seventy-two hours after delivery by the physician in attendance at or after delivery except when inquiry is required by article 21 of this chapter. When such inquiry is required, the medical examiner shall complete and sign the medical certification within seventy-two hours after taking charge of the case.

(c) When a fetal death is attended by a midwife, the midwife shall sign as the attendant but shall not sign the medical certificate of fetal death; such cases, and fetal deaths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance as provided for in G.S. 130-45. (1913, c. 109, s. 6; C. S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; 1955, c. 951, s. 10; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-44. Contents of death certificate.—The certificate of death shall contain, as a minimum, those items prescribed and specified on the standard cer-

tificate of death as prepared by the national agency in charge of vital statistics except as the same may be changed or amended by the North Carolina State Registrar of Vital Statistics. (1913, c. 109, s. 7; C. S., s. 7094; 1949, c. 161, s. 1; 1955, c. 951, s. 11; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 4; 1969, c. 1031, s. 1.)

§ 130-45. Death without medical attendance; duty of funeral directors and officials; approval required before cremation.—(a) In case of death without medical attendance, it shall be the duty of the funeral director or person acting as such, and any other person having knowledge of such death, to notify the local medical examiner and local registrar of such death. No burial-transit permit shall be issued until the medical examiner has completed his investigation and certification. If there is no local medical examiner, the registrar shall refer the case to the Chief Medical Examiner for investigation and certification of death. The certificate of death, required for a burial-transit permit, shall state therein the name of deceased, the disease causing death, or, if from external causes, the means of death, whether probably accidental, suicidal, or homicidal, and such other information as may be required by the State Registrar in order to properly classify the death.

(b) No cremation of a dead body, in case of death without medical attendance, shall take place until the medical examiner has made inquiry into the cause of and manner of death and has certified in writing that the inquiry has been made and in his opinion no further examination is necessary. (1913, c. 109, s. 8; C. S., s. 7095; 1951, c. 1091, s. 2; 1955, c. 972, s. 4; 1957, c. 1357, s. 1; 1963, c. 492, ss. 3, 4; 1967, c. 1154, s. 5; 1969, c. 1031, s. 1.)

§ 130-46. Death registration.—(a) A death certificate for each death which occurs in this State shall be filed with the local registrar of the district in which the death occurred within seventy-two hours after such death and prior to final disposition of the body or removal from the State. If the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within seventy-two hours after such occurrence. If death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body was first removed from such conveyance.

(b) The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death from the person responsible therefor. He shall then state the facts required relative to the date and place of burial, over his signature and over the signature of the embalmer, if applicable. He shall present the completed certificate to the local registrar or his representative in order to obtain a burial-transit permit. He shall deliver the burial-transit permit to the person in charge of the place of burial before interring or otherwise disposing of the body; or shall attach the burial-transit permit to the box containing the corpse, when shipped by any transportation company.

(c) The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial-transit permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted.

(d) It shall be the duty of the physician or medical examiner making the medical certification as to the cause of death to complete the medical certification prior to interment but in no event more than seventy-two hours after death. The said physician or medical examiner may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained. (1913, c. 109, ss. 7, 9; C. S., ss. 7094, 7096; 1949, c. 161, s. 1; 1955, c. 951, ss. 11, 12; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 2, 4; 1969, c. 1031, s. 1.)

§ 130-47. Interment without burial-transit permit forbidden.—No person in charge of any premises in which interments are made shall inter or permit the interment, disinterment, or other disposition of any body unless it is accompanied by a burial-transit permit, as herein provided. Such person shall endorse upon the burial-transit permit the date of interment, or disinterment over his signature, and shall return all burial-transit permits so endorsed to the local registrar of his district within ten days from the date of disposal. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and the name and address of the funeral director; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the funeral director, or person acting as such, shall sign the burial-transit permit, giving the date of burial, and shall write across the face of the burial-transit permit the words "No person in charge," and file the burial-transit permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S., s. 7099; 1955, c. 951, s. 14; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1969, c. 1031, s. 1.)

§ 130-48. Registration of divorces and annulments.—(a) For each divorce and annulment of marriage granted by any court of jurisdiction in this State, a report shall be prepared and filed by the clerk of court with the State Registrar. The information necessary to prepare the report shall be furnished to the clerk of court by the parties or their legal representatives on forms prescribed and furnished by the State Registrar. On or before the 15th day of each month, the clerk of court shall forward to the State Registrar the report of each divorce and annulment granted during the preceding calendar month. Upon request, the Office of Vital Statistics shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the office of a fee not to exceed two dollars (\$2.00), and such true copy shall be competent evidence in any court or other proceeding in this State with like force and effect as the original. The monies received by the office pursuant to this section shall be turned over to the State Treasurer and paid into the general fund of the State. The Office of Vital Statistics is hereby authorized and empowered to do all things necessary to implement and carry out the provisions of this section.

(b) In any county in which the district court is not established, the sum of one dollar (\$1.00) shall be taxed as a part of the cost in the cause in which the decree of divorce or annulment is granted and the same shall be collected by the clerk of the court as costs. With each monthly report, the clerk shall transmit to the Office of Vital Statistics one half of these costs. (1957, c. 983; 1969, c. 1031, s. 1.)

§ 130-49. Registration of marriage certificates; duty of registers of deeds; forms; furnishing copies; copies as evidence.—On or before the fifteenth day of each month, the registers of deeds of the several counties of this State shall transmit to the Office of Vital Statistics, on forms prescribed and furnished by it, a record of each and every marriage ceremony performed in his county during the preceding calendar month, a record of which has been filed in his office as required by applicable law. The form prescribed by the State Registrar

shall contain and set forth in substance the forms and information required by G.S. 51-16, as amended, as a minimum requirement, and shall be the official form of a marriage license, certificate of marriage, and application for marriage license, issued by the register of deeds. The form so prescribed shall contain additional information in order to conform to the minimum requirements of the national agency in charge of vital statistics. Each form signed and issued by the register of deeds, assistant register of deeds, or deputy register of deeds shall constitute an original or duplicate original. Upon request, the Office of Vital Statistics shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the office of a fee of two dollars (\$2.00), and such true copy shall be competent evidence in any court or other proceeding in this State with like force and effect as the original. The monies received pursuant to this section shall be paid into the general fund of the State. The Office of Vital Statistics is authorized to do all things necessary to implement and carry out the provisions of this section. (1961, c. 862; 1969, c. 1031, s. 1.)

§ 130-50. Birth registration.—(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the district in which the birth occurs within five days after such birth and shall be registered by such registrar if it has been completed and filed in accordance with this section. Such certificate shall be on the form adopted and furnished by the State Registrar. When a birth occurs on a moving conveyance, a birth certificate shall be filed in the district in which the child was first removed from the conveyance. When a birth occurs in a hospital or other medical facility, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within five days after the birth.

(b) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth, or in the absence of such a person,
- (2) The midwife or any other person in attendance at or immediately after the birth, or in the absence of such a person,
- (3) Either parent, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(c) If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child and the surname of the child shall be the same as that of the husband, unless paternity has been determined otherwise by a court of competent jurisdiction in which case the name of the father as determined by the court shall be entered and the surname of the child shall be the same as that of the mother. If the mother was not married either at the time of conception or birth, the certificate shall be completed as provided in G.S. 130-54. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S., s. 7101; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-51. Registration of birth certificate more than five days and less than four years after birth.—Any birth may be registered more than five days and less than four years after birth in the same manner as births are registered under this article within five days of birth. Such registration shall have the same force and effect as if the registration had occurred within five days of birth: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required by G. S. 130-50. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-52. **Registration of birth four years or more after birth.**—(a) When the birth of a person born in this State has not been registered within four years after birth, a delayed certificate may be filed with the register of deeds in the county in which the birth occurred in accordance with regulations promulgated by the State Registrar. Each such birth must be registered in duplicate on forms approved and furnished by the State Registrar. Such certificate so registered shall have the same evidentiary value as those registered within five days. Certificates of birth registered four years or more after the date of occurrence shall be marked “delayed” and show on their face the date of the delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate. The register of deeds shall forward the original and duplicate certificate to the Office of Vital Statistics for final approval. If the certificate complies with the rules and regulations and has not been previously registered, the State Registrar shall file the original and return the duplicate to the register of deeds for recording.

(b) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the State Registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the State Registrar shall not register the delayed certificate and shall advise the applicant of the reasons for this action. In the event the deficiencies are not corrected, the registration official shall advise the applicant of his right of appeal to a court of competent jurisdiction. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 80, s. 8; c. 1031, s. 1.)

§§ 130-52.1, 130-52.2: Repealed by Session Laws 1969, c. 1031, s. 1, effective October 1, 1969.

Revision of Article.—See same catchline in note under § 130-36.

§ 130-53. **Register of deeds may perform notarial acts.**—(a) The register of deeds is hereby authorized to take acknowledgments, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration or issuance of certificates relating to births, deaths or marriages. The register of deeds shall be entitled to a fee as prescribed in G.S. 161-10.

(b) All acknowledgments taken, affirmations or oaths administered, or other notarial acts performed by the register of deeds relating to the registration of certificates of births, deaths or marriages, prior to June 16, 1959, are hereby validated and in all respects confirmed. (1945, c. 100; 1957, c. 1357, s. 1; 1959, c. 986; 1969, c. 80, s. 9; c. 1031, s. 1.)

§ 130-54. **Contents of birth certificate.**—The certificate of birth shall contain, as a minimum, those items prescribed and specified on the standard certificate of birth as prepared by the national agency in charge of vital statistics, except as the same may be amended or changed by the North Carolina State Registrar of Vital Statistics: Provided, that in case of a child born out of wedlock, the father’s name shall not be shown on the certificate without his written consent under oath, and provided, further, that in case of a child born out of wedlock, the last name of the child shall be the same as that of the mother, or the person or persons caring for the child when such request is made by both the mother of the child and the person or persons caring for the child, or, if the mother of the child is deceased, or her whereabouts shall have been unknown for a period of three years, then the person or persons caring for such child may make such a request for such change. Where it has been adjudicated in a court of competent jurisdiction that a mother has abandoned her child, then the consent required of the mother by this section shall not be necessary. (1913, c. 109, s. 14; C. S., s. 7102; 1949, c. 161, s. 2; 1955, c. 951, s. 15; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-55. **Validation of irregular registration of birth certificates.**—The registration and filing with the Office of Vital Statistics of the birth certificate of any person whose birth has not been registered within five days of birth under G.S. 130-50 is hereby validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the State Registrar, shall have the same evidentiary value as if the birth had been registered within five days of such birth as provided by G.S. 130-50. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-56. **Institutions to keep records of inmates.**—All superintendents or managers, or other persons in charge of hospitals, lying-in or other institutions, public or private, to which persons resort for treatment of diseases or confinement, or to which persons are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates or patients in their institutions. Such records shall be in the form of the certificates provided for by this article, as directed by the State Registrar. This information must be obtained at the time of the inmate's or patient's admittance or as soon thereafter as practicable, but in any event prior to the discharge of said inmate or patient. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. (1913, c. 109, s. 16; C. S., s. 7104; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-57. **Certificate of identification in lieu of birth certificate where parentage cannot be established.**—A certificate of identification for a foundling child whose parentage cannot be established shall be filed by the court which determines that the child is a foundling, with the local registrar of vital statistics of the district in which the child was found. This certificate of identification shall contain such information and be in such form as the State Registrar may prescribe and shall serve in lieu of a birth certificate. (1941, c. 297, s. 3; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-58. **Certificate of identification for child of foreign birth.**—In the case of an adopted child born in a foreign country and having legal settlement in this State, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a copy of the final order of adoption signed by the clerk of court or other appropriate official prepare a certificate of identification for such child. The certificate shall contain the same information as is required by G.S. 48-29 (a) for children adopted in this State, except that the country of birth shall be specified in lieu of the state of birth. (1949, c. 160, s. 2; 1955, c. 951, s. 16; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-58.1. **Investigations and petitions involving certain neglected illegitimate children; hearings; disposition of children.**—When it appears from the birth certificates filed with the Bureau of Vital Statistics that a child has been born to an unwed mother who had previously given birth to two or more children out of wedlock, said Bureau shall forward copies of such birth certificates to the local health director of the county of such mother's residence; and whenever it shall come to the attention of any local official that a child has been born to a woman by a father other than her husband, which woman had previously given birth to two or more children out of wedlock, such local official shall furnish such information to the local health director of the county of residence of such woman. The local health director to whom such information may come, shall thereupon, by registered or certified mail, notify such mother that she is, or may be, subject to the provisions of this section, and shall instruct her to report to the county director of public welfare in the county of her residence for consultation and advice within fifteen (15) days after receipt of such letter.

A copy of such letter shall be mailed to the county director of public welfare in the county of such mother's residence. If the mother fails to report to the county director of public welfare within fifteen (15) days following receipt of the letter, then the county director shall thereupon begin the investigation hereinafter required.

In the course of the consultation and advice hereinabove provided for, the county director of public welfare shall make, or cause to be made through his own staff or through the staff of a private social agency, an investigation for the purpose of determining if such child, and any other children living with such mother, are living under such conditions, or are under such improper or insufficient guardianship or control, as to endanger the health or general welfare of any such child or children, within the meaning of subdivision (4) of G.S. 7A-278. If, upon such investigation, the county welfare director is of the opinion that such living conditions or surroundings, or such improper or insufficient guardianship or control of such child or children, are such as to endanger the health or general welfare of any such child or children, then said director or some person under his supervision, or the personnel of the private social agency hereinabove referred to, shall consult and advise with the mother of such child or children for the purpose and to the end that such conditions and surroundings be improved, and proper and sufficient guardianship and control be established. If, after such consultation and advice with said mother, such director is of the opinion that the health or general welfare of any such child or children is and will continue to be in danger, then such director shall thereupon file with the court a verified petition stating the alleged facts which bring such child or children within the provisions of the section, which said petition shall also contain all other information required by the provisions of G.S. 7A-281. Upon the filing of such petition, the issuance and service of summons and the making of any interlocutory orders shall be made in accordance with the provisions of G.S. 7A-282, 7A-283, and 7A-284.

After having given due notice, as provided by G.S. 7A-283, the court shall conduct a hearing in accordance with the provisions of G.S. 7A-285, and if, upon said hearing, the court is satisfied that the health or general welfare of any such child or children is in danger, and that such child or children are in need of more suitable guardianship, then the court may thereupon take such action as, in its discretion, it deems proper and suitable, and as provided in G.S. 7A-286. (1963, c. 1259; 1969, c. 911, s. 3.)

Editor's Note. — This section formerly appeared as § 110-25.1. It was transferred to its present position by Session Laws 1969, c. 911, s. 3. The 1969 act also amended the section by substituting references to various sections in chapter 7A for references to sections in chapter 110 throughout.

Session Laws 1969, c. 911, s. 11, provides: "This act shall be effective January 1, 1970,

provided that in those districts where the district court is not yet established, the courts exercising juvenile jurisdiction on the effective date shall continue to exercise juvenile jurisdiction until the district court is established."

For note on illegitimacy in North Carolina, see 46 N.C.L. Rev. 813 (1968).

§ 130-59. State Registrar to supply blanks; to perfect and preserve birth and death certificates.—(a) The State Registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificate received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory.

(b) All physicians, midwives, informants, or funeral directors, and all other

persons having knowledge of the facts are hereby required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the State Registrar, in person, by mail, or through the local registrar.

(c) The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous index of all births and deaths registered. Adequate fireproof space in one of the State buildings for filing the birth and death records made and returned under this article shall be provided by the General Services Division. No persons other than those authorized by the State Registrar shall have access to any original birth and death records. (1913, c. 109, s. 17; C. S., s. 7105; 1941, c. 297, s. 2; 1949, c. 160, s. 3; 1955, c. 951, s. 17; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1969, c. 1031, s. 1.)

§ 130-60. Amendment of birth and death certificate.—(a) No certificate of birth or death, after its acceptance for registration by the State Registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendment requests properly dated, signed and witnessed: Provided, that the State Registrar may promulgate rules and regulations governing the type and amount of proof of the correctness of the change or amendment which must accompany the request for a change or amendment in the certificate of birth or death, or other record made in pursuance of this article: Provided, further, that a new certificate of birth shall be made by the State Registrar whenever:

- (1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;
- (2) When notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;
- (3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person.

(b) For the amendment of any certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this article, the State Registrar shall be entitled to a fee not to exceed five dollars (\$5.00) to be paid by the applicant. Such fees shall be deposited and accounted for in the same manner as all other fees provided for in this article.

(c) When a new certificate of birth is made the State Registrar shall substitute such new certificate for the certificate of birth then on file, and shall forward a copy of the new certificate to the register of deeds of the county of birth, and the copy of the certificate of birth on file with the register of deeds, if any, shall be forwarded to the State Registrar within five days. The State Registrar shall place under seal the original certificate of birth, the copy forwarded by the register of deeds, and all papers relating in any way to the original certificate of birth. Such seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of such person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth. (1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-61. Birth certificate as evidence.—Certified copies of birth certificates shall be accepted by public school authorities in this State as prima facie evidence of the age of children registering for school attendance, and no other proof need be required. In addition, certified copies of birth certificates shall be

required by all factory inspectors, and employers of youthful labor, as prima facie proof of age, and no other proof need be required. When, however, it is not possible to secure such certified copy of birth certificate for any child, the school authorities and factory inspectors may accept as secondary proof of age any competent evidence by which the age of persons is usually established. (1913, c. 109, s. 17; C. S., s. 7107; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-62. Clerk of court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.—(a) Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of the court in which such judgment is entered shall notify in writing the State Registrar of the name of the person against whom such judgment has been entered, together with such other facts disclosed by the record as may assist in identifying the record of the birth of the child as the same may appear in the office of the State Registrar. If such judgment shall thereafter be modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner.

(b) Upon receipt of said notification the State Registrar shall record the information upon the birth certificate of the illegitimate child: Provided, however, that unless the judgment, order, or decree discloses that the child has been legitimated under the provisions of G.S. 49-10 or 49-12, the surname of said illegitimate child shall remain the same as the surname of its mother. (1941, c. 297, s. 1; 1955, c. 951, s. 19; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-63. Duties of local registrars as to birth and death certificates; reports; copies to be forwarded by State Registrar.—(a) The local registrar with respect to his registration district, shall:

- (1) Administer and enforce the provisions of this article and any instructions, rules and regulations issued by the State Registrar.
- (2) Furnish blank certificate forms, supplies, and instructions to persons who require them.
- (3) Examine each certificate when submitted for record to ascertain if it has been completed in accordance with the provisions of this article and the instructions of the State Registrar. If a certificate is incomplete or unsatisfactory, he shall immediately notify the person responsible and require him to furnish the necessary information. All certificates, either of birth or death, shall be typed or written legibly in permanent black or blue-black ink.
- (4) Enter the date on which he received the certificate and sign his name as local registrar.
- (5) Within seven days of the date of his receipt of a certificate of birth or death, transmit to the register of deeds of the county or his agent a copy of each certificate registered by him. Such copies may be on blanks furnished by the State Registrar; or, in lieu thereof, he may cause photocopies to be made in such manner and form and on paper of such standard grade and quality as the register of deeds may approve. He may also make a copy of each certificate for his own records.
- (6) On the fifth day of each month, or more often if requested, send to the State Registrar all original certificates registered by him during the preceding month.
- (7) Maintain such records, make such reports, and perform such other duties as may be required by the State Registrar.

(b) Upon receipt of the original certificates of birth, death, and fetal death from the local registrars of vital statistics, the State Registrar shall prepare a copy of each certificate except in the case of a child born out of wedlock that was filed in a county other than the county of residence. Such copies shall be forwarded within ninety days, through the local health department, to the register of deeds of

the county of residence. (1913, c. 109, s. 18; 1915, c. 85, s. 2; c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1949, c. 133; 1955, c. 951, ss. 20, 21; 1957, c. 1357, s. 1; 1963, c. 492, ss. 4, 8; 1969, c. 1031, s. 1.)

§ 130-64. Register of deeds to preserve copies of birth and death records.—The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished to him by the local registrar under the provisions of G.S. 130-63, and shall make and keep a proper index of such certificates. These records shall be open to public inspection. Upon request, the register of deeds may make duplicates, copies, or abstracts of such records for which he shall be entitled to such fees as may be provided in G.S. 161-10. (1957, c. 1357, s. 1; 1969, c. 80, s. 3; c. 1031, s. 1.)

§ 130-64.1: Repealed by Session Laws 1969, c. 1031, s. 1, effective October 1, 1969.

Revision of Article. — See same catch-line in note under § 130-36.

§ 130-65. Pay of local registrars.—Each local registrar shall be paid the sum of fifty cents (50¢) for each birth, death, and fetal death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the State Registrar, as required by this article. In case no births, deaths, or fetal deaths were registered during any month, the local registrar shall be entitled to be paid the sum of fifty cents (50¢) for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers. The State Registrar shall certify every six months to the treasurers of the several counties the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; C. S., s. 7110; Ex. Sess. 1920, c. 58, s. 2; 1949, c. 306; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-66. Certified copies of records; fee.—(a) The State Registrar shall, upon request, issue to any authorized applicant a certified copy of the record of any birth or death registered under provisions of this article. Such certified copy of the birth record shall show the date of registration, and such other items as may be determined by the State Registrar.

(b) The State Registrar is authorized to prepare typewritten, photographic, or other reproductions of original records and files in his office. Such reproductions, when certified by him, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts therein stated.

The State Registrar shall have the power and authority to appoint employees or agents, and upon such appointment by the State Registrar, said employees or agents shall have the power and authority to issue a certified copy of the record of any birth or death registered under the provisions of this article and to sign the name of or affix a facsimile of the signature of the State Registrar to the certification of said copy; and any copy of a record of a birth or a death, with the certification of same, so signed or with the facsimile of the State Registrar affixed thereto shall have the same evidentiary value as those issued by the State Registrar.

(c) The State Registrar shall be entitled to a fee not to exceed two dollars (\$2.00) for the making and certification of any record registered under the provisions of this article, or for conducting a search of the files for such record when no copy is made.

The State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the Treasurer of the State of North Carolina for use by the State Board of Health for health purposes.

(d) Federal, State, local, and other public or private agencies may, upon request, be furnished copies or data for statistical purposes upon such terms or conditions as may be prescribed by the State Registrar.

(e) No person shall prepare or issue any certificate which purports to be an official certified copy of a certificate of birth, death, or fetal death, except as authorized in this article or regulations adopted hereunder. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; C. S., s. 7111; 1941, c. 297, s. 4; 1947, c. 473; 1949, c. 160, s. 1; 1951, c. 1091, s. 3; 1955, c. 951, s. 23; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-67. Information furnished to officers of any veterans' organization.—Upon application to the Office of Vital Statistics by any officer of the local post of any veterans' organization chartered by Congress or organized and operating on a statewide or nationwide basis, it shall be the duty of the Office of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to records of persons who are members or former members of the armed forces of the United States and members of their families and/or beneficiaries under government insurance or adjusted compensation certificate issued to such member or former member of armed forces of the United States: Provided, that the State Registrar shall furnish to any veterans' organization in this State, upon application therefor in connection with junior or youth baseball, certification of dates of birth, without the payment of the fees prescribed in this article. (1931, c. 318; 1939, c. 353; 1945, c. 996; 1955, c. 951, s. 24; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-68. Registers of deeds to issue birth certificates without cost to persons entering military forces.—The several registers of deeds of the State of North Carolina are authorized and directed to issue, free of cost, birth certificates to persons about to enter the United States military forces. (1951, c. 1113; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-69. Violations of article; penalty.—(a) Grounds for Suspension or Revocation of Embalmer's or Funeral Director's License.—A violation of any of the provisions of this article by any licensed embalmer or licensed funeral director shall constitute grounds for suspension or revocation of such license or licenses by the State Board of Embalmers and Funeral Directors.

(b) Misdemeanors.—Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

- (1) Shall remove the dead body of a human being, or permit the same to be done, without such authorization as is provided in this article;
- (2) Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article;
- (3) Wilfully alter, otherwise than as provided by G.S. 130-59, or falsify any certificate or record required by this article; or wilfully alter, falsify, or change any photocopy, certified copy, extract copy, or any document containing information obtained from an original, or copy, of any certificate or record required by this article, or wilfully make, create or use any altered, falsified, or changed record, reproduction, copy or document, for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown thereon;
- (4) With the intention to deceive wilfully uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;
- (5) Wilfully and knowingly furnishes a certificate of birth or certified copy

of a record of birth with the intention that it be used by an unauthorized person or for an unauthorized purpose;

- (6) Fail, neglect, or refuse to perform any act or duty as required by this article or by the instructions of the State Registrar prepared under authority of this article;
- (7) Inter, cremate, remove from the State, or otherwise finally dispose of the dead body of a human being, or permit the same to be done without authority of a burial-transit permit issued by the local registrar of the district in which the death occurred or in which the body was found;

shall upon conviction thereof, be guilty of a general misdemeanor and punished in the discretion of the court. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S., s. 7112; 1955, c. 673; c. 951, s. 25; 1957, c. 1357, s. 1; 1963, c. 492, s. 7; 1969, c. 1031, s. 1.)

§ 130-69.1: Repealed by Session Laws 1969, c. 1031, s. 1, effective October 1, 1969.

Revision of Article. — See same catchline in note under § 130-36.

§ 130-70. **Duties of registrars and others in enforcing this article.**

—(a) Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this article in his registration district, under the supervision and direction of the State Registrar. He shall make an immediate report to the State Registrar of any violation of this article coming to his knowledge, by observation or upon complaint of any person or otherwise.

(b) The State Registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the State, and is hereby granted supervisory power over local registrars, deputy local registrars, and sub-registrars. He shall see that all of the requirements of this article are uniformly complied with. The State Registrar, either personally or through an accredited representative, shall have authority to investigate cases of irregularity or violation of this article, and all registrars shall aid him, upon request, in such investigations. When he deems it necessary, he shall report violations of the provisions of this article to the prosecuting attorney of the county, or to the solicitor of the district, with a statement of the facts and circumstances; and when any such violation is reported to him by the State Registrar, the prosecuting attorney or solicitor of the district, as the case may be, shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the State Registrar, the Attorney General shall also assist in the enforcement of the provisions of this article. (1913, c. 109, s. 22; C. S., s. 7113; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-71. **Local systems abrogated.**—No systems for the registration of births and deaths shall be continued or maintained in any of the several municipalities of this State other than the one provided for and established by this article. (1913, c. 109, s. 24; C. S., s. 7115; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-72. **Establishing fact of birth by person without certificate.**

—(a) Any person born in the State of North Carolina not having a duly recorded certificate of his or her birth, may file a duly verified petition with the clerk of the superior court in the county of his legal residence or place of birth, setting forth the date, place, and parentage of his birth, and petitioning the said clerk to hear evidence, and find, and adjudge the date, place and parentage of the birth of said petitioner. Upon the filing of such a petition, the clerk shall set a date for hearing evidence upon the same, and shall conduct said proceeding in the same manner as other special proceedings. At the time set for said hearing the petitioner shall present such evidence as may be required by the court to establish the fact of

his birth to the satisfaction of said court. At said hearing, if the evidence offered shall satisfy said court of the date, place, and parentage of said petitioner's birth, the court shall thereupon find the facts and enter a judgment duly establishing the date and place of birth and parentage of said petitioner, and record the same in the record of special proceedings in his office. The clerk shall certify the same to the Office of Vital Statistics and the same shall thereupon be recorded in the Office of Vital Statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was born. The clerk may charge a fee not to exceed two dollars (\$2.00) for his services under this section.

(b) The record of birth established by a person under this section, when recorded, shall be accepted by the courts and other agencies of this State in the same manner as other records covered by this article.

(c) The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1941, c. 122; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1.)

§ 130-73. Establishing facts relating to birth of abandoned children.—(a) In the event a person who was abandoned, deserted, or forsaken as a child by his or her parent(s) in North Carolina and the name and address of the abandoning parent(s) are unknown, and the place and date of birth are unknown, such person may file a duly verified petition with the clerk of the superior court in the county where he was abandoned, deserted or forsaken, setting forth the facts and petitioning the clerk to hear evidence and find the facts concerning the abandonment, the name or assumed name, date and place of birth of the person, and the names of the person or persons acting in loco parentis to the individual.

(b) The clerk shall find such facts as the evidence may warrant and, if there is insufficient evidence to establish the place of birth, it shall be conclusively presumed that such person was born in the county where he was abandoned. The clerk shall enter a judgment as to his findings and record the same in the record of special proceedings in his office. The clerk shall certify the same to the State Office of Vital Statistics and the same shall thereupon be recorded in the State Office of Vital Statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was abandoned. The clerk may charge a fee not to exceed two dollars (\$2.00) for his services under this section.

(c) The record of birth established by a person under this section, when recorded, shall be accepted by the courts and other agencies of this State in the same manner as other records covered by this article.

(d) The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1959, c. 492; 1969, c. 1031, s. 1.)

§§ 130-74 to 130-79.1: Repealed by Session Laws 1969, c. 1031, s. 1, effective October 1, 1969.

Revision of Article. — See same catchline in note under § 130-36.

ARTICLE 9.

Immunization.

§ 130-87. Immunization required.

Applied in *State v. Miday*, 263 N.C. 747, 140 S.E.2d 325 (1965).

§ 130-88. Administering immunizing preparations.

Applied in *State v. Miday*, 263 N.C. 747, 140 S.E.2d 325 (1965).

§ 130-89. Expenses of immunization.

Applied in *State v. Miday*, 263 N.C. 747, 140 S.E.2d 325 (1965).

ARTICLE 9A.

Poliomyelitis (Infantile Paralysis).

§ 130-93.1. Vaccination of young children against poliomyelitis (infantile paralysis).

(c) If the said parent, parents, guardian or person in loco parentis of such child are unable to pay for the services of a private physician, or for such prophylactic poliomyelitis agent, such parent, parents, guardian or person in loco parentis shall present such child to the county physician of the county in which the child resides, or to the physician health director serving such county, who shall then administer or authorize a competent agent to administer such prophylactic agent without charge. The vaccine necessary for immunizations under this subsection shall be purchased and furnished to the local health directors by the State Board of Health, and the cost of such vaccine shall be paid by the State Board of Health from appropriations made to it for that purpose.

(1965, c. 652.)

Editor's Note.—The 1965 amendment rewrote the last sentence in subsection (c).

As only subsection (c) was changed by the amendment, the rest of the section is not set out.

Whether Religious Teachings Are within Subsection (h) Is Jury Question.—It is not necessary for a religious organization to forbid vaccination in order for its teachings

to come within the meaning of subsection (h) of this section; it is for the jury under proper instructions to determine whether or not the evidence concerning the teachings of his religious organization are such that the defendant was justified in his position against vaccination and immunization of his child. *State v. Miday*, 263 N.C. 747, 140 S.E.2d 325 (1965).

ARTICLE 10.

Venereal Disease.

Part 1. Venereal Disease.

§ 130-97. Prisoners examined and treated.

Opinions of Attorney General. — Mr. Martin R. Peterson, N.C. Department of Corrections, 8/29/69.

ARTICLE 11.

Tuberculosis.

Part 1. Prevention of Spread of Tuberculosis.

§ 130-114. Precautions necessary pending admission to the hospital.

—Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in a State sanatorium for tuberculosis, county sanatorium for tuberculosis or in a private hospital or ward of a private hospital maintained for the treatment of tuberculosis, it shall be the duty of the local health director to instruct such person as to the precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself and to live in such a manner as not to expose members of his family or household, or any other person with whom he may be associated to danger of infection, and said health director shall investigate from time to time to make certain that his instructions are being carried out in a reasonable and acceptable manner. It shall be unlawful for any person to:

- (1) Wilfully fail and refuse to present himself to any private physician qualified in chest diseases, hospital, clinic, county sanatorium or State sanatorium for an examination for tuberculosis at such time and place as is fixed by the health director or at such time and place agreed upon between such suspected person and the health director,
- (2) Wilfully fail and refuse to present himself for admission as a patient to any State sanatorium, county sanatorium, provided such facilities are available, or private hospital or ward of a private hospital maintained and operated for the treatment of tuberculous persons when such action is found by the health director to be necessary for the prevention of spread of the disease, in accordance with the provisions of G.S. 130-113,
- (3) Wilfully fail or refuse to follow the instructions of the health director as to the precautions necessary to be taken to protect the members of his or her household or any member of the community or any other person with whom he or she may be associated from danger of infection by tuberculosis communicated by such person.

If any person shall be convicted of any of the violations set forth in subdivisions (2) and (3) of this section or shall enter a plea of guilty thereto when charged with such violations, such person shall be imprisoned in the prison division of the North Carolina Sanatorium; provided, the period of imprisonment shall be for two years. The associate superintendent-medical director of the North Carolina Sanatorium, located at McCain, North Carolina, upon signing and placing among the permanent records of the North Carolina Sanatorium a statement to the effect that a person imprisoned under this section may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed at any time during the period of commitment. He shall report each such discharge, together with a full statement of the reasons therefor, at once to the health director serving the territory from which the person came and to the board of trustees or other controlling authority of such sanatorium and to the prison division of the State Department of Correction. The court in which a person is convicted of violating subdivision (2) or (3) of this section may suspend judgment, however, if such convicted person shall be hospitalized in a county sanatorium or State sanatorium and shall remain there until discharged by the associate superintendent-medical director or controlling authority of such county sanatorium or State sanatorium. The superintendent-medical director of the North Carolina sanatorium system with the advice and consent of the Commissioner of Paroles, where he finds that a person committed to the prison division of the State sanatorium has obeyed the rules and regulations of such division or department for a period of not less than sixty days may, in his discretion, have the authority to transfer any patient who, in his judgment, will conform to the rules of the sanatorium, from the prison division to any State sanatorium, or Veterans Administration tuberculosis hospital.

The county of legal residence of such committed person shall be responsible for the regularly established fee for indigent or welfare patients and shall be responsible for this fee during the patient's period of hospitalization in the prison division of the North Carolina Sanatorium located at McCain, North Carolina.

The provisions of this section apply to minors as well as adults; provided, however, that persons under 16 years of age, upon conviction of a violation of the provisions of this section, shall not be imprisoned in the prison division of the North Carolina Sanatorium, but shall be placed in a State, county or private sanatorium for treatment. (1943, c. 357; 1951, c. 448; 1955, c. 89; 1957, c. 1357, s. 1; 1967, c. 996, s. 13.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" at the end of the fifth sentence.

ARTICLE 12.

*Sanitary Districts.***§ 130-123. Creation by State Board of Health.**

The holder of a nonexclusive franchise has no monopoly, and cannot complain of competition from a publicly created utility system. Phrased another way, the creation by a state of a competing public utility does not amount to a "taking" compensable under the Fourteenth Amendment. *Durham v. North Carolina*, 395 F.2d 58 (4th Cir. 1968).

Hence, a water company had no cause of action for damages against the state, the Utilities Commission, or a sanitary district for infringement of its franchise. *Durham v. North Carolina*, 395 F.2d 58 (4th Cir. 1968).

§ 130-124. Procedure for incorporating district.—A sanitary district shall be incorporated as hereinafter set out. Either fifty-one percent (51%) or more of the resident freeholders within a proposed sanitary district, or fifty-one percent (51%) or more of the freeholders within a proposed sanitary district, whether residents therein or not, may petition the board of county commissioners of the county in which all or the largest portion of the land of the proposed district is located, setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, through its chairman, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the proposed district lies, of the receipt of said petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, or in the event the land to be affected lies in more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place within the proposed district named by the representative of the State Board of Health. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 1; 1965, c. 135; 1967, c. 24, s. 21.)

Editor's Note.—

Prior to the 1965 amendment, the second sentence referred to resident freeholders only.

The 1967 amendment, originally effective Oct. 1, 1967, substituted "largest" for "majority" in the second sentence. Session

Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

Cited in *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965); *Durham v. North Carolina*, 395 F.2d 58 (4th Cir. 1968).

§ 130-128. Corporate powers.

- (3) To issue bonds and bond anticipation notes of the district in the manner hereinafter provided, and, at any time after a bond resolution has taken effect, as provided in § 130-134, to accept advances on any loan for which the federal government or any agency or instrumentality thereof shall have entered into a loan agreement with such district.
- (4) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district

evidenced by bonds, bond anticipation notes, certificates of indebtedness and revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings.

(16) To establish a capital reserve fund for the district in accordance with the following provisions:

- a. The district board shall pass a resolution declaring that a capital reserve fund is thereby established, which resolution shall state that said fund shall consist of unencumbered balances and unappropriated surplus revenues evidenced by money derived from collections of ad valorem taxes of the district or from service charges and rates applied by the district board in accordance with law or from proceeds of the sale of real or personal property of the district, that it shall take effect when the provisions thereof are approved by the Local Government Commission, and the district board shall designate therein some bank or trust company as depository in which the capital reserve fund shall be placed to the credit of a special account to be known as "..... District, Capital Reserve Fund."
- b. Upon adoption of a resolution by the district board providing therefor and with the approval of the Local Government Commission, the capital reserve fund may be increased at any time with money from like source or sources as those stated in establishing resolution.
- c. Withdrawal from the capital reserve fund shall be of two kinds, temporary and permanent. Temporary withdrawal may be made:
 - 1. In anticipation of the collections of taxes and other revenues of the district of the current fiscal year in which such withdrawal is made and for the purpose of paying principal or interest of bonds of the district falling due within three months, but the amount of such withdrawal shall be repayable to the capital reserve fund not later than thirty days after the close of the fiscal year in which such withdrawal is made, and
 - 2. For deposit at interest or investment under the provisions of G.S. 159-28.1.

Permanent withdrawal may be made for the purpose of acquiring property for the district by purchase or otherwise, or for extending, enlarging, improving, replacing or reconstructing any properties of the district incident to or deemed necessary for the exercise of the powers granted by law to the district board. Each withdrawal shall be authorized by resolution of the district board and approved by the Local Government Commission and shall be by check drawn on the designated depository of the capital reserve fund upon which such approval by the Commission shall be endorsed by the secretary of the Commission or by an assistant designated by him for that purpose: Provided, however, the State of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such endorsement, such endorsement only being prima facie evidence of approval of the withdrawal authorized. No permanent withdrawal shall be made unless, after such withdrawal, there shall remain in the capital reserve fund an amount equal to the sum of the principal and interest of bonds of the district maturing either in the fiscal year in which the withdrawal is made or in the ensuing fiscal year, whichever is greater, ex-

cept that, when the amount of authorized and unissued bonds of the district is determined by the sanitary district board to be insufficient for financing the cost of the improvements or properties for which such bonds were authorized, all or any part of such remaining amount may be withdrawn for the purpose of meeting such insufficiency.

- d. All moneys stated in the establishing resolution or in a resolution providing for increase of the capital reserve fund, when the provisions of such resolutions are approved by the Local Government Commission, and all realizations and earnings from temporary withdrawals shall be deposited in the designated depository of the capital reserve fund by the officer or officers having the charge and custody of such moneys, and it shall be the duty of such officer or officers to simultaneously report each of such deposits to the Local Government Commission.
- (17) To make rules and regulations in the interest of and for the promotion and protection of the public health and the welfare of the people within the sanitary district, and for such purposes to possess the following powers:
- a₁ To require any person, firm or corporation owning, occupying or controlling improved real property within the district to connect with either or both, the water or sewerage systems of the district, when the local health director, having jurisdiction over the area in which the greater portion of the residents of the district reside, determines that the health of the people residing within the district will be endangered by a failure to connect.
 - b. To require any person, firm or corporation owning, occupying or controlling improved real property within the district where the water or sewerage systems of the district are not immediately available or it is impractical to connect therewith to install sanitary toilets, septic tanks and other health equipment or installations in accordance with the requirements of the State Board of Health.
 - c. To require any person, after notice and hearing, to abate any nuisance detrimental or injurious to the public health of the district. The person being ordered to abate the nuisance may appeal such order to the local board of health as provided in G.S. 130-20.
 - d. To abolish, or to regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless such 500 feet be within the corporate limits of some city or town.
 - e. Upon the noncompliance by any person, firm or corporation of any rule and regulation promulgated and enacted hereunder, the sanitary district board shall cause to be served upon the person, firm or corporation who fails to so comply a notice setting forth the rule and regulation and wherein the same is being violated, and such person, firm or corporation shall have a reasonable time, as determined by the local health director of the area within which the noncomplying person resides, from the service of such notice in which to comply with such rule and regulation.
 - f. Upon failure to comply with any rule and regulation of a sanitary district board within 30 days as directed in the notice provided for above, or within the time extended by the sanitary district

- board, such person, firm or corporation shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.
- g. The sanitary district board is authorized to enforce the rules and regulations enacted or promulgated hereunder by criminal action or civil action, including injunctive relief.
- (19) To negotiate for and acquire any distribution system located outside the district when the water for such distribution system is furnished by the district pursuant to contract. If any such distribution system be acquired by a district it may continue the operation of such system even though it remains outside the district.
- (20) To accept gifts of real and personal property for the purpose of operating a nonprofit cemetery; to own, operate, and maintain cemeteries with the property so donated; and to establish perpetual care funds for such cemeteries in the manner provided by §§ 160-258 through 160-260 of the General Statutes.
- (21) Any county, city, town, incorporated village, sanitary district or other local governmental unit which is a political subdivision of the State of North Carolina is authorized and empowered to submit to a vote of the people any lease, contract, agreement or other contractual obligation the effect of which is to create a debt for a local governmental unit within the meaning of Article V, § 4, or Article VII, § 6, of the Constitution of North Carolina. Any referendum held pursuant to the provisions of this subdivision shall be conducted according to the law applicable to bond elections for the particular local governmental unit concerned. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; cc. 1130, 1145; 1951, c. 17, s. 1; c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232; 1965, c. 496, s. 1; 1967, c. 632; c. 637, s. 1; c. 798, s. 2; 1969, cc. 478, 700, 944.)

Editor's Note.—

The 1965 amendment inserted "and bond anticipation notes" in subdivision (3) and "bond anticipation notes" in subdivision (4).

The first 1967 amendment added paragraphs f and g of subdivision (17).

The second 1967 amendment added that part of subdivision (3) following the first comma.

The third 1967 amendment rewrote clause 2 of paragraph c of subdivision (16).

The first 1969 amendment added subdivision (19).

The second 1969 amendment added subdivision (20).

The third 1969 amendment added subdivision (21).

As the rest of the section was not changed by the amendments, only subdivisions (3), (4), (16), (17), (19), (20) and (21) are set out.

For an article on local legislation in the General Assembly discussing this section, see 45 N.C.L. Rev. 340 (1967).

§ 130-129. Organization of board.—Upon election, a sanitary district board shall meet and elect one of its members as chairman, and another member as secretary. Each member of the board may receive a per diem compensation of twelve dollars (\$12.00) when actually engaged in the business of the district, payable from the funds of the district. The board may employ a clerk, stenographer, or such other assistants as it may deem necessary and may fix the duties and compensation thereof.

A sanitary district board may at any time remove any of its employees and may fill any vacancies however arising. (1927, c. 100, s. 8; 1957, c. 1357, s. 1; 1967, c. 723.)

Local Modification. — Halifax: 1969, c. 345. increased the per diem from \$8.00 to \$12.00 a day.

Editor's Note.—The 1967 amendment

§ 130-138. Bonds; bond anticipation notes; advances on loans from federal government.—The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice, prescribe by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, and the place or places of payment of principal and interest which may be at any bank or trust company within or without the State of North Carolina. The bonds shall not be sold at less than par and accrued interest nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said board in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A sanitary district may keep in the office of the secretary of the sanitary district board, or in the office of a bank or trust company appointed by said board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A sanitary district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest the bond register shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been cancelled. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. The officer or officers having charge or custody of funds of the district shall require said bank to furnish security for the protection of deposits of the district as provided in G.S. 159-28.

Bonds issued for any purpose pursuant to this article shall mature within the period of years as hereinafter provided, each such period being computed from the date of the election upon the issuance thereof held under the provisions of G.S. 130-137. Such period shall be for the purposes stated by clauses in G.S. 130-134 as follows: Clause (1), forty years; clause (2), twenty years; clause (3), ten years; clause (4), thirty years. Such bonds shall mature in annual installments or series, the first of which shall be made payable not more than five years after the date of the first issued bonds of such issue, and the last within the aforesaid period. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of any issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. Such bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. Bonds issued pursuant to this ar-

title shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued.

After a bond resolution has taken effect, as provided in § 130-134, bonds may be issued in conformity with its provisions at any time within five years after the time of taking effect, unless the resolution shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of repeal), unless notes issued in anticipation of the proceeds of the bonds shall be outstanding; provided, however, that where a bond resolution has taken effect prior to July 1, 1965, such bonds may be issued at any time not later than five years after July 1, 1965.

At any time after a bond resolution has taken effect, as provided in § 130-134, a sanitary district may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipts of the proceeds of the sale of bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than five years after the time of taking effect of the bond resolution authorizing the bonds upon which they are predicated; provided, however, that where a bond resolution has taken effect prior to July 1, 1965, such loans shall be paid not later than five years after July 1, 1965. The sanitary district board may, in its discretion, retire any such loans by means of current revenues or other funds, in lieu of retiring them by means of bonds; provided, however, that the sanitary district board, at or before the actual retirement of any such loans by any means other than the issuance of bonds under the bond resolution upon which such loans are predicated, shall amend or repeal such bond resolution so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing resolution shall take effect upon its passage, and need not be published. Negotiable notes shall be issued for all moneys so borrowed. Such notes may be renewed from time to time, and money may be borrowed upon notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by this section for the payment of the original loan. No money shall be borrowed under this section at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the sanitary district board, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The sanitary district board may delegate to any member thereof the power to fix said face amount and rate of interest with the limitations prescribed by said resolution, and the power to dispose of said notes. All such notes shall be executed in the manner provided in this section for the execution of bonds. They shall be submitted to and approved by the attorney for the sanitary district before they are issued, and his written approval endorsed on the notes.

At any time after a bond resolution has taken effect, as provided in § 130-134, and where a sanitary district has entered into a loan agreement with the federal government or an agency or instrumentality thereof for a loan to be evidenced by the bonds authorized by said resolution, a sanitary district may secure advances of money on such loan from the federal government or such agency or instrumentality to be repayable out of the proceeds of the sale of the bonds. Each such advance shall be authorized by resolution of the sanitary district board requesting the advance and specifying the manner of execution of the request and such other provisions thereof as the board deems expedient. Said board shall cause a certified copy of such resolution to be filed with the Local Government Commission with a statement showing the exact amount of the advance, its date and interest rate, if any. The State Treasurer is hereby authorized to apply proceeds of sale of the bonds to payment of such advances. (1927, c. 100, s. 15; 1949, c. 880, s.

1; 1951, c. 17, s. 1; c. 846, s. 2; 1957, c. 1357, s. 1; 1963, c. 1247, s. 2; 1965, c. 496, s. 2; 1967, c. 637, s. 2.)

Editor's Note.—

The 1965 amendment added the third paragraph.
The 1967 amendment added the last and fourth paragraphs.

§ 130-141. Valuation of property; determining annual revenue needed.—Upon the creation of a sanitary district and after each assessment for taxes thereafter the board or boards of county commissioners of the county or counties in which the sanitary district is located shall file with the sanitary district board the valuation of assessable property within the district. The sanitary district board shall then determine the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G.S. 130-144 below to provide payment of interest and the proportionate part of the principal of all outstanding bonds and, to the extent not otherwise provided for, the interest on and the principal of all outstanding bond anticipation notes, and retire all outstanding certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of its lawful undertakings.

The sanitary district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per one hundred dollars (\$100.00) so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected and every month the amount of tax so collected shall be remitted to the sanitary district board and deposited by the said board in a bank in the State of North Carolina separately from other funds of the district. Such levy may include an amount for reimbursing the county for expenses of levying and collecting said taxes, which amount shall be based upon such percentage of the collection of said taxes, not exceeding five per centum (5%) thereof, as may be agreed upon by the sanitary district board and the board of county commissioners, to be deducted from the collections and stated with each remittance to the sanitary district board, and such percentage of collections shall remain the same until revised or abolished by further agreement between said boards. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G.S. 159-28.

The sanitary district board of any sanitary district, in lieu of collecting the taxes in the manner as hereinbefore provided, may cause to be listed by all the taxpayers residing within the district with the person designated by the district board, all the taxable property located within the district and after determining the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G.S. 130-144 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, bond anticipation notes, certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings, to determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount. The said sanitary district board in its next annual levy shall levy against all taxable property in the district the number of cents per one hundred dollars (\$100.00) necessary to raise the amount with which to pay the obligations of the district, including principal and interest on bonds, bond anticipation notes not otherwise provided for, certificates of indebtedness, revenue anticipation notes and other lawful obligations of the district, which tax shall be collected in the same manner as taxes of other political subdivisions of the State of North Carolina are collected by a tax collector, to be selected by the sanitary district board of the sanitary district electing to assess, levy and collect its taxes in the manner herein

provided. The tax collector selected by said sanitary district board and the depository, in which said taxes so collected are deposited, shall qualify in the same manner and give the necessary surety bonds as are required of tax collectors and depositories of county funds in the county or counties in which said sanitary districts are located.

In any sanitary district located in two or more counties any one or more of which have different assessment ratios for tax purposes, the sanitary district board of such sanitary district shall, in order that all taxable property within the sanitary district shall be subject to taxation for sanitary district purposes the same as if the same assessment ratio were used throughout the entire sanitary district, (i) certify to the boards of commissioners of such counties such different determinations as to the numbers of cents per one hundred dollars (\$100.00) to be levied against the taxable property within the portion of the sanitary district located within such county or counties as will provide the amount of funds to be raised for the ensuing year for sanitary district purposes as hereinabove mentioned, or (ii) in the event the sanitary district board shall elect to levy and collect such sanitary district taxes itself, adjust the valuations of assessable property within the sanitary district as filed with the sanitary district board by the respective boards of commissioners. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1959, c. 994; 1963, c. 1226; 1965, c. 496, s. 3.)

Editor's Note.—

The 1965 amendment inserted, in the second sentence of the first paragraph, "and, to the extent not otherwise provided for, the interest on and the principal of all outstanding bond anticipation notes."

The amendment also inserted "bond anticipation notes" in the first sentence of the third paragraph and "bond anticipation notes not otherwise provided for" in the second sentence of the third paragraph.

§ 130-144. Service charges and rates.—A sanitary district board shall immediately upon the placing into service of any of its works apply service charges and rates which shall, as nearly as practicable, be based upon the exact benefits derived. Such service charges and rates shall be sufficient to provide funds for the proper maintenance, adequate depreciation, and operation of the work of the district, and provided said service charges and rates would not thereby be made unreasonable, to include in said service charges and rates an amount sufficient to pay the principal and interest maturing on the outstanding bonds and, to the extent not otherwise provided for, bond anticipation notes of the district and thereby make the project self-liquidating. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on bonds or on bond anticipation notes or to the retirement of bonds or bond anticipation notes or for any one or more of said purposes. As the necessity arises the sanitary district board may modify and adjust such service charges and rates from time to time. (1927, c. 100, s. 20; 1933, c. 8, s. 5; 1957, c. 1357, s. 1; 1965, c. 496, s. 4.)

Editor's Note. — The 1965 amendment inserted "and, to the extent not otherwise provided for, bond anticipation notes" in the second sentence and "or on bond anticipation notes or" in the third sentence.

It also substituted "or bond anticipation notes or for any one or more of said purposes" for "or both" at the end of the third sentence.

§ 130-144.1. Liens for sewer service charges in sanitary districts not operating water distribution system; collection of charges; disconnection of sewer lines. — In sanitary districts which maintain and operate a sewerage system but do not maintain and operate a water distribution system, the charges made for sewer service or for use of sewer service facilities shall be a lien upon the property served, and if such charges shall not be paid within fifteen days after they become due and payable, suit may be brought therefor in the name of the sanitary district in the county in which the property served is located, or the property, subject to the lien thereof, may be sold by the sanitary district under the

same rules and regulations, rights of redemption and savings as are now or may hereafter be prescribed by law for the sale of land for unpaid ad valorem taxes. Such sanitary districts shall have the right to establish reasonable rules and regulations for the use of said sewerage works and the collection of charges therefor, and said sanitary districts, through their officers or agents, are hereby authorized and empowered, in accordance with such reasonable regulations, to enter upon the premises of any person, firm or corporation using said sewerage works and failing to pay the charges therefor, and to disconnect the sewer line of such person, firm or corporation from the public sewer line or disposal plant; and any person, firm or corporation who shall connect with such public sewer line or disposal plant or reconnect his or their property therewith, without a permit from the officer authorized to give the same, shall be guilty of a misdemeanor. (1965, c. 920, s. 1.)

Local Modification. — Burke, Chowan, Forsyth, Gaston and Onslow: 1965, c. 920, s. 1½.

§ 130-151. **Dissolution of certain sanitary districts.**—In any sanitary district established under this chapter which has no outstanding indebtedness, fifty-one percent (51%) or more of the resident freeholders therein may petition the board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located to dissolve said district. Upon receipt of such petition, the board of county commissioners through its chairman, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the district lies, of the receipt of such petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the said county commissioners concerning the dissolution of the district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place determined by the representative of the State Board of Health. If after such hearing, the State Board of Health and the county commissioners concerned shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved, and the sanitary district board of said district shall be authorized to convey all assets, including cash, to any county, municipality, or other governmental unit, or to any public utility company operating or to be operated under the authority of a certificate of public convenience and necessity granted by the North Carolina Utilities Commission in return for the assumption of the obligation to provide water and sewage services to the area served by the district at the time of dissolution. (1943, c. 620, 1951, c. 178, s. 2; 1957, c. 1357, s. 1; 1967, c. 4, s. 1.)

Editor's Note.—The 1967 amendment added to the last sentence the provision relating to conveyance of assets, etc., of the district in return for the assumption of the obligation to provide water and sewage service to the area served by the district.

Section 2 of the amendatory act provides: "The provisions of this act shall

apply to all dissolutions of sanitary districts under the provisions of § 130-151 of the General Statutes of North Carolina in which the petition for dissolution is filed after the date of ratification of this act, and also to the dissolution of sanitary districts under § 130-151 of the General Statutes of North Carolina in which the petition for dissolution was filed and the joint

public hearing held prior to the date of ratification of act if the said petition set forth that the assets of a district being dissolved were to be conveyed to a public utility company operating or to be op-

erated under a certificate of public convenience and necessity granted by the North Carolina Utilities Commission." The act was ratified Feb. 28, 1967.

§ 130-156.2. Merger of district with contiguous city or town; election.

Opinions of Attorney General. — Mr. Archie L. Smith, Asheboro City Attorney, 9/9/69.

ARTICLE 13.

Water and Sewer Sanitation.

§ 130-157. Sanitary engineering and sanitation units.

Editor's Note. — For article on "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967).

§ 130-160. Sanitary sewage disposal; rules.

Applied in Walker v. Sprinkle, 267 N.C. 626, 148 S.E.2d 631 (1966).

§ 130-161. Systems of water supply and sewerage; plans submitted.

—The State Board of Health shall from time to time consult with and advise the boards of all State institutions, the authorities of cities and towns, and persons already having or intending to introduce systems of water supply, drainage, or sewerage, or intending to make major alterations to existing systems of water supply, drainage, or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewerage, having regard to the present and prospective needs and interests of other cities, towns, and persons which may be affected thereby. All such boards of directors, authorities, and persons are hereby required to give notice to the State Board of Health of their intentions to introduce or alter a system of water supply, drainage or sewerage, and to submit to the Board such plans, surveys, and other information as may be required by rules and regulations promulgated by the State Board of Health. No such board of directors, authorities, or persons may enter into a contract for the introduction or alteration of a system of water supply, sewage disposal, or drainage until such plans and other information have been received, considered and approved by the State Board of Health. Provided, that prior to the "effective date" applicable to any watershed whenever the State Board of Health is advised by a municipality that application is being filed with the Board of Water and Air Resources for a certificate of approval covering a voluntary pollution abatement project pursuant to G.S. 143-215.2, the plans will be reviewed by said Board if the effluent from the proposed works is to be discharged into waters used as a source of public water supply and if approved, said plans shall be referred to the Board of Water and Air Resources for final approval. If no water supply is involved, such plans will be referred directly to the Board of Water and Air Resources and the approval of the Board of Health will not be prerequisite to the entering of a contract. Provided, further, that after the "effective date" applicable to any watershed as provided for in G.S. 143-215, the Board of Water and Air Resources, rather than the State Board of Health, shall carry out the provisions of this section relating to sewage and waste disposal, except as otherwise provided by G.S. 143-215.1 (a) (5), with regard to:

- (1) Incorporated municipalities served by public sewerage systems;
- (2) Unincorporated communities served by a community sewerage system;
- (3) Sanitary districts created pursuant to law which are served by public sewerage systems;

- (4) Industries of all types, except raw milk dairies, farm slaughterhouses, shellfish processing plants and similar establishments; and those food and/or lodging establishments which are supervised by the State Board of Health under other State laws and which are not served by public or community sewerage systems;
- (5) Housing developments served by community sewerage systems; and
- (6) Military installations, parks, institutions, and other reservations which are maintained and operated by the federal government. (1911, c. 62, s. 24; C. S., s. 7118; 1957, c. 1357, s. 1; 1959, c. 779, s. 9; 1967, c. 892, s. 3.)

Editor's Note.—

The 1967 amendment substituted "Board of Water and Air Resources" for "State

Stream Sanitation Committee" in four places in this section.

§ 130-162. Condemnation of lands for water supply.

Editor's Note.—For an article urging revision and recodification of North Caro-

lina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 130-165. Discharge of sewage or industrial waste.—No person or municipality shall flow or discharge sewage or industrial waste above the intake into any source from which a public drinking water supply is taken, unless said sewage or industrial waste shall have been passed through some system of purification approved by the State Board of Health and Board of Water and Air Resources; and the continued flow and discharge of such sewage may be enjoined. (1903, c. 159, s. 13; Rev., ss. 3051, 3858; 1911, c. 62, ss. 33, 34; C. S., s. 7125; 1957, c. 1357, s. 1; 1959, c. 779, s. 9; 1967, c. 892, s. 3.)

Editor's Note.—

The 1967 amendment substituted "Board

of Water and Air Resources" for "State Stream Sanitation Committee."

ARTICLE 13B.

Solid Waste Disposal.

§ 130-166.16. Definitions.—The following definitions shall apply in the enforcement and interpretation of this article:

- (1) "Garbage"—all putrescible wastes, including animal and vegetable matter, animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human wastes.
- (2) "Refuse"—all nonputrescible wastes.
- (3) "Solid waste"—garbage, refuse, rubbish, trash, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.
- (4) "Solid waste disposal"—the collection, storage, treatment, utilization, processing, or final disposal of solid waste.
- (5) "Solid waste disposal facility"—land, personnel, equipment or other resources used in the disposal of solid wastes.
- (6) "Solid waste disposal site"—any place at which solid wastes are disposed of by incineration, sanitary landfill or any other methods. (1969, c. 899.)

§ 130-166.17. Solid waste unit in State Board of Health.—For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creating of nuisances, the State Board of

Health shall maintain an appropriate administrative unit to promote sanitary disposal of solid waste and the Board shall employ and retain such qualified personnel as may be necessary. (1969, c. 899.)

§ 130-166.18. **Solid waste disposal program.** — The State Board of Health is authorized and directed to engage in research, conduct investigations and surveys, make inspections, and to establish a state-wide solid waste disposal program. In establishing a program, the Board shall have authority to:

- (1) Provide standards for the establishment, location, operation, maintenance, use and discontinuance of solid waste disposal sites and facilities. Such standards shall be designed to accomplish the maintenance of safe and sanitary conditions in and around solid waste disposal sites and facilities, and shall be based on recognized public health practices and procedures, sanitary engineering research and studies, and current technological development in equipment and methods. Such standards shall not apply to the disposal of solid waste accumulated by an individual or individual family or household unit and disposed of on his own property.
- (2) Develop a comprehensive program for implementation of safe and sanitary practices for disposal of solid waste throughout the State.
- (3) Advise, consult, cooperate, and contract with other agencies and units of State and local governments, the federal government, and industries and individuals in the formulation and carrying out of a solid waste disposal program. (1969, c. 899.)

§ 130-166.19. **Receipt and distribution of funds.** — The Board may accept loans and grants from the federal government and other sources for carrying out the purpose of this article, and shall adopt reasonable policies governing the administration and distribution of such funds to county and municipal governing bodies and agencies, other State agencies, and private agencies, institutions or individuals, for studies, investigations, demonstrations, surveys, planning, training, and construction or establishment of solid waste disposal facilities. (1969, c. 899.)

§ 130-166.20. **Single agency designation.**—The State Board of Health is hereby designated as the single agency for the State for the purposes of the Federal Solid Wastes Disposal Act (PL 89-272) and for the purpose of such other State or federal legislation as has or may be hereafter enacted to assist in the proper disposal of solid waste. (1969, c. 899.)

ARTICLE 14A.

Sanitation of Shellfish and Crustacea.

§ 130-169.01. **Board of Health to make regulations relating to sanitation of shellfish and crustacea.**—The State Board of Health is authorized to make and enforce regulations concerning the sanitary aspects of the harvesting, processing, and handling of shellfish and crustacea. In the exercise of its regulatory powers, the State Board of Health may issue and revoke permits, regulate, prohibit, or restrict such activities relating to the sanitation of shellfish and crustacea as may be necessary, and in addition exercise all other powers granted within this chapter with regard to dealings in shellfish and crustacea. (1965, c. 783, s. 1.)

Editor's Note.—The act adding this section became effective July 1, 1965.

Section 2 of c. 783, Session Laws 1965, provides: "Upon the effective date of this act, the property of the Department of Conservation and Development permanently allocated to the existing program

of shellfish and crustacea sanitation is hereby transferred to the State Board of Health for use in implementing the provisions of this act. Employees of the Department of Conservation and Development engaged in such sanitation program are also transferred to work with the

State Board of Health. The property to be transferred includes appropriations, mobile laboratory, laboratory equipment and supplies, and other property of the Department of Conservation and Development purchased for and used in the existing program of shellfish and crustacea sanitation."

Section 3 of c. 783, Session Laws 1965, provides. "In the event of any disagreement concerning the number, amount, or identity of any employees, funds or property described in s. 2, the Director of Administration is empowered to settle the disagreement and make the allocation as to employees, funds, and property."

§ 130-169.02. Agreements between Board of Health and Department of Conservation and Development.—Nothing in this article is intended to deprive the Department of Conservation and Development of its authority to regulate aspects of the harvesting, processing, and handling of shellfish and crustacea relating to conservation of the fisheries resources of the State. The State Board of Health and the Department of Conservation and Development are authorized to enter into an agreement respecting the duties and responsibilities of each agency as to the harvesting, processing, and handling of shellfish and crustacea. (1965, c. 783, s. 1.)

Cross Reference.—See Editor's note to § 130-169.01.

Editor's Note.—The act adding this section became effective July 1, 1965.

§ 130-169.03. Construction of article.—The purpose of this article is to transfer to the State Board of Health authority over shellfish and crustacea sanitation formerly exercised by the Department of Conservation and Development. Nothing in this article is intended to deprive the State Board of Health of any authority as may elsewhere have been granted as to sanitation generally or as to control of harvesting, processing, and handling of other foods. (1965, c. 783, s. 1.)

Cross Reference.—See Editor's note to § 130-169.01.

Editor's Note.—The act adding this section became effective July 1, 1965.

ARTICLE 14B.

Sanitation of Scallops.

§ 130-169.04. Board of Health to make regulations relating to sanitation of scallops.—The State Board of Health is authorized to make and enforce regulations concerning the sanitary aspects of the harvesting, processing, and handling of scallops. In the exercise of its regulatory powers, the State Board of Health may issue and revoke permits, regulate, prohibit, or restrict such activities relating to the sanitation of scallops as may be necessary, and in addition exercise all other powers granted within this chapter with regard to dealings in scallops. (1967, c. 1005, s. 1.)

Editor's Note.—Session Laws 1967, c. 1005, s. 5, makes this article effective July 1, 1967. Section 4 of the 1967 act provides that all persons shall have four months to comply with regulations adopted by the Board of Health under this article from

and after the date upon which such regulations are first adopted and that all persons beginning any activity subject to such regulations after such regulations are adopted shall immediately comply therewith.

§ 130-169.05. Agreements with other agencies.—Nothing in this article is intended to deprive the Department of Conservation and Development of its authority to regulate aspects of the harvesting, processing, and handling of scallops relating to conservation of the fisheries resources of the State. The State Board of Health and the Department of Conservation and Development are authorized to enter into an agreement respecting the duties and responsibilities of each agency as to the harvesting, processing, and handling of scallops. (1967, c. 1005, s. 1.)

§ 130-169.06. Construction of article.—Nothing in this article is intended to deprive the State Board of Health of any authority as may elsewhere have

been granted as to sanitation generally or as to control of harvesting, processing, and handling of other foods. (1967, c. 1005, s. 1.)

ARTICLE 14C.

Swimming Pools.

Editor's Note. — Session Laws 1965, c. 783, s. 1, effective July 1, 1965, redesignated this article as article 14B. However, Session Laws 1967, c. 1005, s. 1, effective July 1, 1967, further redesignated the article as article 14C. It was formerly article 14A.

ARTICLE 16.

Regulation of the Manufacture of Bedding.

§ 130-171. **Definitions.**—In addition to the definitions set out in article one of this chapter, as used in this article, or on the tags required by this article:

The word "bedding" means: Any mattress, upholstered spring, comforter, pad of a thickness of more than one inch, cushion or pillow used principally for sleeping, or like item of a thickness of more than one inch used principally for sleeping. Dual purpose furniture such as sofa beds and studio couches shall be included within this definition.

The terms "cotton," "virgin cotton" and "staple cotton" mean: The staple fibrous growth as removed from cottonseed in the usual process of ginning.

The term "cotton by-products" means: Any by-products removed from cotton by the various machine operations necessary in the manufacture of cotton yarn.

The term "cotton linters" means: The fibrous growth removed from cottonseed subsequent to the usual process of ginning.

The word "felt" means: Material that has been carded in layers by a garnett machine and is inserted into the bedding in layers.

The term "itinerant bedding vendor" means: Any person who sells bedding from a movable conveyance.

The word "manufacture" means: Any making or remaking of bedding out of new or previously used materials, except for the maker's own personal use or the use of his immediate family, other than renovating.

The term "new material" means: Any material or article that has not been used for any other purpose: Provided this shall not exclude by-products of industry that have not been in human use, unless otherwise excluded in this article.

The term "previously used material" means: Any material of which previous use has been made, but manufacturing processes shall not be considered previous use.

The word "renovate" means: The reworking or remaking of used bedding and returning it to the owner for his personal use or the use of his immediate family.

The word "sanitize" means: Treatment of bedding or materials to be used in bedding for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.

The term "secondhand bedding" means: Any bedding of which prior use has been made.

The word "sell" or "sold" shall, in the corresponding tense, include: Sell, have to sell, give away in connection with a sale, delivery or consign in sale, or rent; or, possess with intent to sell, deliver, consign in sale, or rent. (1937, c. 298, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 1.)

Editor's Note.—

The 1965 amendment effective Jan. 1, 1966, deleted "quilt" following "spring" in the second paragraph, deleted "in the man-

ufacture of another article or used" preceding "for any other purpose" in the ninth paragraph and rewrote the tenth paragraph.

§ 130-173. **Manufacture regulated.**—No person shall manufacture in this State any bedding containing previously used materials without first sanitizing the

previously used materials in accordance with rules and regulations adopted by the State Board of Health.

No manufacturing establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by regulations of the State Board of Health.

All materials used in the manufacture of bedding in this State shall be free of toxic materials and shall be reasonably clean and free from other trash, oil, grease, or other extraneous matter. No material known as "sweeps" or "oily sweeps" may be used unless washed by a process approved by the State Health Director.

No person shall manufacture any bedding to which is not securely sewed a tag of durable material approved by the State Board of Health, which tag shall be at least two inches by three inches in size, and to which is affixed the adhesive stamp provided for in G.S. 130-177. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English:

- (1) The name and kind of material or materials used to fill such bedding;
- (2) The name and address of the maker or vendor of the bedding;
- (3) A registration number designated by the State Health Director;
- (4) In letters at least one-eighth inch high the words "made of new material," if such bedding contains no previously used material; or the words "made of previously used materials," if such bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or secondhand bedding.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the adhesive stamp required by this article, and shall be sewed to the outside covering of every piece of bedding being manufactured. Except in the case of dual purpose furniture, said tag must be sewed to the outside covering before the filling material has been inserted. No trade name or advertisement will be permitted on said tag. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2.)

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1966, inserted "shall be free of toxic materials and" near the beginning of the

third paragraph and deleted "(as defined by this article or by the regulations of the State Board of Health)" following "materials" in subdivision (1).

§ 130-177. Enforcement funds.—The State Board of Health is hereby charged with the administration and enforcement of this article, and the Board shall provide specially designated adhesive stamps for use under the provisions of this article. Upon request the Board shall furnish no less than five hundred such stamps to any person paying in advance twelve dollars (\$12.00) per five hundred stamps.

Any person who manufactures bedding in North Carolina or any person who manufactures bedding to be sold in North Carolina may, in lieu of purchasing and affixing the adhesive stamps provided for by this article, annually secure from the State Board of Health a "stamp exemption permit" upon compliance with the provisions of this section and the rules and regulations of the State Board of Health. The holder of a stamp exemption permit shall not be required to purchase or affix adhesive stamps to bedding manufactured or sold in North Carolina. The cost of a stamp exemption permit is to be determined annually by the total number of bedding items manufactured or sold in North Carolina by the applicant during the calendar year immediately preceding the issuance of the permit, at the rate of twelve dollars (\$12.00) for each five hundred (500) pieces of bedding or fraction

thereof. A maximum charge of five hundred dollars (\$500.00) shall be made for pieces of bedding manufactured in North Carolina but not sold in North Carolina.

Applications for stamp exemption permits must be submitted in such form as the State Board of Health shall prescribe. No stamp exemption permit may be issued to any person unless he has done business in North Carolina throughout the preceding calendar year in compliance with the provisions of this article, and unless he complies with the rules and regulations of the State Board of Health governing the granting of stamp exemption permits.

The State Board of health is hereby authorized and directed to prepare rules and regulations for the proper enforcement of this section. The rules and regulations shall include provisions governing the type and amount of proof which must be submitted by the applicant to the State Board of Health in order to establish the number of bedding items that were, during the preceding calendar year :

- (1) Manufactured in North Carolina and sold in North Carolina;
- (2) Manufactured outside of North Carolina and sold in North Carolina; and
- (3) Manufactured in North Carolina but not sold in North Carolina.

Because of the greater difficulty involved in auditing the records of out-of-State manufacturers, the State Board of Health is authorized to require a greater amount of proof from out-of-State manufacturers than from in-State manufacturers. The State Board of Health may provide in its regulations for additional proof of the number of bedding items sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer (whether in-State or out-of-State) is incomplete, misleading, or incorrect.

All money collected under this article shall be paid to the State Health Director who shall place all such money in a special "bedding law fund," which is hereby created and specifically appropriated to the State Board of Health, solely for expenses in furtherance of the enforcement of this article. The State Health Director shall semiannually render to the State Auditor a true statement of all receipts and disbursements under said fund, and the State Auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for:

- (1) Salaries and expenses of inspectors and other employees who devote their time to the enforcement of this article, or
- (2) Expenses directly connected with the enforcement of this article, including attorney's fees, which are expressly authorized to be incurred by the State Health Director without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty percent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the State Board of Health. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771.)

Editor's Note — The 1965 amendment, effective Jan. 1, 1966, substituted "ten dollars (\$10.00)" for "eight dollars (\$8.00)" in the first and second paragraphs and substituted "five hundred dollars (\$500.00)" for "four hundred dollars (\$400.00)" in the second paragraph.

The 1967 amendment, effective Jan. 1, 1968, substituted "twelve dollars (\$12.00)" for "ten dollars (\$10.00)" in the first and second paragraphs.

ARTICLE 17.

Cancer Control Program.

§ 130-184.2. **Immunity of persons who report cancer.**—Any physician, pathologist or their employee, any administrator or other officer or employee of any hospital, clinic, center, sanatorium or other medical facility, of any health department or home for the aged who makes a report, pursuant to this article,

to the Central Tumor Registry, to a local health director, or to the State Board of Health shall be immune from any civil or criminal liability that might otherwise be incurred or imposed for so doing, unless such person acted in bad faith or with malicious purpose. (1967, c. 859; 1969, c. 5.)

Editor's Note.—Prior to the 1969 amendment this section applied only to a physician or pathologist. The amendment also included the Central Tumor Registry.

ARTICLE 17A.

North Carolina Cancer Study Commission.

§ 130-186.1. **Commission created; appointment, qualifications and terms of members; vacancies; officers.**—There is hereby created the North Carolina Cancer Study Commission, which shall be composed of 20 members appointed by the Governor. Ten members shall be persons chosen from the medical profession and 10 members shall be persons not associated with the medical profession. Members shall be appointed for terms of two years, beginning July 1, 1967. Vacancies by death, resignation or otherwise shall be filled by persons appointed by the Governor for the unexpired term. Any public officer appointed to the Commission shall serve ex officio in addition to his duties imposed by law.

The Commission shall elect one of its members as chairman and such other officers as the Commission deems necessary. (1967, c. 186, s. 1.)

§ 130-186.2. **Duties.**—The Commission shall study the entire problem of cancer, including research, education and services furnished cancer victims. The Commission shall study means of implementing its recommendations, assist in their development, study the effective use of assembled information, and make such additional studies and recommendations as circumstances may warrant for the control and cure of cancer. The Commission shall report annually to the governor its findings and recommendations. (1967, c. 186, s. 2.)

§ 130-186.3. **Per diem and expenses.**—Members of the Commission shall be paid for the performance of their duties the same per diem and subsistence and travel allowance as is provided for other commissioners in the biennial appropriations act. These expenses and such other expenses as the Commission may incur in the performance of its duties, subject to the approval of the Governor and Council of State, shall be paid out of the Contingency and Emergency Fund. (1967, c. 186, s. 3.)

ARTICLE 20A.

Treatment of Self-Inflicted Injuries upon Prisoners.

§ 130-191.1. **Procedure when consent is refused by prisoner.**—When a board comprised of the Commissioner of Correction, the chief medical officer of a prison hospital or penal institution, and a representative of the State or county welfare department of the county where the prisoner is confined, shall convene and find as a fact that the injury to any prisoner was wilfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings made by this board have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the local health director, as defined by G.S. 130-3, or in the event a local health director is not immediately available then the local health director of any adjoining or nearby area, shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this article, the medical staff of the hospital or institution shall keep a careful and complete medical record of the

treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. (1959, c. 1196; 1967, c. 996, s. 15.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "Commissioner of Correction" for "Director of Prisons" in the first sentence.

ARTICLE 21.

Chief Medical Examiner; Postmortem Medicolegal Examinations.

§ 130-192. **Chief Medical Examiner; appointment; vacancy.**—There is hereby created, under the State Board of Health, the office of Chief Medical Examiner. The State Board of Health is authorized and directed to appoint a Chief Medical Examiner who shall serve for a term of four years and until his successor has been appointed and qualified. The Chief Medical Examiner shall take an oath and enter into bond in the sum of five thousand dollars (\$5,000.00) before entering upon the duties of his office. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8.

Any vacancy in the office of Chief Medical Examiner shall be filled by the State Board of Health for the unexpired term. The Board may remove the Chief Medical Examiner from office for cause.

The Chief Medical Examiner shall be a skilled pathologist and eligible to be licensed as a doctor of medicine. His salary shall be fixed by the Governor and the Advisory Budget Commission, and he shall receive such travel expenses as allowed other State employees by law. (1967, c. 1154, s. 1; 1969, c. 844, s. 10.)

Revision of Article.—Session Laws 1967, c. 1154, s. 1, rewrote this article, designating the sections therein as §§ 130-192 to 130-202.2. This article formerly consisted of §§ 130-192 to 130-202. Section 9 of the amending act provides: "This act shall become effective on January 1, 1968; provided, however, that the appropriation

provided for herein, for the purpose of employing personnel and making the necessary preparation to effectuate the purposes of this act by January 1, 1968, shall be effective July 1, 1967."

Editor's Note. — The 1969 amendment added the last sentence of the first paragraph.

§ 130-193. **Central and district offices and laboratories.**—The State Board of Health shall establish and maintain, under the supervision of the Chief Medical Examiner, a central office and a laboratory in the city of Raleigh or Chapel Hill, North Carolina, and with the approval of the Governor first obtained, such district offices and laboratories in such localities in the State as are deemed necessary, having adequate professional and technical personnel and physical facilities for the conduct of postmortem examinations and of such pathological, bacteriological and toxicological investigations as may be necessary or proper. The State Board of Health shall provide the Chief Medical Examiner with such furniture, equipment, records and supplies as may be required in the conduct of this office. The State Board of Health may, if deemed advisable to do so, contract with the Medical School of the University of North Carolina for the use of certain of its laboratories, its morgue and other technical facilities, and space in one of its buildings as a central office and laboratory for the Chief Medical Examiner and his staff. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1.)

§ 130-194. **Assistants and employees.**—The Chief Medical Examiner, with the approval of the State Board of Health, may employ such clerical and other assistants as are necessary for the performance of the duties of his office. All persons appointed by the Chief Medical Examiner shall be responsible to him and may be removed by him for any reasonable cause. (1967, c. 1154, s. 1.)

§ 130-195. **Certain salaries and expenses paid by State.**—The salaries of the Chief Medical Examiner, and the technical and clerical personnel in the central office and laboratory, the expenses of maintaining the central office and

laboratory, the cost of pathological, bacteriological and toxicological services rendered by other than the Chief Medical Examiner and his assistants, and the traveling and other expenses of the personnel of the central and district offices and laboratories, shall be paid by the State out of funds appropriated for the purpose. (1967, c. 1154, s. 1.)

§ 130-196. Additional services and facilities. — In order to provide proper facilities for investigating the causes of death as authorized in this article the State Board of Health may employ and pay qualified pathologists and toxicologists to make autopsies and such other pathological and chemical studies and investigations as may be deemed necessary or advisable by the Chief Medical Examiner, and may arrange for the use of existing public or private laboratory facilities for such purposes wherever these are available. (1967, c. 1154, s. 1.)

§ 130-197. County medical examiners; appointment; term of office and vacancies.—The Chief Medical Examiner shall appoint for each county in the State one or more medical examiners to serve for terms of three years and until their successors are appointed by the Chief Medical Examiner and have qualified. All vacancies in the office of medical examiner shall be filled by the Chief Medical Examiner for the unexpired terms. Each medical examiner shall be appointed from a list of two or more licensed doctors of medicine submitted by the component medical society of the county in which the appointment is to be made, or of the district in which the county is located. If no list of names is submitted by the society, the Chief Medical Examiner shall appoint a medical examiner or medical examiners from a list of licensed medical doctors of such county. In the event a licensed doctor will not accept an appointment as medical examiner in a county, the Chief Medical Examiner is authorized to appoint the coroner as acting medical examiner to serve until such time as the vacancy can be filled. In the event the medical examiner of any county, on account of illness or enforced absence or personal interest is unable to serve in any particular case or for a temporary period of time, the Chief Medical Examiner shall then designate some other qualified doctor of medicine in such county, or the coroner, to serve in the place of the regular medical examiner in making any examination or report required. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1.)

Opinions of Attorney General. — Dr. James E. Oliver, Jackson County Medical Examiner, 10/28/69.

§ 130-198. Medical examiners to be notified of certain deaths.— Upon the death of any person, apparently by criminal act or default, or apparently by suicide, or while an inmate of any penal or correctional institution, or under any suspicious, unusual or unnatural circumstances, the medical examiner of the county in which the body of the deceased is found shall be notified by the physician in attendance, by any law-enforcement officer having knowledge of such death, by the funeral director, by a member of the family of the deceased, by any person present, or by any person having knowledge of such death. No person shall disturb the body at the scene of death until authorized by the county medical examiner.

A similar procedure shall be followed upon discovery of anatomical material suspected of being or determined to be a part or parts of a human body. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1.)

§ 130-199. Duties of medical examiners upon receipt of notice; reports; fees.—Upon receipt of such notice the medical examiner shall take charge of the dead body, make inquiries regarding the cause and manner of death, reduce his findings to writing, and promptly make a full report thereof to the Chief Medical Examiner on forms prescribed for such purpose, retaining one copy of such report for his own; delivering copies to the district solicitor of the superior

court, and upon request to a defendant in a criminal action, or any party in a civil action. Full directions as to the nature, character and extent of the investigation to be made in such cases shall be furnished the medical examiner by the Chief Medical Examiner, together with appropriate forms for the required reports and instructions for their use. For each investigation under this article, including the making of the required reports, the medical examiner shall receive a fee of twenty-five dollars (\$25.00), to be paid by the State unless the deceased is a legal resident of the county in which his death occurred, in which event such county shall be responsible for the fee. The medical examiner is authorized to issue subpoenas for any person or persons to appear during the investigation. (1955, c. 972, s. 1; 1957, c.1357, s. 1; 1967, c. 1154, s. 1.)

§ 130-200. When autopsies and other pathological examinations to be performed.—If, in the opinion of the Chief Medical Examiner or the medical examiner of the county wherein the body or anatomical material is first found under any of the circumstances set forth in G.S. 130-198, it is advisable and in the public interest that an autopsy or other pathologic study be made, or if an autopsy or other pathologic study is requested by the superior court solicitor or by any superior court judge on his own motion, or on a motion of any party, such autopsy or pathological study shall be made by the Chief Medical Examiner or by a competent pathologist designated by him, and a copy of the autopsy report shall be furnished the solicitor, judge, and requesting party.

In any case of death under circumstances set forth in § 130-198 where a body shall be buried without a medical examination being made as specified in § 130-199, or in any case where a body shall be cremated except in compliance with the provisions of this article, it shall be the duty of the medical examiner of the county in which the body is buried or was cremated, upon being advised of such facts, to notify the superior court solicitor who shall communicate the same to any resident special, or assigned judge of the superior court, and such judge may order that the body or the remains be exhumed and an examination or autopsy performed thereon by the Chief Medical Examiner or a competent pathologist or toxicologist appointed by the Chief Medical Examiner. The pertinent facts disclosed by the examination or autopsy shall be communicated to the solicitor of the superior court and the judge who ordered it, for such action thereon as he, or the court of which he is judge, deems proper. A copy of the report of the examination or autopsy findings and interpretations shall be filed with the superior court solicitor: Provided, that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown. If the deceased is a resident of the county where death occurred, the cost of the autopsy or pathological study shall be paid by the county; otherwise, the State Board of Health shall pay the expense of the autopsy or pathological study. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1.)

§ 130-201. Rules and regulations.—The Chief Medical Examiner, subject to the approval of the State Board of Health, shall make, amend, repeal and promulgate the necessary rules and regulations and procedures to carry out the intent and purposes of this article. The facilities of the central laboratory and the services of its professional staff shall be made available to the county medical examiners in their investigations. (1967, c. 1154, s. 1.)

§ 130-202. Reports and records received as evidence.—Reports of investigations made by the Chief Medical Examiner or his assistants or by medical examiners, and the records and reports of autopsies made under the authority of this article, may be received as corroborative evidence, if admissible, in any court or other proceeding and copies of records, photographs, laboratory findings and records in the office of the Chief Medical Examiner or any medical examiner, when duly attested by the Chief Medical Examiner, or one of his assistant chief

medical examiners, or the medical examiner in whose office the same are, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without any proof of the official character of the person whose name is signed thereto. (1967, c. 1154, s. 1.)

§ 130-202.1. When medical examiner's permission necessary before embalming, burial and cremation.—(a) In any case where it is the duty of the county medical examiner to view the body and investigate the death of a deceased person as herein provided, it shall be unlawful to embalm the said body until the written permission of the county medical examiner has first been obtained, and such county medical examiner shall make the certificate of death required for a burial-transit permit, stating thereon the name of the disease causing death; or, if from external causes,

- (1) The means of death, and
- (2) Whether (probably) accidental, suicidal, homicidal; and shall, in any case, furnish such information as may be required by the State Registrar of Vital Statistics in order properly to classify the death.

(b) It shall be unlawful to embalm or to bury a dead body, or to issue a burial-transit permit, when any fact within the knowledge of, or brought to the attention of, the embalmer, the funeral director, or the local registrar of vital statistics charged with the issuance of burial-transit permits, is sufficient to arouse suspicion of crime in connection with the death of the deceased, until the written permission of the county medical examiner has first been obtained.

(c) No burial-transit permit for cremation of a body shall be issued by the local registrar charged therewith and no cremation of a body shall be carried out until the county medical examiner shall have certified in writing that he has made inquiry into the cause and manner of death and is of the opinion that no further examination concerning the same is necessary. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1.)

§ 130-202.2. Coroner to hold inquests. — In every case requiring the medical examiner to be notified, as provided by § 130-198, the coroner shall be notified by the medical examiner, and the coroner shall hold an inquest and preliminary hearing in those instances as required in § 152-7. The coroner shall file a written report of his investigation with the solicitor of the superior court and the county medical examiner. The body shall remain in the custody and control of the medical examiner; provided, however, if a county has abolished the office of coroner pursuant to the provisions of General Statutes chapter 152A at a time when General Statutes chapter 152A was in effect in such county: (i) the provisions of this article relating to coroner shall not be applicable to such county, (ii) the provisions of G.S. 152A-9 shall remain in full force and effect in such county, and (iii) chapter 152 of the General Statutes shall not be applicable in such county. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1969, c. 299.)

Editor's Note. — The 1969 amendment added the proviso at the end of the section.

Opinions of Attorney General. — Mr. William E. (Jack) Bass, Coroner, Catawba County, 7/24/69.

ARTICLE 22.

Remedies.

§ 130-203. Penalties.

Editor's Note.—For comment as to warrants required for administrative health inspections, see 4 Wake Forest Intra. L. Rev. 117 (1968).

Applied in *State v. Miday*, 263 N.C. 747, 140 S.E.2d 325 (1965).

§ 130-205. **Injunction.**—If any person shall violate or threaten to violate the provisions of this chapter or any rules and regulations adopted pursuant thereto and such violation, if continued, or such threatened violation, if committed, is or may be dangerous to the public health or if any person shall hinder or interfere with the proper performance of duty of the State Health Director or his representative or any local health director or his representative and such hindrance or interference is or may be dangerous to the public health, the State Health Director or any local health director may institute an action in the superior court of the county in which such violation, threatened violation, hindrance or interference occurred for injunctive relief against such continued violation, threatened violation, hindrance or interference, irrespective of all other remedies at law, and upon the institution of such an action, the procedure shall be in accordance with the provisions of article 37 of chapter 1 of the General Statutes, and Rule 65 of the Rules of Civil Procedure. (1957, c. 1357, s. 1; 1967, c. 954, s. 3.)

Editor's Note. — The 1967 amendment added "and Rule 65 of the Rules of Civil Procedure" at the end of this section.

Session Laws 1969, c. 803, amends Session Laws 1967, c. 954, s. 10, so as to make the 1967 act effective Jan. 1, 1970. See Editor's note to § 1A-1.

The Rules of Civil Procedure are found in § 1A-1.

For comment as to warrants required for administrative health inspections, see 4 Wake Forest Intra. L. Rev. 117 (1968).

ARTICLE 24.

Mosquito Control Districts.

§ 130-210. **Creation and purpose.**

Editor's Note.—

Chapter 239, Session Laws 1967, amended c. 238, Session Laws 1961, referred to in note in original, by adding Beaufort County.

Chapter 361, Session Laws 1967, amended c. 238, Session Laws 1961, by adding Dare County therein.

ARTICLE 25.

State Air Hygiene Program.

§§ 130-221 to 130-226: Repealed by Session Laws 1967, c. 892, s. 5.

Cross Reference.—For present provisions as to control of air pollution, see § 143-211 et seq.

§§ 130-227 to 130-229: Reserved for future codification purposes.

ARTICLE 26.

Regulation of Ambulance Services.

§ 130-230. **Permit required to operate ambulance.**—(a) No person, firm, corporation, or association, either as owner, agent, or otherwise, shall hereafter furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to be engaged in the business or service of transporting patients upon the streets or highways in North Carolina unless he holds a currently valid permit for each ambulance used in such business or service, issued by the State Board of Health or a duly authorized representative thereof.

(b) Before a permit may be issued for a vehicle to be operated as an ambulance, its registered owner must apply to the Board for an ambulance permit. Application shall be made upon forms and according to procedures established by the Board. Prior to issuing an original or renewal permit for an ambulance, the Board shall determine that the vehicle for which the permit is issued meets all requirements as to medical equipment and supplies and sanitation as set forth

in this article and in the regulations of the Board. Permits issued for ambulances shall be valid for a period specified by the Board, not to exceed one year.

(c) Duly authorized representatives of the Board may issue temporary permits for vehicles not meeting required standards valid for a period not to exceed 60 days, when it determines the public interest will be served thereby.

(d) When a permit has been issued for an ambulance as specified herein, the vehicle for which issued, and records relating to maintenance and operation of such vehicle shall be open to inspection by duly authorized representatives of the Board at all reasonable times.

(e) The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation, or association to provide ambulance services or to operate any ambulances without a franchise in any county or municipality which has enacted an ordinance pursuant to G.S. 153-9 (58) making it unlawful to do so. (1967, c. 343, s. 3.)

§ 130-231. Advisory Committee on Ambulance Service created.—For the purpose of assisting the State Board of Health in developing standards for use in the administration of this article, there is hereby created the Advisory Committee on Ambulance Service. Such Committee shall be composed of nine members, one each designated by the North Carolina Funeral Directors Association, Inc., the Funeral Directors and Morticians Association of North Carolina, Inc., the North Carolina Ambulance Association, Inc., the Medical Society of the State of North Carolina, the North Carolina Hospital Association, the American National Red Cross, the North Carolina State Association of Rescue Squads, Inc., the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. Each member shall serve at the pleasure of the organization which designated him, and his successor shall be designated in the same manner. The Committee shall choose its own chairman, and shall meet at the call of the chairman or at the call of the State Health Director. (1967, c. 343, s. 3.)

§ 130-232. State Board of Health to adopt standards for equipment; inspection of medical equipment and supplies required for ambulances.—(a) The Board shall adopt regulations specifying sanitation standards for ambulances. Regulations so adopted shall also require that the interior of the ambulance and the equipment within the ambulance be sanitary and maintained in good working order at all times.

(b) Every ambulance shall be equipped with the medical equipment and supplies specified by the "Minimal Equipment List for Ambulances and Dual Purpose Vehicles Serving as Ambulances" as approved by the Committee on Trauma of the American College of Surgeons on January 14, 1961; provided, however, the State Board of Health, with the approval of the Advisory Committee on Ambulance Service, may require additional equipment or supplies to be aboard ambulances or may delete items of medical equipment or supplies from the required Minimal Equipment List adopted herein by reference.

(c) The Board shall inspect medical equipment and supplies required of ambulances when it deems such inspection is necessary and maintain a record thereof. Upon a determination, based upon an inspection, that required medical supplies or equipment fail to meet the requirements of this article or regulations adopted pursuant hereto, the Board shall suspend the permit for the ambulance concerned, until such requirements are met. (1967, c. 343, s. 3.)

Editor's Note.—Section 9, c. 343, Session Laws 1967, provides: "This act shall become effective upon its ratification; provided that compliance with regulations and standards of the State Board of Health

established pursuant to the authority granted by § 3 [§§ 130-230 to 130-225] of this act shall be mandatory only after 90 days following the date of promulgation thereof by the State Board of Health."

§ 130-233. **Certified ambulance attendant required.**—(a) Every ambulance, except those specifically excluded from the operation of this article, when operated on an emergency mission in this State shall be occupied by at least one person who possesses a valid ambulance attendant's certificate from the Board. This section shall not be construed to require a person other than the driver to be aboard if the driver is properly certified by the Board as an ambulance attendant.

(b) The Board shall adopt regulations setting forth the qualifications required for certification of ambulance attendants. Such regulations shall be effective when approved by the Advisory Committee on Ambulance Service.

(c) Persons desiring certification as ambulance attendants shall apply to the Board using forms prescribed by that agency. Upon receipt of such application the Board shall examine the applicant and if it determines the applicant meets the requirements of its regulations duly adopted pursuant to this article, it shall issue a certificate to the applicant. Ambulance attendant's certificates so issued shall be valid for a period not to exceed two years and may be renewed after reexamination if the holder meets the requirements set forth in the regulations of the Board. The Board is authorized to cancel a certificate so issued at any time it determines that the holder no longer meets the qualifications prescribed for ambulance attendants.

(d) Duly authorized representatives of the Board may issue temporary certificates with or without examination when it finds that such will be in the public interest. Temporary certificates shall be valid for a period not exceeding 90 days. (1967, c. 343, s. 3.)

§ 130-234. **Exemptions.** — The following are exempted from the operation of the provisions of this article:

- (1) Privately owned vehicles not ordinarily used in the business of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless;
- (2) A vehicle rendering service as an ambulance in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required;
- (3) Ambulances based outside this State, except that any such ambulance receiving a patient within this State for transportation to a location within this State shall comply with the provisions of this article;
- (4) Ambulances owned and operated by an agency of the United States government.
- (5) Vehicles owned and operated by rescue squads chartered by the State of North Carolina as nonprofit corporations or associations or by rescue squads authorized by G.S. 160-191.11 which are not regularly used to transport sick, injured, wounded or otherwise incapacitated or helpless persons except as a part of rescue operations are excluded. (1967, c. 343, s. 3; c. 1257, s. 2.)

Editor's Note. — The 1967 amendment added subdivision (5).

§ 130-235. **Violation declared misdemeanor.**—It shall be the duty of the registered owner of the vehicle concerned to see that the provisions of this article and all regulations adopted hereunder are complied with. Upon the violation of any regulation adopted under authority of this article, the State Board of Health shall have power to revoke or suspend the permits of all vehicles owned or operated by the violator. The operation of an ambulance without a valid permit therefor, or the operation thereof after any permit has been suspended or revoked, or the operation thereof without having a certified attendant aboard as required by G.S. 130-233, shall constitute a misdemeanor punishable by a fine or imprisonment or both in the discretion of the court. (1967, c. 343, s. 3.)

Chapter 131.
Public Hospitals.

Article 2.

Hospitals in Counties, Townships, and Towns.

Sec.

131-9. Trustees to have control, and to make regulations; lease of hospital to nonprofit association or corporation.

Article 13.

Medical Care Commission and Program of Hospital Care.

131-121.1, 131-121.2. [Repealed.]

131-121.3. Scholarships for medical technicians.

Article 13B.

Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

131-126.19. Purpose and construction of article.

Article 13C.

Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

Sec.

131-126.33. Election for bond issue; method of election; issuance of additional bonds.

131-126.36. Issuance of bonds and levy of taxes; bond anticipation notes.

Article 15.

Discharge from Hospital.

131-137. Authority of superintendent or administrator; payment of patient's transportation; refusal to leave after discharge.

ARTICLE 2.

Hospitals in Counties, Townships, and Towns.

§ 131-9. Trustees to have control, and to make regulations; lease of hospital to nonprofit association or corporation.—The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this article and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all money collected to the credit of the hospital fund, and the purchase of the site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care, and custody of the grounds, rooms, or buildings purchased, constructed, leased, or set apart for that purpose.

The board of trustees may, jointly with the governing body of the county, lease any hospital established by the county pursuant to this article to any nonprofit association or corporation upon such terms and subject to such conditions as will carry out the purposes of this article. In such event and for the term of such lease, the board of trustees shall be dissolved and no further elections to the board shall be held until the governing body of the county shall so order. The authority to lease may include all or any part of any real, personal, or mixed real and personal property comprising a part of the hospital facility to be leased and including the assignment and transfer of any part of or all money, accounts receivable, stocks and bonds, and any other assets used or held for use by the hospital as a going concern. (1913, c. 42, s. 4; C. S., s. 7259; 1967, c. 466.)

Editor's Note.—The 1967 amendment added the second paragraph.

§ 131-15. Condemnation of land.

Editor's Note.—For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 537 (1967).

ARTICLE 2A.

*The County Hospital Act.***§ 131-28.3. Counties authorized to erect, purchase and operate hospitals.**

Cited in *Moody v. Transylvania County*,
271 N.C. 384, 156 S.E.2d 716 (1967).

§ 131-28.4. Issuance of bonds subject to approval of voters.

Cited in *Moody v. Transylvania County*,
271 N.C. 384, 156 S.E.2d 716 (1967).

§ 131-28.14. Condemnation proceedings.

Editor's Note.—For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

ARTICLE 7.

*State Sanatorium for Tuberculosis.***§ 131-54. Indigent patients; recovery of charges from those able to pay.**

Constitutionality.—The law makes no unconstitutional discrimination between classes when it charges all tubercular patients the same rate but actually collects from only those who can pay. *Graham v. Reserve Life Ins. Co.*, 274 N.C. 115, 161 S.E.2d 485 (1968).

ARTICLE 8.

*Western North Carolina Sanatorium.***§ 131-62. Control of both tubercular sanatoriums vested in one board.**

Cited in *Graham v. Reserve Life Ins. Co.*, 274 N.C. 115, 161 S.E.2d 485 (1968).

ARTICLE 9.

*Eastern North Carolina Sanatorium.***§ 131-76. Establishment of Eastern North Carolina Sanatorium for Treatment of Tuberculosis.**

Cited in *Graham v. Reserve Life Ins. Co.*, 274 N.C. 115, 161 S.E.2d 485 (1968).

§ 131-77. Control of sanatorium by board of directors.

Cited in *Graham v. Reserve Life Ins. Co.*, 274 N.C. 115, 161 S.E.2d 485 (1968).

§ 131-78. Powers of directors as to erection, organization, operation, etc., of sanatorium.

Cited in *Graham v. Reserve Life Ins. Co.*, 274 N.C. 115, 161 S.E.2d 485 (1968).

§ 131-79. Bylaws and regulations.

Quoted in *Graham v. Reserve Life Ins. Co.*, 274 N.C. 115, 161 S.E.2d 485 (1968).

§ 131-82. Compensation of directors.

Cited in *Graham v. Reserve Life Ins. Co.*, 274 N.C. 115, 161 S.E.2d 485 (1968).

ARTICLE 11.

Sanatorium for Tubercular Prisoners.

§ 131-88. **Nursing, guarding and disciplining of prisoners.**—The prison division of the State Department of Correction for tuberculous prisoners of McCain, North Carolina, or any other place where a prison division for tuberculous prisoners may be established, shall have the same powers, duties, and responsibilities in the nursing, guarding and disciplining of tuberculous prisoners and convicts as it now has as to other prisoners and inmates under its supervision and control. (1923, c. 127, s. 6; C. S., s. 7220(e); 1949, c. 1136; 1955, c. 968, s. 1; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.— 1967, substituted "State Department of Correction" for "State Prison Department."
The 1967 amendment, effective Aug. 1,

ARTICLE 12.

Hospital Authorities Law.

§ 131-91. **Finding and declaration of necessity.**

Local Modification.—Mecklenburg: 1969, c. 933.

§ 131-92. **Definitions.**

Local Modification.—Mecklenburg, as to subdivisions (3), (4), (7) and (11): 1969, c. 933.

§ 131-93. **Creation of authority.**

Local Modification.—Mecklenburg: 1969, c. 933.

§ 131-94. **Appointment, qualifications, and tenure of commissioners.**

Local Modification.—Mecklenburg: 1969, c. 933.

§ 131-97. **Removal of commissioners.**

Local Modification.—Mecklenburg: 1969, c. 933.

§ 131-99. **Eminent domain.**

Editor's Note.—For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 131-101. **Types of bonds.**

Local Modification.—Mecklenburg: 1969, c. 933.

§ 131-111. **Reports.**

Local Modification.—Mecklenburg: 1969, c. 933.

ARTICLE 13.

Medical Care Commission and Program of Hospital Care.

§ 131-117. **North Carolina Medical Care Commission.**—There is hereby created a State agency to be known as "The North Carolina Medical Care Commission," which shall be composed of twenty members nominated and appointed as follows:

Three members shall be nominated by the Medical Society of the State of North Carolina; one member by the North Carolina Hospital Association; one member

by the North Carolina Nurses' Association; one member by the North Carolina Pharmaceutical Association, and one member by the Duke Foundation, for appointment by the Governor. One member shall be a dentist licensed to practice in North Carolina appointed by the Governor.

Ten members of said Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interests and groups in North Carolina. In appointing the members of said Commission, the Governor shall designate the term for which each member is appointed. Four of said members shall be appointed for a term of one year; four for a term of two years; four for a term of three years; five for a term of four years; and thereafter, all appointments shall be for a term of four years. All vacancies shall be filled by the Governor for the unexpired term. The Commissioner of Public Welfare, and the State Health Director shall be ex officio members of the Commission, without voting power.

The Commission shall elect, with the approval of the Governor, a chairman and a vice-chairman. All members, except the Commissioner of Public Welfare, and the State Health Director shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses. (1945, c. 1096; 1957, c. 1357, s. 17; 1963, c. 325; 1965, c. 16.)

Editor's Note.—

The 1965 amendment deleted "after requesting recommendations from the president of the North Carolina Dental Society" at the end of the last sentence in the second paragraph.

The Medical Care Commission is a crea-

ture of the State of North Carolina. *Hawkins v. North Carolina Dental Soc'y*, 355 F.2d 718 (4th Cir. 1966).

And the functions it serves are concededly public functions of the State. *Hawkins v. North Carolina Dental Soc'y*, 355 F.2d 718 (4th Cir. 1966).

§ 131-121. **Medical and other students; loan fund.** — For the purpose of increasing the number of qualified people in the health services in North Carolina and especially in communities of limited population, mental health facilities and other areas where a shortage of health personnel exists, the North Carolina Medical Care Commission is hereby authorized and empowered, in accordance with such regulations as it may promulgate, to make loans and award scholarships to students who are residents of North Carolina and who may wish to become physicians, dentists, optometrists, pharmacists, nurses, nurse instructors, nurse anesthetists, medical technicians, social workers, psychologists and students who are enrolled in other studies to be decided by the Commission leading to specialization in the health professions and who are accepted in any school, college or university giving accredited courses in these specialized areas provided such students shall agree that upon graduation and being duly licensed or qualified to practice their profession in North Carolina in such field, geographic area or facilities as the Commission may designate for one calendar year for each academic year or fraction thereof for which a loan or scholarship is granted. The loans shall bear such interest rate as contracted for not to exceed the per annum interest rate allowed by law. The Commission shall have the authority to cancel any contract made between it and any applicant for assistance upon such cause deemed sufficient by the Commission; provided, the assent to cancellation be first obtained from the Attorney General of North Carolina. The Medical Care Commission is hereby granted full power and authority to make reasonable rules and regulations so as to implement and promote the student loan and scholarship program in the best interests of the State.

The North Carolina Medical Care Commission is hereby authorized and empowered to expend up to thirty thousand dollars (\$30,000) per biennium from its appropriations for scholarship loans for the purposes of establishing programs for the recruitment of persons interested in embarking upon careers in the health professions who are eligible for financial assistance under G.S. 131-121, 131-121.3 and 131-124, encouraging nonpracticing nurses to return to their profession and encouraging the establishment of new training schools of nursing.

All funds heretofore appropriated to the Medical Care Commission for student loans and scholarships, including the appropriation made by chapter 1185 of the Session Laws of 1963, shall be administered by the Commission pursuant to the provisions of this section. This section shall be applicable also to all loans or scholarship funds repaid to the Commission pursuant to this program. (1945, c. 1096; 1947, c. 933, s. 2; 1949, c. 1019; 1953, c. 1222; 1959, c. 1028, ss. 1-4; c. 1165; 1963, c. 365, s. 1; c. 493; 1965, c. 485, s. 1; c. 1154; 1969, cc. 1069, 1219.)

Editor's Note.—

The first 1965 amendment rewrote this section. The second 1965 amendment inserted "optometrists" near the middle of the first sentence.

The first 1969 amendment rewrote the second sentence and added the proviso to the third sentence of the first paragraph.

The second 1969 amendment added the second paragraph.

§§ 131-121.1, 131-121.2: Repealed by Session Laws 1965, c. 485, s. 2.

Editor's Note.—Section 2 of the repealing act provides that "said laws shall continue in full force and effect with respect

to any obligations created by any loan or scholarship agreements outstanding upon the effective date of this act."

§ 131-121.3. **Scholarships for medical technicians.**—There is hereby appropriated out of the general fund of the State to the North Carolina Medical Care Commission the sum of twenty-five thousand dollars (\$25,000.00) to be used for the establishment of scholarships for medical technicians.

Said scholarship program shall provide for payments of twenty-five dollars (\$25.00) per month for the first six (6) months and payments of fifty dollars (\$50.00) per month for the last twelve (12) months.

Said scholarship program is to be administered by the North Carolina Medical Care Commission and shall be used in connection with the accredited schools now established in this State. (1963, c. 1185.)

ARTICLE 13A.

Hospital Licensing Act.

§ 131-126.1. **Definitions and distinctions.**

Cited in *Simkins v. Moses H. Cone Memorial Hosp.*, 323 F.2d 959 (4th Cir. 1963).

ARTICLE 13B.

Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

§ 131-126.18. **Definitions.**

(2) "Hospital facility" means any type of hospital, clinic (including mental health clinic), nursing or convalescent facility, or public health center, housing or quarters for local public health departments, including related facilities such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals.

(1965, c. 863, s. 1.)

Editor's Note.—

The 1965 amendment inserted "(including mental health clinic), nursing or convalescent facility" in subdivision (2).

As the rest of the section was not affected by the amendment, it is not set out.

Cited in *Jones v. Nash County Gen. Hosp.*, 1 N.C. App. 33, 159 S.E.2d 252 (1968).

§ 131-126.19. **Purpose and construction of article.**—It is the purpose of this article to confer additional authority upon municipalities for the furnish-

ing of hospital, clinic and similar services to the people of this State, through the construction, operation, and maintenance of hospital facilities and otherwise; and to this end to authorize municipalities to co-operate with other public and private agencies and with each other, and to accept assistance from agencies of this State or the federal government or from other sources. This article shall be liberally construed to effect these purposes.

This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers heretofore or hereafter conferred by any other law, including without limitation chapter 122 of the General Statutes, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local. (1947, c. 933, s. 6; 1965, c. 863, s. 2.)

Editor's Note. — The 1965 amendment added the last paragraph.

§ 131-126.20. General powers of municipalities in the construction, acquisition, operation and maintenance of hospital facilities.

(c) Any municipality may enter into a contract or other arrangement with any other municipality or other public agency of this or any other state or of the United States or with any individual, private organization or nonprofit association for the provision of hospital, clinic, or similar services. Pursuant to such contract or other arrangement, the municipality may pay for such services out of any appropriations or other moneys made available for such purposes. A municipality may lease any hospital facilities to any nonprofit association on such terms and subject to such conditions as will carry out the purposes of this article. Such lease may be for such duration or term of years as the municipality may deem wise and expedient, but no such lease shall be deemed to convey a freehold interest. (1947, c. 933, s. 6; 1967, c. 820.)

Editor's Note. — The 1967 amendment added the last sentence in subsection (c).

As only subsection (c) was changed by the amendment, the rest of the section is not set out.

Cited in *Coats v. Sampson County Memorial Hosp., Inc.*, 264 N.C. 332, 141 S.E.2d 490 (1965).

§ 131-126.21. Board of managers; county hospital authority.

(b) Board of County Commissioners May Establish Hospital Authority in Any County with Membership Representation from Town or City.—The board of county commissioners of any county may elect to establish a county hospital authority which shall be designated by the title or name of: “..... County Hospital Authority,” which shall consist of seven members, six of whom shall be appointed by the board of county commissioners and shall be composed of men and women representing the various dominant or primary interests of the county. Two of said members shall be appointed for a term of three years, two for a term of four years and two for a term of five years, and thereafter the term of office of each successor member shall be five years. In making said appointments the board of county commissioners of any county electing to establish a hospital authority under this subsection shall appoint three members of the said authority, who shall be residents of a town or city of said county, and three members who shall be residents of said county, or of cities or towns in said county other than the cities or towns in which the three other members appointed under this subsection reside. The seventh member of said authority shall be a member of the board of county commissioners of said county who shall serve in the capacity of a member at large, and whose term of office shall be commensurate with his term of office as a member of the board of county commissioners, and said member shall serve ex officio and because of his position as a member of the board of county commissioners. All vacancies in the office or position of a member of said hospital authority by death, resignation or otherwise shall be filled by appointments made by the board of county

commissioners of said county and shall be for the unexpired term of the member causing said vacancy. Any authority vested in a county by virtue of article 13B of chapter 131 of Volume 3B of the General Statutes or any authority or power that may be exercised by a hospital authority under G.S. 131-98 of article 12 of chapter 131, and as described and granted in said section, may be vested by resolution of the board of county commissioners of such county in the county hospital authority herein authorized, which such power and authority shall be applicable to the whole area of the county, and in addition to the purposes described in the statutes and articles heretofore referred to such power and authority shall also be exercised and delegated for the planning, establishment, construction, maintenance or operation of hospital facilities, clinics, public health centers, housing or quarters for local public health departments and centers, laboratories, outpatient departments and clinics, nurses' home and training facilities, and any and all services, including central service facilities operated in connection with such hospitals, clinics, laboratories and other facilities. The said county hospital authority, however, shall exercise only such powers and duties as are prescribed in the resolution of the board of county commissioners granting and vesting such authority and powers in said county hospital authority, and the said board of county commissioners of said county shall fix in said resolution the compensation, travelling and other expenses, if any, which shall be paid to each member of said county hospital authority; provided, however, that the expenses of such planning, establishment, construction or operation of all the hospital facilities named and mentioned in this subsection shall be a responsibility of said county. (1947, c. 933, s. 6; 1955, c. 710, s. 1; c. 1363; 1965, c. 260, s. 1.)

Editor's Note.—

The 1965 amendment struck out the former sixth sentence of subsection (b), making members of county hospital authorities ineligible to succeed themselves. Section 2 of the act provides that it shall not apply to Warren County.

As only subsection (b) was changed by the amendment, the rest of the section is not set out.

Cited in *Coats v. Sampson County Memorial Hosp., Inc.*, 264 N.C. 332, 141 S.E.2d 490 (1965).

§ 131-126.26. Municipal aid.—If the governing body of any municipality determines that the public interest and the interests of the municipality will be served by aiding another municipality or municipalities or a nonprofit association or nonprofit associations to provide physical facilities for furnishing hospital, clinic, or similar services to the people of the municipality, such municipality, may render such aid by gift of real or personal property, or lease or loan thereof with or without rental or charge, or by gift of money, or loan thereof with or without interest. The governing body of any municipality is hereby authorized, under the provisions of the preceding sentence, specifically to render the aid therein described by a gift of hospital property to a nonprofit corporation notwithstanding such hospital property may have been acquired and constructed from the proceeds of the sale of bonds. For the purpose of raising money to be given or loaned as aforesaid, such municipality shall have power to levy taxes as provided in § 131-126.22 and to issue general obligation bonds as provided in § 131-126.23, as though such taxes were to be levied and such bonds were to be issued to finance hospital facilities owned and operated by the municipality and whether or not such facilities are physically located within the boundaries of the municipality. No bonds shall be issued under this section, however, except for the construction of new buildings, the expansion, remodeling and alteration of existing buildings, and the equipment of buildings, or for one or more of said purposes. For the purpose of applying the provisions of the County Finance Act and the Municipal Finance Act to bonds authorized by this section, the bonds shall be deemed to be bonds issued to finance public buildings owned by the municipality issuing the bonds. The special approval of the General Assembly is hereby given for the levying of the taxes authorized by this section, including taxes sufficient to pay the

principal of and the interest on bonds issued under this section. The proceeds of the sale of such bonds may be expended by the municipality that issues them or by the municipality or municipalities or nonprofit association or nonprofit associations in aid of which the bonds are issued, as may be determined by the governing body of the municipality that issued the bonds. If any building for which bonds are issued under this section shall, prior to the final date of maturity of the bonds, cease for 90 days or more to be used for the purpose of furnishing hospital, clinic, or similar services to the people of the municipality that issued the bonds, or ceased to be owned by a municipality or a nonprofit association, the municipality that issued the bonds shall be entitled to recover from the owners of such building, or from their predecessors entitled since the date of the bonds issued for such building, the amount of such bonds remaining outstanding and unpaid. Such right of recovery shall, however, be subordinate to any claim of the United States on account of aid in financing such building. Any municipality that grants aid under this section may require assurance from the grantee that the grantee will furnish hospital, clinic, or similar services during a specified period to the people of the municipality that grants such aid. Such assurance may be given by lease, deed of trust, mortgage, contract to convey, lien, trust indenture, or other means. (1947, c. 933, s. 6; 1951, c. 1143, s. 1; 1965, c. 863, s. 3; 1969, c. 1119.)

Local Modification. — Wake: 1969, c. 635. sentence concluded “to finance hospital facilities owned by the municipality.”

Editor’s Note.—

Prior to the 1965 amendment the third sentence. The 1969 amendment added the second sentence.

§ 131-126.28. Public purpose; county and municipal purpose.

Stated in *Coats v. Sampson County Memorial Hosp., Inc.*, 264 N.C. 332, 141 S.E.2d 490 (1965).

ARTICLE 13C.

Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

§ 131-126.33. Election for bond issue; method of election; issuance of additional bonds.—Whenever five hundred or more qualified voters residing in such hospital district shall file with the board of county commissioners of the county in which such hospital district is located a petition requesting an election, the board of county commissioners shall order a special election to be held in any such hospital district for the purpose of voting upon the question of issuing bonds and levying a sufficient tax for the payment thereof for the purpose of paying all or a part of the cost of planning and acquiring, establishing, developing, constructing, enlarging, improving or equipping any type of hospital, clinic or public health center, including relating facilities such as laboratories, outpatient departments, nurses’ homes and training facilities operated in connection with hospitals and purchasing sites in such district for any one or more of said purposes, including any public or nonprofit hospital facility. In all such elections, the board of county commissioners of such county shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of the election upon filing with it of the election returns by the officers holding the election and shall record such determination on their records. The notice of election shall be given by publication at least three times in some newspaper published or circulating in such hospital district. The notice shall state the date of the election, the place or places at which the election will be held, the boundary lines of such hospital district unless the hospital district is coterminous with a township in said county (in which event the notice shall so state), the maximum amount of bonds to be issued, the purpose or purposes for which the bonds are to be issued, and the fact that a sufficient tax will be levied on all taxable property within the hospital district for the payment of the principal

and interest of the bonds. The first publication of the notice shall be at least thirty days before the election. A new registration of the qualified voters of such hospital district shall be ordered and notice of such new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in such hospital district at least thirty days before the close of the registration books. This notice of registration may be considered one of three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of the voters and the place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day; and except as otherwise provided in this article, such election shall be held in accordance with the laws governing the general elections. The form of the question, as stated on the ballot or ballots, shall be in substantially the words: "For the issuance of \$ Hospital Bonds and the levying of a sufficient tax for the payment thereof", and "Against the issuance of \$. Hospital Bonds and the levying of a sufficient tax for the payment thereof", with squares in front of each proposition, in one of which squares the voter may make a cross (X) mark; but any other form of ballot properly stating the question to be voted upon shall be construed as being in compliance with this section.

If, after any hospital district shall have been created as authorized by this article, a petition signed by at least 500 of the qualified voters residing in such hospital district shall be filed with the board of county commissioners of the county in which such hospital district is located representing that the issuance of additional bonds on behalf of such hospital district is necessary for any one or more of the purposes provided in this article, the board of county commissioners of the county shall order a special election to be held in such hospital district for the purpose of voting upon the question of issuing bonds for the purpose or purposes set forth in such petition and levying a sufficient tax for the payment thereof. The other provisions of this article relating to the ordering and holding of an election, giving of notice, and making, canvassing and passing upon the returns of such election, and relating to the determination, declaration and publication of the results of the election, and to the issuing of bonds, and levying taxes to pay the principal thereof and the interest thereon, shall be followed and shall apply to the issuance of such bonds as nearly as the same can be made adaptable and applicable thereto. (1949, c. 766, s. 5; 1953, c. 1045, s. 3; 1967, c. 718, s. 1.)

Editor's Note.—

The 1967 amendment added the second paragraph.

§ 131-126.34. Canvassing vote and determining results. — At the close of the polls, the election officers shall count the votes and make returns thereof to the board of county commissioners, which board shall, as soon as practicable after the election, judicially pass upon the returns and judicially determine and declare the results of such election, which determination shall be spread upon the minutes of said board. The returns shall be made in duplicate, one copy of which shall be delivered to the board of county commissioners as aforesaid and the other filed with the clerk of the superior court of the county in which the hospital district is situated. The board of county commissioners shall prepare a statement showing the number of votes cast for and against the bonds, and declaring the result of the election, which statement shall be signed by the chairman of the board and attested by the clerk, who shall record it in the minutes of the board and file the original in his office and publish it once in a newspaper published or circulating in such hospital district. (1949, c. 766, s. 5; 1967, c. 718, s. 2.)

Editor's Note.—The 1967 amendment deleted "and/or notes" following the word "bonds" in the last sentence.

§ 131-126.36. Issuance of bonds and levy of taxes; bond anticipation notes.—If a majority of the votes cast shall be in favor of the issuance of such bonds and the levy of such tax, then the board of county commissioners may provide by resolution, which resolution may be finally passed at the same meeting at which it is introduced, for the issuance of such bonds, which bonds shall be issued in the name of the hospital district and shall be payable exclusively out of taxes to be levied in such hospital district. They shall be issued in such form and denominations, and with such provisions as to the time, place and medium of payment of principal and interest as the said board of county commissioners may determine, subject to the limitations and restrictions of this article. They may be issued as one issue, or divided into two or more separate issues, and in either case may be issued at one time or in blocks from time to time within five years after the date of the election held on the question of issuing such bonds. When bonds are to be issued, they shall be serial bonds and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. The bonds shall bear interest at a rate not exceeding six percent (6%) per annum, payable semiannually, and may have interest coupons attached, and may be made registerable as to principal or as to both principal and interest under such terms and conditions as may be prescribed by said board. They shall be signed by the chairman of the board of county commissioners, and the seal of the county shall be affixed to or impressed upon each bond and attested by the register of deeds of the county or by the clerk of said board; and the interest coupons shall bear the printed, lithographed or facsimile signature of such chairman. The delivery of bonds, signed as aforesaid by officers in office at the time of such signing, shall be valid, notwithstanding any changes in office occurring after such signing.

At any time after the issuance of bonds has been approved at an election, a hospital district may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than five years after the date of the election. The board of county commissioners may, in its discretion, retire any such loans by means of current revenues or other funds, lawfully available therefor, in lieu of retiring them by means of bonds; provided, however, that the actual retirement of any such loans by any means other than the issuance of bonds, shall reduce the authorized amount of the bond issue by the amount of the loan so retired. Negotiable bond anticipation notes shall be issued for all moneys so borrowed, and the resolution authorizing the issuance of such notes shall take effect upon its passage, and need not be published. Such bond anticipation notes may be renewed from time to time for the payment of any indebtedness evidenced thereby, but all such bond anticipation notes shall mature within the time limited by this section for the payment of the original loan. No money shall be borrowed under this section at a rate of interest exceeding the maximum rate permitted by law. Said bond anticipation notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such bond anticipation notes shall be authorized by resolution of the board of county commissioners, which shall fix the actual or maximum face amount of the bond anticipation notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The board of county commissioners may delegate to any officer the power to fix such face amount and rate of interest within the limitations prescribed by such resolution, and the power to dispose of such bond anticipation notes. All such bond anticipation notes shall be executed in the manner provided in this section for the execution of bonds. They shall be submitted to and approved by the attorney for the hospital district before they are issued, and his

written approval endorsed on the notes. (1949, c. 766, s. 5; 1953, c. 1045, s. 5; 1967, c. 718, ss. 3, 4.)

Editor's Note.—

The 1967 amendment added "within five years after the date of the election

held on the question of issuing such bonds" at the end of the third sentence and added the second paragraph.

§ 131-126.37. Collection and application of tax.—The board of county commissioners is hereby authorized and directed to levy annually a special tax, ad valorem, on all taxable property in the hospital district in which the election was held, sufficient to pay the principal and interest of the bonds and bond anticipation notes as such principal and interest become due. Such special tax shall be in addition to all other taxes authorized to be levied in such district or in such unit. The taxes provided for in this section shall be collected by the county officer collecting other taxes and be applied solely to the payment of principal and interest of such bonds and bond anticipation notes. (1949, c. 766, s. 5; 1953, c. 1045, s. 8; 1967, c. 718, s. 5.)

Editor's Note.—

The 1967 amendment inserted "and bond

anticipation notes" in two places in this section.

ARTICLE 15.

Discharge from Hospital.

§ 131-137. Authority of superintendent or administrator; payment of patient's transportation; refusal to leave after discharge.—Whenever, in the opinion of the superintendent or administrator of any hospital in this State, and in the opinion of two physicians authorized to practice medicine in this State, any patient should be discharged therefrom as cured, or as no longer needing treatment, or for the reason that treatment cannot benefit his case, or for other good and sufficient reasons, said superintendent or administrator may discharge said patient.

If, upon the discharge of any patient from the hospital, it shall appear to the superintendent or administrator thereof that said patient, upon his discharge, is not financially able to provide himself with transportation to his home or other place to which he may be discharged, said superintendent or administrator, if so empowered by the hospital, may authorize the payment of such transportation on behalf of said patient.

If upon discharge, as described above, and upon tender of transportation or payment therefor under the circumstances authorized above, said patient shall refuse or fail to leave the hospital after being so directed by the superintendent or administrator, such refusal shall constitute a trespass and the patient shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed fifty dollars (\$50.00), or imprisoned not more than thirty (30) days. (1965, c. 258.)

Chapter 134. Reformatories.

Article 1.

Stonewall Jackson School.

Sec. 134-21. [Repealed.]

Article 2.

Samarkand Manor.

Article 4.

Reformatories or Homes for Fallen Women.

134-66. Reports to be made by directors.

Article 5.

Richard T. Fountain School.

Article 6.

Cameron Morrison School.

Article 6A.

State Training School for Girls.

Article 9.

State Board of Juvenile Correction.

Sec.

134-111.1. Providing necessary medical and surgical treatment for students.

ARTICLE 1.

Stonewall Jackson School.

§ 134-1. Incorporation; certain powers.—The Stonewall Jackson School is hereby created a corporation, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1907, c. 509, s. 1; c. 955; C. S., s. 7313; 1925, c. 306, s. 1; 1943, c. 776, s. 12; 1969, c. 901.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, substituted "Stonewall Jackson

School" for "Stonewall Jackson Manual Training and Industrial School."

§ 134-16. Trustees to receive gifts for cottages.—The board of trustees of the Stonewall Jackson School are hereby empowered to receive specific gifts from individuals or other sources for the exclusive purpose of erecting and equipping cottages on the grounds of the institution under such rules and regulations as may be fixed by the said board of trustees. (Ex. Sess. 1920, c. 48, s. 1; C. S., s. 7328(a); 1969, c. 901.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, substituted "Stone-

wall Jackson School" for "Stonewall Jackson Training School."

§ 134-17. Boys from counties making gifts; designation of cottage.—When such gifts, sufficient to erect or to erect and equip a cottage sufficient to accommodate thirty boys, are received from individuals or other sources from any given county of the State, the trustees of the Stonewall Jackson School may enter into an obligation to receive and maintain in the institution only according to their fixed rules and regulations for entrance, maintenance and discharge, a number of boys from the said county equal to the number which may be accommodated in such building. Such cottage may be designated county cottage. (Ex. Sess. 1920, c. 48, s. 2; C. S., s. 7328(b); 1969, c. 901.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, substituted "Stone-

wall Jackson School" for "Stonewall Jackson Training School."

§ 134-21: Repealed by Session Laws 1969, c. 1279.

Editor's Note.—Session Laws 1969, c. 837, s. 4, had previously amended this section.

ARTICLE 2.

Samarkand Manor.

§ 134-22. **Incorporation and name.**—A corporation to be known and designated as Samarkand Manor is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1917, c. 255, s. 1; C. S., s. 7329; 1937, c. 147, s. 1; 1969, c. 837, s. 1.)

Editor's Note.— industrial School for Girls to Samarkand Manor.
The 1969 amendment changed the name of the school from State Home and In-

§ 134-33. **Unlawful acts of inmates and others; escape; prostitution, etc.**

(1) For any inmate of Samarkand Manor to escape from said school, or for any person to aid and abet any inmate to escape therefrom;

(1969, c. 837, s. 2.)

Editor's Note.— As the rest of the section was not changed by the amendment, only subdivision (1) is set out.
The 1969 amendment substituted "Samarkand Manor" for "the State Home and Industrial School for Girls and Women" in subdivision (1).

§ 134-34. **"Inmate" and "prostitution" defined.**—The term "inmate" as used in § 134-33 shall be construed to include any and all girls committed to, or received into said Samarkand Manor under the provisions of this article; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse. (Ex. Sess. 1920, c. 40, s. 2; C. S., s. 7343(b); 1969, c. 837, s. 3.)

Editor's Note. — The 1969 amendment substituted "Samarkand Manor" for "State Home and Industrial School for Girls."

ARTICLE 4.

Reformatories or Homes for Fallen Women.

§ 134-66. **Reports to be made by directors.**—The board of directors shall at least once a year file with the city and the board of county commissioners of the county in which the institution is situated a full detailed report of the institution, together with the superintendent's reports thereon. (1917, c. 264, s. 9; C. S., s. 7361; 1967, c. 218, s. 4.)

Editor's Note. — The 1967 amendment repealed the former second sentence, making it the duty of the grand jury to visit and inspect the institutions.

ARTICLE 5.

Richard T. Fountain School.

§ 134-67. **Corporation created; name; powers.** — A corporation to be known and designated as the Richard T. Fountain School is hereby created, and as such corporation and under said name it may sue and be sued, plead and be impleaded, hold, use, and sell and convey real estate, receive gifts and donations and appropriations, and do all other things necessary and requisite for the purposes of its organization as hereinafter specified. (1923, c. 254, s. 1; C. S., s. 7362(a); 1969, c. 771.)

Editor's Note. — The 1969 amendment changed the name of the school from Eastern Carolina Industrial Training School for Boys to Richard T. Fountain School.

§ 134-69. **Establishment and operation of school; boys subject to committal; control; term of detention.** — The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent boys of the State; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal boys under the age of twenty years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders, or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under proper and humane rules and regulations as may be adopted by the trustees. (1923, c. 254, s. 3; C. S., s. 7362(c); 1937, c. 116; 1969, c. 1279.)

Editor's Note. — The 1969 amendment deleted "white" preceding "boys" where that word first appears in the section.

§ 134-72. **Bonds of superintendent and treasurer.**—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the State of North Carolina, in such sums as may be named by the Governor and approved by the State Treasurer. The bonds herein provided for shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1923, c. 254, s. 7; C. S., s. 7362(g); 1969, c. 844, s. 2.)

Editor's Note. — The 1969 amendment added the second sentence.

ARTICLE 6.

Cameron Morrison School.

§ 134-79. **Creation of corporation; name; powers.**—A corporation, to be known and designated "The Cameron Morrison School," hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations, hold real estate by purchase or gift, and do all other things necessary and requisite to be done for the care, discipline and training of boys which may be received by said corporation. (1921, c. 190, s. 1; C. S., s. 5912(a); 1937, c. 146; 1969, cc. 901, 1279.)

Editor's Note. — The first 1969 amendment, effective July 1, 1969, substituted "The Cameron Morrison School" for "The Morrison Training School." The second 1969 amendment deleted "negro" preceding "boys" near the end of the section.

§ 134-81. **Powers of board; board of parole.**—The board shall undertake as expeditiously as possible the business of selecting a location and preparing for the opening and maintenance of the Cameron Morrison School. The board shall have power to appoint and dismiss at will a superintendent and other employees, to make such rules for its own meetings and guidance as it deems necessary; have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein, and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall constitute a board of parole of the institution, and shall have the power to parole and discharge the inmates under such rules and regulations as the board may pre-

scribe, and to retake them upon failure to comply with any requirement of parole. (1921, c. 190, s. 3; C. S., s. 5912(c); 1943, c. 776, s. 11; 1969, c. 901.)

Editor's Note. — The 1969 amendment, Morrison School" for "Morrison Training effective July 1, 1969, substituted "Cameron School" at the end of the first sentence.

§ 134-82. Delinquents committed to institution; cost; age limit.—Delinquent boys, under the age of sixteen years, may be committed to the institution by any juvenile, State, or other court having jurisdiction over such boy, but no boy shall be sent to the institution until the committing agency has received notice from the superintendent that such person can be received. The cost of sending inmates shall be paid by the county or municipality sending the same, as the case may be. In special cases where the public good would seem to be subserved thereby the board shall have the right, upon the request of any court of proper jurisdiction, to receive an inmate above the age of sixteen, but this shall be a matter wholly within the discretion of the board. When any commitment to the institution is made, it shall not be for any specified time, but may continue or terminate at the discretion of the board, not to exceed the age of majority of the inmate. (1921, c. 190, s. 4; C. S., s. 5912(d); 1969, c. 1279.)

Editor's Note. — The 1969 amendment deleted "negro" preceding "boys" near the beginning of the first sentence.

§ 134-83. Selection of location of institution; title.—The location of the institution shall be recommended by the board of trustees and approved by the Governor. In the event the location selected is upon property now owned by the State or any other State institution, then the governing body in whom the title is vested is hereby directed and authorized to transfer title to the board of trustees of the Cameron Morrison School, and turn over to them all or such portions of the said property as the Governor may direct, without compensation, as the Governor may deem proper for the best interests of the State. (1921, c. 190, s. 5; C. S., s. 5912(e); 1969, c. 901.)

Editor's Note. — The 1969 amendment, Morrison School" for "Morrison Training effective July 1, 1969, substituted "Cameron School."

§ 134-84. Apportionment of admissions; private or municipal contributions.—In receiving inmates of the institution, the trustees shall distribute such admissions as near as may be in relation to the population of the several counties until all the maintenance appropriation from the State is exhausted. If after such maintenance fund is exhausted it be found possible to provide housing space and control for additional inmates, then the trustees may receive such additional number of inmates as can be cared for upon the payment by private persons or municipal or county authorities of the actual cost of the maintenance of such inmates. County and municipal authorities are hereby given authority to pay such sums in their discretion. (1921, c. 190, s. 6; C. S., s. 5912(f); 1969, c. 1279.)

Editor's Note. — The 1969 amendment deleted "negro" preceding "population" in the first sentence.

ARTICLE 6A.

State Training School for Girls.

§ 134-84.1. Creation and name.—An institution, to be known and designated as State Training School for Girls, is hereby created, and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1943, c. 381, s. 1; 1969, c. 1279.)

Editor's Note. — The 1969 amendment heading of this article and near the beginning of this section.

§ 134-84.2. **Under control of North Carolina Board of Juvenile Correction.**—The said institution shall be under the control of the North Carolina Board of Juvenile Correction, and wherever the words “board,” “directors” or “board of directors” are used in this article with reference to the governing board of said institution, the same shall mean the North Carolina Board of Juvenile Correction, and said Board shall exercise the same powers and perform the same duties with respect to the State Training School for Girls as it exercises and performs with respect to the other institutions under its control, except as may in this article be otherwise provided. (1943, c. 381, s. 2; 1963, c. 914, s. 4; 1969, c. 1279.)

Editor’s Note.—

The 1969 amendment deleted “Negro”

preceding “Girls” near the end of the section.

§ 134-84.4. **Operation of institution before permanent quarters established.**—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the Governor and Council of State, is authorized and empowered to enter into an agreement with any other State institution or agency for the temporary uses of any state-owned property which such other State institution or agency may be able and willing to divert for the time being from its original purpose; and any other State institution or agency, which may be in possession of real estate suitable for the purpose of the State Training School for Girls and which is not occupied or needed by said institution or agency, is hereby authorized to turn such real estate over to the directors of the State Training School for Girls upon such terms as may be mutually agreed upon. (1943, c. 381, s. 4; 1969, c. 1279.)

Editor’s Note. — The 1969 amendment deleted “Negro” preceding “Girls” in two places in this section.

§ 134-84.7. **Committal and delivery of girls to institution; no inmate detained after becoming of age.**—Any girl under the age of sixteen years, who may come or be brought before any juvenile court of the State or other court of competent jurisdiction, and may be found by such court to be in need of institutional training, may be committed by such court to the institution for an indefinite period: Provided, that such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of the institution: Provided, further, that before committing such person to the institution, the court shall ascertain whether the institution is in a position to care for such person; and that it shall be at all times within the discretion of the board of directors as to whether the board will receive any person into the institution. No commitment shall be for any definite term, but any person so committed may be conditionally released or discharged by the board of directors at any time after commitment, but in no case shall any inmate be detained in the institution for a period longer than such time at which she may attain the age of twenty-one years. It shall be the duty of the county authorities of the county from which any girl is sent to the institution or the city authorities, if any is ordered to be sent to the institution by any city court, to see that such girl is safely and duly delivered to the institution, and to pay all the expenses incident to her conveyance and delivery to the institution. (1943, c. 381, s. 7; 1969, c. 1279.)

Editor’s Note. — The 1969 amendment deleted “negro” preceding “girl” near the beginning of the first sentence.

§ 134-84.9. **Contract to care for certain girls within federal jurisdiction.**—The board of directors shall have power and they are hereby authorized, shall it be deemed necessary, to enter into a contract with the office of the United States Attorney General or such necessary federal agency, to keep, restrain, control,

care, and train any girl under the age of sixteen years, being a citizen of the State of North Carolina, who may come within the jurisdiction of the several federal courts and who may fall within the classification hereinbefore set forth. Any such contract made under the authority and provisions of this article shall be for a period of not more than two years, and shall provide payments by the office of the United States Attorney General or such necessary federal agency to the institution for the care of any persons coming within the provisions of this article, which shall not be less than the current estimated cost per capita at the time of the execution of the contract, and all such financial provisions of any contract shall first, before the execution of said contract, have the approval of the Budget Bureau of North Carolina. Any payments received under the contract authorized by this article shall be deposited in the State treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1943, c. 381, s. 9; 1969, c. 1279.)

Cross Reference.—For provision that a statutory reference to the "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

Editor's Note. — The 1969 amendment deleted "negro" preceding "girl" in the first sentence.

ARTICLE 7.

Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools.

§ 134-85. **Conditional release.**—The superintendent of the Samarkand Manor, of the Stonewall Jackson School, of the Eastern Carolina Industrial Training School for Boys, and of the Cameron Morrison School, shall have power to grant a conditional release to any inmate of the institution over which such superintendent presides, under rules adopted by the board of trustees or managers of such institution, and such conditional release may be terminated at any time by the written revocation of such superintendent, which written revocation shall be sufficient authority for any officer of the school or any peace officer to apprehend any inmate named in such written revocation, in any county of the State and to return such inmate to the institution from which he or she was conditionally released. Such conditional release shall in no way affect any suspended sentence, a condition of which is that the inmate be admitted to and remain at such institution. (1937, c. 145, s. 1; 1969, c. 837, s. 4; cc. 901, 1279.)

Editor's Note.—

The first 1969 amendment substituted "Samarkand Manor" for "State Home and Industrial School for Girls" near the beginning of the section.

The second 1969 amendment, effective July 1, 1969, substituted "Stonewall Jackson School" for "Stonewall Jackson Manual Training and Industrial School" and "Cameron Morrison School" for "Morrison Training School for Negro Boys."

The third 1969 amendment directed that the word "Negro" in this section be deleted. The word formerly appeared only in the title of the "Morrison Training School for Negro Boys."

The Eastern Carolina Industrial Training School for Boys is now known as the Richard T. Fountain School. See § 134-67.

ARTICLE 8.

Care of Persons under Federal Jurisdiction.

§ 134-87. **Certain correctional institutions to make contracts with federal agencies for care of persons under federal jurisdiction.**—The governing boards of the Stonewall Jackson School, Cameron Morrison School,

Eastern Carolina Training School, the Samarkand Manor, and the State Industrial Farm Colony for Women may contract with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary federal agency for the care, keeping, correction, training, education, and supervision of delinquent children or other persons under the jurisdiction, custody, or care of the federal courts or of the said office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary federal agency, as authorized by the terms of the Federal Juvenile Delinquency Act of one thousand nine hundred thirty-eight, and may receive, accept, hold, train, and supervise such persons as may be received from said courts or department under the rules and regulations of the several and respective institutions as prescribed or as may hereafter be established by the said governing boards, provided, however that such contracts or subsequently established rules of care, procedure, and training, of those committed to said institutions, first shall have been approved by the State Board of Public Welfare. (1939, c. 166, s. 1; 1969, c. 837, s. 4; cc. 901, 1279.)

Editor's Note.—

The first 1969 amendment substituted "Samarkand Manor" for "State Home and Industrial School for Girls" near the beginning of the section.

The second 1969 amendment, effective July 1, 1969, substituted "Stonewall Jackson School" for "Stonewall Jackson Manual Training and Industrial School" and "Cameron Morrison School" for "Morrison Training School for Negro Boys" near the beginning of the section.

The third 1969 amendment directed that the word "Negro" in this section be deleted. The word formerly appeared in this section only in the title of the "Morrison Training School for Negro Boys."

The Eastern Carolina Industrial Training School for Boys is now known as the Richard T. Fountain School. See § 134-67.

Under § 108-1, "State Board of Public Welfare" shall be construed to mean "State Board of Social Services."

ARTICLE 9.

State Board of Juvenile Correction.

§ 134-91. Powers and duties of the State Board of Juvenile Correction.—The following institutions, schools and agencies of this State, namely, the Stonewall Jackson School, the Samarkand Manor, Dobb's Farms, the Eastern Carolina Industrial Training School for Boys, the Cameron Morrison School, and the State Training School for Girls, together with all such other correctional State institutions, schools or agencies of a similar nature, established and maintained for the correction, discipline or training of delinquent minors, now existing or hereafter created, shall be under the management and administrative control of the State Board of Juvenile Correction.

Wherever in §§ 134-1 to 134-48, inclusive, or in §§ 134-67 to 134-89, inclusive, or in any other laws of this State, the words "board of directors," "board of trustees," "board of managers," "directors," "trustees," "managers," or "board" are used with reference to the governing body or bodies of the institutions, schools or agencies enumerated in § 134-90, the same shall mean the State Board of Juvenile Correction provided for in § 134-90, and it shall be construed that the State Board of Juvenile Correction shall succeed to, exercise and perform all the powers conferred and duties imposed heretofore upon the separate boards of directors, trustees or managers of the several institutions, schools or agencies herein mentioned, and said powers and duties shall be exercised and performed as to each of the institutions by the State Board of Juvenile Correction herein provided for. The said Board shall be responsible for the management of the said institutions, schools or agencies and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, schools or agencies subject to the provisions of the Executive Budget Act, and said Board shall make report to the Governor annually, and oftener if called for by him, of the condition of

each of the schools, institutions or agencies under its management and control, and shall make biennial reports to the Governor, to be transmitted by him to the General Assembly, of all moneys received and disbursed by each of said schools, institutions or agencies.

The State Board of Juvenile Correction shall have full management and control of the institutions, schools and agencies named in this article, and shall have power to administer these institutions, schools and agencies in the manner deemed best for the interest of delinquent boys and girls of all races. Individual students may be transferred from one institution, school or agency to another, but this authority to transfer individual students does not authorize the consolidation or abandonment of any institution, school or agency. The Board of Juvenile Correction, subject to the approval of the Governor and the Advisory Budget Commission, is authorized to transfer the entire population at Dobb's Farms to the Samarkand Manor and to utilize the present facilities at Dobb's Farms as a training school for girls.

The State Board of Juvenile Correction is hereby vested with administrative powers over the schools, institutions and agencies set forth in this article, together with all lands, buildings, improvements, and other properties appertaining thereto, and the Board is authorized and empowered to do all things necessary in connection therewith for the care, supervision and training of boys and girls of all races who may be received at any of such schools, institutions or agencies. (1947, c. 226; 1963, c. 914, s. 4; 1969, c. 837, s. 4; cc. 901, 1279.)

Editor's Note.—

The first 1969 amendment substituted "Samarkand Manor" for "State Home and Industrial School for Girls" near the beginning of the first paragraph and near the end of the third paragraph.

The second 1969 amendment, effective July 1, 1969, substituted "Stonewall Jackson School" for "Stonewall Jackson Manual Training and Industrial School" and "Cameron Morrison School" for "Morrison Training School" near the beginning of the section.

The third 1969 amendment substituted

"State Training School for Girls" for "State Training School for Negro Girls" in the first paragraph and deleted "negro" preceding "girls" at the end of the third paragraph. The amendment also deleted the former second and third sentences of the third paragraph, relating to separate schools for white, negro and Indian children.

The Eastern Carolina Industrial Training School for Boys is now known as the Richard T. Fountain School. See § 134-67.

Cited in *In re Burrus*, 4 N.C. App. 523, 167 S.E.2d 454 (1969).

§ 134-99. Bonds for superintendents and budget officers.—All superintendents and budget officers shall before entering upon their duties make a good and sufficient bond payable to the State of North Carolina in such form and amount as may be specified by the Governor and approved by the State Treasurer. The bonds herein provided for shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1947, c. 226; 1969, c. 844, s. 1.)

Editor's Note. — The 1969 amendment added the second sentence.

§ 134-111.1. Providing necessary medical and surgical treatment for students.—The State Board of Juvenile Correction is authorized and directed to provide, through licensed physicians and surgeons, such medical and surgical treatment as is necessary to preserve the life and health of the students. The medical staff of any school, institution, or agency, under the management and control of the State Board of Juvenile Correction, is hereby authorized to perform or cause to be performed, by competent and skillful physicians or surgeons, medical treatment or surgical operations upon any student when such operation is necessary for the physical health of the student. Provided, that no operation shall be performed except as authorized in G.S. 130-191. (1965, c. 1024.)

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

Sec.

135-18. [Repealed.]

ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

- (10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided, that the term "employee" shall not include any justice of the Supreme Court, any judge of the Court of Appeals, any judge of the superior court, or any part-time or temporary employee. In all cases of doubt, the board of trustees shall determine whether any person is an employee as defined in this chapter. "Employee" shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above-described national guard employees if a federal Retirement System is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal Retirement System. "Employee" shall also mean any full-time employee of the North Carolina Symphony Society, Inc.
- (11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid. "Employer" shall also mean the North Carolina Symphony Society, Inc.
- (25) "Teacher" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time

employee of department of public instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee. In all cases of doubt, the board of trustees, hereinafter defined, shall determine whether any person is a teacher as defined in this chapter.

(1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227.)

Editor's Note.—

The first 1965 amendment added the third proviso at the end of subdivision (10).

The second 1965 amendment, effective July 1, 1965, added "or any part-time or temporary employee" at the end of the first sentence of subdivision (10), in the same subdivision inserted the present second sentence, and added the proviso at the end of the first sentence of subdivision (25).

The first 1969 amendment inserted "judge of the Court of Appeals" in the proviso to the first sentence of subdivision (10).

The second 1969 amendment, effective July 1, 1969, inserted "any" preceding "judge of the Court of Appeals" in the proviso to the first sentence of subdivision (10).

The third 1969 amendment added the last sentences of subdivisions (10) and (11).

Session Laws 1969, c. 1223, s. 18½, provides: "Notwithstanding any other provisions of this act, all new or increased benefits provided herein shall be payable subject to the availability of funds as determined by the board of trustees of the Re-

tirement System, and no additional appropriations shall be made by the General Assembly of 1969 or any future session of the General Assembly to provide the above referred to new or increased benefits."

As the rest of the section was not changed by the amendments, only subdivisions (10), (11) and (25) are set out.

"Secretary of the Board of Trustees" to Mean "Director."—Section 1 of c. 780, Session Laws 1965, provides that reference in any statute to the secretary of the board of trustees of the Teachers' and State Employees' Retirement System shall be deemed to be a reference to the director of such Retirement System.

Retirement Law, etc.—

Allowances to which a member of the Teachers' and State Employees' Retirement System is entitled upon retirement constitute compensation for public services previously rendered and do not violate N.C. Const., Art. I, § 7. *Harrill v. Teachers' & State Employees' Retirement Sys.*, 271 N.C. 357, 156 S.E.2d 702 (1967).

The purpose, etc.—

In accord with original. See *Powell v. Board of Trustees of Teachers' & State Employees' Retirement Sys.*, 3 N.C. App. 39, 164 S.E.2d 80 (1968).

§ 135-2. Name and date of establishment.

Quoted in *Powell v. Board of Trustees of Teachers' & State Employees' Retirement Sys.*, 3 N.C. App. 39, 164 S.E.2d 80 (1968).

§ 135-3. Membership.

- (1) All persons who shall become teachers or state employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin ninety days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this chapter. Provided, that every person who is employed by the State as a State highway patrolman or other law enforcement officer as defined in G.S. 143-166 (m) shall automatically become a member of the Teachers' and State Employees' Retirement System unless such person shall, within fifteen days after his employment, become a member of the Law Enforcement Officers' Benefit and Retirement Fund, in which event such person shall not be entitled to membership in the Teachers' and State Employees' Retirement System.

ment System; provided, that any such State employee who joins said fund and is later transferred to a position other than one described in G.S. 143-166 (m) shall be enrolled in the Teachers' and State Employees' Retirement System and in addition thereto be entitled to transfer to this Retirement System his contributions in lump sum and credits for membership and prior service standing to his credit in the Law Enforcement Officers' Benefit and Retirement Fund. Upon request for transfer of such credits, the State's employer contributions shall also be paid to the Teachers' and State Employees' Retirement System by the executive secretary of the Law Enforcement Officers' Benefit and Retirement Fund. This right shall apply retroactively in the case of any member who heretofore has transferred to nonlaw enforcement duties. Under such rules and regulations as the board of trustees may establish and promulgate, Co-operative Agricultural Extension Service employees may, in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. On and after July 1, 1965, new extension service employees in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees who are required to accept a federal Civil Service appointment may elect in writing, on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the Local Retirement System.

- (3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967.
- (5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946. Any such member on or after June 30, 1965, anything in this chapter to the contrary, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank on or before January 1, 1942, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.
- (6) No person who becomes a teacher or employee, as the terms are defined in this chapter, shall thereby become a member of the Retirement System who is elected, appointed, employed or reemployed after he has attained the age of 62 years: Provided, however, that this will not ap-

ply to any member whose account is active upon his return to service. (7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963 and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of § 135-5 (b) as in effect at the date of such retirement.

- a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5, subsection (b), subdivisions (1), (2) and (3).
- b. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separates from service on or after July 1, 1951 and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
- c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951 and prior to the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, subsequent to July 1, 1951 and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
- d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall

contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 135, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in § 135-15; provided that, should such restoration occur on or after the attainment of the age of 55 years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

- e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance and earnings from employment by a unit of the Retirement System for any year will not exceed the member's annual rate of compensation when he retired. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 135-1(3).
- (8) The provisions of this subdivision (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of sixty years for any reason other than death or retirement for disability as provided in § 135-5, subsection (c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of sixty years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967 or whose account is active on July 1, 1967, or has not withdrawn his contributions, the afore-stated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5 (b1); provided that such benefits will be computed in accordance with (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with (b3) on or after July 1, 1969. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment

- of such employer; provided that he files notice thereof in writing with the board of trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age sixty while in such employment.
- b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service on or after July 1, 1963 and prior to the attainment of the age of sixty years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (c), after completing 20 or more years of creditable service and after attaining the age of fifty years, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of sixty years upon proper application therefor.
- c. The provisions of paragraphs d and e of the preceding subdivision (7) shall apply equally to this subdivision (8). (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 9½; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 2, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14.)

Editor's Note.—

The first 1965 amendment, effective July 1, 1965, added the last sentence in subdivisions (1) and (5), respectively. The second 1965 amendment, effective July 1, 1965, added the last sentence in paragraph a of subdivision (8).

The first 1967 amendment, effective July 1, 1967, added the provisos to subdivision (3), deleted the former second sentence of the opening paragraph of subdivision (8), and added the second proviso to the first sentence and the first proviso to the second sentence of paragraph a and deleted the former second proviso to the first sentence of paragraph b of subdivision (8).

The second 1967 amendment rewrote subdivision (6).

The 1969 amendment, effective July 1, 1969, rewrote subdivision (6), inserted "or service" and substituted "sixty-two years" for "sixty years" in the first sentence of paragraph d of subdivision (7), added new

paragraph e to subdivision (7) and rewrote the second sentence of paragraph a of subdivision (8) and paragraph c of subdivision (8).

Session Laws 1969, c. 1223, s. 18½, provides: "Notwithstanding any other provisions of this act, all new or increased benefits provided herein shall be payable subject to the availability of funds as determined by the board of trustees of the Retirement System, and no additional appropriations shall be made by the General Assembly of 1969 or any future session of the General Assembly to provide the above referred to new or increased benefits."

As the rest of the section was not affected by the amendments, it is not set out.

Opinions of Attorney General. — Mr. J.E. Miller, Director, Teachers' & State Employees' Retirement System, 8/1/69.

Quoted in *Harrill v. Teachers' & State Employees' Retirement Sys.*, 271 N.C. 357, 156 S.E.2d 702 (1967).

§ 135-4. Creditable service.—(a) Under such rules and regulations as the board of trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946 shall file a detailed statement of all North Carolina service as a teacher or State employee

rendered by him prior to the date of establishment for which he claims credit; provided, that, notwithstanding the foregoing, any member retiring on or after July 1, 1965 with credit for not less than ten years of membership service shall file such detailed statement of service as a teacher or State employee rendered by him prior to July 1, 1941, for which he claims credit; provided, that any person who is a member of the Teachers' and State Employees' Retirement System on July 1, 1963 and who was previously employed by a participating unit of the North Carolina Local Governmental Employees' Retirement System and who terminated his service with such unit prior to its participation in the North Carolina Local Governmental Employees' Retirement System shall file a detailed statement of all service to such political entity. Certification of such service shall be furnished to the Teachers' and State Employees' Retirement System.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1967, one month of credit for each 20 days or portion thereof, but sick leave shall not be counted in computing creditable service for the purposes of G.S. 135-3 (8) a.

(f) Armed Service Credit.—

- (1) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from such armed services under other than dishonorable conditions shall be entitled to full credit for all prior service.
- (2) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than ten years of service to the State after they are separated or released from such armed services under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in such armed services up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.
- (3) Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed services.
- (4) Under such rules as the board of trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the board of trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and

regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of § 135-8, the board of trustees shall refund to or reimburse such member for such payments.

- (5) The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.

(h) During periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 135-8 (b) (5). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4; 1953, c. 1050, s. 3; 1959, c. 513, s. 1½; 1961, c. 516, s. 3; c. 779, s. 2; 1963, c. 1262; 1965, c. 780, s. 1; c. 924; 1967, c. 720, s. 3; 1969, c. 1223, ss. 3, 4.)

Editor's Note.—

The first 1965 amendment, effective July 1, 1965, inserted "or who devote not less than ten years of service to the State" following "1952" in subdivision (2) of subsection (f).

The second 1965 amendment, effective July 1, 1965, inserted the first proviso in subsection (a).

The 1967 amendment, effective July 1, 1967, added to subsection (e) the provision as to credit for sick leave.

The 1969 amendment, effective July 1, 1969, rewrote subsection (f) and added subsection (h).

Session Laws 1969, c. 1223, s. 18½, pro-

vides: "Notwithstanding any other provisions of this act, all new or increased benefits provided herein shall be payable subject to the availability of funds as determined by the board of trustees of the Retirement System, and no additional appropriations shall be made by the General Assembly of 1969 or any future session of the General Assembly to provide the above referred to new or increased benefits."

As the rest of the section was not affected by the amendments, it is not set out.

Opinions of Attorney General. — Mr. J.E. Miller, Director, Teachers' & State Employees' Retirement System, 8/1/69.

§ 135-5. Benefits.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967.—Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 65th birthday, such allowance shall be equal to the sum of (i) one per centum (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4800.00) plus one and one half per centum (1½%) of the portion of such compensation in excess of forty-eight hundred dollars (\$4800.00), multiplied by the number of years of his creditable service rendered prior to January 1, 1966 and (ii) one per centum (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5600.00) plus one and one half per centum (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5600.00), multiplied by the number of years of his creditable service rendered after January 1, 1966.
- (2) If the member's service retirement date occurs before his 65th birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five-twelfths of one percent (5/12 of 1%) thereof

for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday

- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963 shall receive not less than the benefit provided by G.S. 135-5 (b).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969.—Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 65th birthday, such allowance shall be equal to one and one quarter per centum ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5600.00) plus one and one half per centum ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5600.00), multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his 65th birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963 shall receive not less than the benefit provided by G.S. 135-5 (b).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969.—Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or on or after his 62nd birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one quarter per centum ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600.00) plus one and one half per centum ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600.00), multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his 65th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- (3) If the member's service retirement date occurs before his 62nd birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 62nd birthday.
- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5 (b).

(c) Disability Retirement Benefits.—Upon the application of a member or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, on the first day of any calendar month,

not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of sixty years, minus the actuarial equivalent to the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963 shall receive not less than the benefit provided by G.S. 135-5 (d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of sixty-five years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5 (d).

(f) Return of Accumulated Contributions.—Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this chapter, he shall upon submission of an application be paid, not earlier than 60 days from receipt of an acceptable application, the sum of his contributions and one half of the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Provided that, if the member at the time of separation from service shall have attained the age of sixty years or is otherwise entitled to a retirement allowance under this chapter, he shall be paid the amount of his accumulated contributions plus the full amount of his accumulated regular interest thereon. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the board of trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount

of his accumulated contributions at the time of his death. Notwithstanding any other provision of chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this chapter, even if the member fails to demand the return of his accumulated contributions within ninety days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; provided, further, that such agency or subdivision shall have notified the executive director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions.

(g) Election of Optional Allowance.—With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963.—If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963.—If he dies within ten (10) years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits.—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a Social Security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option 1 above.

Option 5. The member may elect to receive a reduced retirement allowance dur-

ing his life, with some other benefit payable after his death; provided that the benefit shall be approved by the board of trustees.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits Prior to July 1, 1967.—From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars (\$10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(1) Death Benefit.—Upon receipt of proof, satisfactory to the board of trustees, of the death, in service, of a member who had completed at least one full calendar year of membership in the System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the compensation earned by the member during the calendar year preceding the year in which his death occurs but not to exceed the sum of fifteen thousand dollars (\$15,000.00). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions on his death pursuant to the provisions of subsection (f) of this § 135-5. For purposes of this subsection (1), a member shall be deemed to be in service at the date of his death if his last day of actual service occurred not more than 90 days before the date of his death; provided that he shall not have retired or that payment of a refund of his contributions shall not have been issued by the Retirement System.

The death benefit provided in this subsection (1) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65.

Notwithstanding the above provisions, the board of trustees may and is specifically authorized to purchase a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, which policy contract or contracts shall provide death benefits upon the life of each member according to the terms and conditions otherwise appearing in this subsection. To that end the board of trustees is authorized and empowered to investigate the feasibility of utilizing group life insurance for the purpose of providing a death benefit for members comparable to the death benefits provided for herein.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of twelve consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the twelve months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated (except by retirement), the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4 (h).
- (3) A member shall be deemed to have retired on the day he becomes eligible to receive monthly retirement benefits.
- (4) A member in service who has filed an early election of option, without designating a date of retirement, is deemed to have retired on the first day of the month following the date of his death.
- (5) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4 (h).

(m) Early Election of Option.—Any member in service, after attainment of age 55 or completion of 30 years of creditable service, may elect one of the following options which would become effective and remain in effect until a final election has been made:

- (1) Designation of a single beneficiary who would receive the monthly benefit provided by Option 2 of subsection (g) above. Such benefit would be computed by assuming that the member had retired on the first day of the month following the date of his death.
- (2) Designation of a single beneficiary who would have the right upon the member's death, to elect to receive either the benefit under (1) of this subsection or a lump sum return of the member's accumulated contributions.

Such elections would become effective under the conditions stated if a form provided for this purpose by the board of trustees is executed and filed with the Retirement System 30 days or more before the member's death.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(o) Post Retirement Increases in Allowances.—As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum, each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum effective July 1, 1970.

As of December 31st of each year after 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined.

- (1) If such ratio indicates an increase that equals or exceeds three per centum, each beneficiary receiving a retirement allowance as of the end of the preceding year shall be entitled to have his allowance increased three per centum effective on July 1st of the year following the date of determination, provided that any such increase in allowances shall become effective only if the additional liabilities on account of

such increase do not require an increase in the total employer rate of contributions.

- (2) If such ratio indicates an increase of less than three per centum for any year, the index at the end of such year will be compared to the index at the end of 1968, or if later, at the end of the last year when an increase of three per centum or more was indicated.

If such comparison indicates an increase of three per centum or more, each beneficiary receiving an allowance at the beginning of the period encompassed by the comparison shall be entitled to have his allowance increased three per centum effective on July 1st of the year following such period, subject to the proviso stated in (1) above.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items—United States City average), as published by the United States Department of Labor, Bureau of Labor Statistics. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote subdivision (1) of subsection (b1), the fourth sentence of subsection (f), and the first paragraph of subsection (g).

The first 1967 amendment, effective July 1, 1967, inserted, in the opening paragraph of subsection (b1), "but prior to July 1, 1967," inserted subsection (b2), added the second paragraph of subsection (c), substituted "of one of the options set forth below" for "set forth in Options one, two, three, or four below" at the end of the first sentence and added a former proviso in the first sentence of subsection (g), added Option 5 to subsection (g), inserted present subsections (k) and (l) and redesignated former subsections (k) and (l) as (m) and (n), respectively.

The second 1967 amendment, effective July 1, 1967, added subdivision (3) at the end of subsection (b2).

The 1969 amendment, effective July 1, 1969, rewrote the opening paragraph of subsection (b2), added subsection (b3), rewrote the first paragraph of subsection (c) and the opening paragraph of subsection (d1), added subsection (d2), rewrote the first sentence of subsection (f), eliminated two provisos at the end of the first sentence of the first paragraph of subsection (g) and deleted the former second and last sentences of that paragraph, rewrote the proviso at the end of the first paragraph of

subsection (l), added the last paragraph of subsection (l), deleted former subsection (m), which provided that the provisions of this section as to the time of giving notice of retirement should be construed as mandatory, and substituted present subsection (m) therefor, and added subsection (o).

Session Laws 1969, c. 1223, s. 18½, provides: "Notwithstanding any other provisions of this act, all new or increased benefits provided herein shall be payable subject to the availability of funds as determined by the board of trustees of the Retirement System, and no additional appropriations shall be made by the General Assembly of 1969 or any future session of the General Assembly to provide the above referred to new or increased benefits."

Only the subsections added or changed by the amendments are set out.

"Secretary of the Board of Trustees" to mean "Director."—Section 1 of c. 780, Session Laws 1965, provides that reference in any statute to the secretary of the board of trustees of the Teachers' and State Employees' Retirement System shall be deemed to be a reference to the director of such Retirement System. Accordingly, "director" has been substituted for "secretary" in the last proviso in subsection (f).

Applied in Powell v. Board of Trustees of Teachers' & State Employees' Retirement Sys., 3 N.C. App. 39, 164 S.E.2d 80 (1968).

§ 135-6. Administration.

(b) Membership of Board; Terms.—The board shall consist of ten members, as follows:

- (1) The State Treasurer, *ex officio*;
- (2) The Superintendent of Public Instruction, *ex officio*;
- (3) Eight members to be appointed by the Governor and confirmed by the Senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the State; one of the appointive members shall be an employee of the State Highway Commission, who shall be appointed by the Governor for a term of four years commencing April 1st, 1947 and quadrennially thereafter; one of the appointive members shall be a representative of higher education appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one of the appointive members shall be a retired teacher or State employee who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one to be a general State employee, and three who are not members of the teaching profession or State employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years.

(g) Officers and Other Employees; Salaries and Expenses.—The State Treasurer shall be *ex officio* chairman of the board of trustees. The board of trustees shall, by a majority vote of all the members, appoint a director, who may be, but need not be, one of its members. The salary of the director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons, other than the director, engaged by the board of trustees, and all other expenses of the board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the board of trustees shall approve, subject to the approval of the Director of the Budget.

(k) Medical Board.—The board of trustees shall designate a medical board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(o) On the basis of such tables and interest assumption rate as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this chapter. (1941, c. 25, s. 6; 1943, c. 719; 1947, c. 259; 1957, c. 541, s. 15; 1965, c. 780, s. 1; 1969, c. 805; c. 1223, s. 17.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "director" for "secretary" in the second sentence of subsection (g) and "not less than three nor more than five" for "three" in the first sentence of subsection (k).

The first 1969 amendment, effective July 1, 1969, changed subsection (b) by in-

creasing the membership of the board from eight to ten and the number of appointive members from six to eight and inserting in subdivision (3) the provisions for an appointive member to be a representative of higher education and an appointive member to be a retired teacher or State employee.

The second 1969 amendment, effective

July 1, 1969, inserted "and interest assumption rate" near the beginning of subsection (o).

Session Laws 1969, c. 1223, s. 18½, provides: "Notwithstanding any other provisions of this act, all new or increased benefits provided herein shall be payable subject to the availability of funds as determined by the board of trustees of the Retirement System, and no additional appropriations shall be made by the General Assembly of 1969 or any future session of the General Assembly to provide the above referred to new or increased benefits."

As the rest of the section was not affected by the amendments, it is not set out.

"Secretary of the Board of Trustees" to Mean "Director."—Section 1 of c. 780, Session Laws 1965, provides that reference in any statute to the secretary of the board of trustees of the Teachers' and State Employees' Retirement System shall be deemed to be a reference to the director of such Retirement System. Accordingly, "director" has been substituted for "secretary" in the third and fifth sentences of subsection (g).

§ 135-7. Management of funds.—(a) Management and Investment of Funds.—The board of trustees shall be the trustee of the several funds created by this chapter as provided in G.S. 135-8, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Cooperatives, Federal Land Bank, International Bank for Reconstruction and Development, and Inter-American Development Bank;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services; and
- (7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States government, or by some other agency of the United States government.
- (8) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

In order to carry out the duties and exercise the powers imposed and granted by this section, the board of trustees is specifically authorized to retain the services of a reputable investment counseling firm.

(c) Custodian of Funds; Disbursements; Bond of Director.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The director of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(1965, c. 780, s. 1; 1967, c. 720, s. 11; c. 1205.)

Editor's Note.—

The first 1967 amendment, effective July 1, 1967, added the International Bank for Reconstruction and Development and the Inter-American Development Bank to the list of banks in subdivision (2) of subsection (a).

The second 1967 amendment, effective July 1, 1967, added the last paragraph of subsection (a).

"Secretary of the Board of Trustees" to Mean "Director."—Section 1 of c. 780, Ses-

sion Laws 1965, provides that reference in any statute to the secretary of the board of trustees of the Teachers' and State Employees' Retirement System shall be deemed to be a reference to the director of such Retirement System. Accordingly "director" has been substituted for "secretary" in subsection (c).

Only Part of Section Set Out.—Only the subsections affected by the 1965 and 1967 Session Laws are set out.

§ 135-7.2. Authority to invest in certain common and preferred stocks.

(8) That the total value of common and preferred stocks shall not exceed fifteen per centum of the total value of all invested funds of the Retirement System; provided, further:

- a. Not more than one and one-half per centum of the total value of such funds shall be invested in the stock of a single corporation, and provided further;
- b. The total number of shares in a single corporation shall not exceed eight per centum of the issued and outstanding stock of such corporation, and provided further;
- c. As used in this subdivision (8), value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments.

(1965, c. 415, s. 1.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "fifteen per centum" for "ten per centum" near the beginning of subdivision (8), deleted former paragraph c of that subdivision providing that not more than 1½% of the total value of such

funds should be invested in stocks during any year, and designated former paragraph d as paragraph c.

As only subdivision (8) was changed by the amendment, the rest of the section is not set out.

§ 135-8. Method of financing.

(b) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

- (1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is

effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955 and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2, chapter 135 of Volume 3B of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, with respect to the period of service commencing on July 1, 1963 and ending December 31, 1965 the rates of such deduction shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars (\$4800.00) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars (\$4800.00); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deductions shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5600.00) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5600.00); and with respect to the period of service commencing July 1, 1967, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5600.00) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5600.00). Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this chapter. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.
- (3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State

appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the salaries that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the county boards of education and the board of trustees of city administrative units to make such payment, the tax levying authorities in each such city or county administrative unit are hereby authorized, empowered and directed to provide the necessary funds therefor: Provided, that it shall be within the discretion of the county board of education in a county administrative unit and the board of trustees in a city administrative unit, with the approval of the tax levying authorities of such unit, to provide for the payment from local tax funds of any amount specified in subsection (b) (3) of this section in excess of the amount to be paid to the Retirement System on the basis of the State salary schedule and term. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.

- (4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959.
- (5) Subject to the approval of the board of trustees, any member who is granted by his employer a leave of absence for the sole purpose of acquiring knowledge, talents, or abilities which are, in the opinion of the employer, expected to increase the efficiency of the services of the member to his or her employer, may make monthly contributions to the Retirement System on the basis of the salary or wage such member was receiving at the time such leave of absence was granted.
- (6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(d) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) On account of each member there shall be paid in the pension accumulation fund by employers an amount equal to a certain percentage of

the actual compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." In addition, such contributions by employers will be required for each member on leave of absence who makes monthly contributions in accordance with (b) (5) above, and will be based on the salary or wage the member was receiving at the time the leave of absence was granted. The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one-hundredths per centum (2.57%) for teachers, and one and fifty-seven one-hundredths per centum (1.57%) for State employees, and the accrued liability contribution shall be two and ninety-four one-hundredths per centum (2.94%) for teachers and one and fifty-nine one-hundredths per centum (1.59%) of the salary of other State employees.

- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
- (3) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum (4%) of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the board of trustees that the accrued liability contribution rate may be reduced without impairing the Retirement System, the board of trustees may cause the accrued liability contribution rate to be reduced.
- (4) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total actual compensation of all members during the preceding year: Provided, however, that, subject to the provisions of subdivision (3) of this subsection the amount of each annual accrued liability contribution shall be at least three per centum (3%) greater than the preceding annual accrued liability payment, and that the aggregate

payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

- (5) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.
 - (6) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.
 - (7) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.
- (f) Collection of Contributions.
- (1) The collection of members' contributions shall be as follows:
 - a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.
 - (2) The collection of employers' contributions shall be made as follows:
 - a. Upon the basis of each actuarial valuation provided herein there shall be prepared biennially and certified to the budget division of the Department of Administration a statement of the total amount necessary for the ensuing biennium to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with chapter 100, Public Laws of 1929, and amendments thereto (§ 143-1 et seq.), known as the Executive Budget Act.
 - b. Until the first valuation has been made and the rates computed as provided in subsection (d) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths per centum (5.51%) of the payroll of all teachers and three and sixteen one-hundredths per centum (3.16%) for other State employees.
 - c. The auditor shall issue his warrant to the State Treasurer directing the State Treasurer to pay this sum to the board of trustees, from the appropriations for the Teachers' and State Employees' Retirement System.
 - d. Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the board of trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.

- (3) If within 90 days after request therefor by the board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the board to the State Treasurer that such employer is no longer in default.

(h): Repealed by Session Laws 1965, c. 780, s. 1, effective July 1, 1965. (1941, c. 25, s. 8; c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8; 1955, c. 1155, ss. 3-5; 1959, c. 513, s. 4; 1963, c. 687, ss. 4, 5; 1965, c. 780, s. 1; 1967, c. 720, ss. 12, 13; 1969, c. 1223, s. 13.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, inserted "and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955" in the second sentence of subdivision (1) of subsection (b), rewrote the last paragraph in the same subdivision, deleted "annually" formerly appearing between "paid" and "in the pension accumulation fund" in the first sentence of subdivision (1) of subsection (d), and in the same sentence deleted "for the preceding fiscal year" formerly appearing between "employers" and "an amount," rewrote paragraph a of subdivision (2) of subsection (f), and deleted subsection (h), relating to further contributions by employees.

The 1967 amendment, effective July 1, 1967, inserted "and ending June 30, 1967" in the first sentence of the second paragraph of subdivision (1) of subsection (b), added, at the end of that paragraph,

the provision as to the rate of deductions with respect to the period commencing July 1, 1967, and added subdivision (3) of subsection (f).

The 1969 amendment, effective July 1, 1969, added the second sentence in subdivision (1) of subsection (d).

Session Laws 1969, c. 1223, s. 18½, provides: "Notwithstanding any other provisions of this act, all new or increased benefits provided herein shall be payable subject to the availability of funds as determined by the board of trustees of the Retirement System, and no additional appropriations shall be made by the General Assembly of 1969 or any future session of the General Assembly to provide the above referred to new or increased benefits."

As the rest of the section was not affected by the amendments, it is not set out.

Quoted in *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

§ 135-14. Pensions of certain teachers and State employees.

Editor's Note.—

Session Laws 1965, c. 1140, effective July 1, 1965, appropriated from the general fund a sum to increase to eighty-five dollars per month retirement allowances paid to retired members having twenty years' service but who do not qualify for social security benefits under the State's agreement with the federal government.

Session Laws 1969, c. 1156, effective July 1, 1969, appropriated from the general fund a sum to increase by fifteen percent per month pensions to be paid public school teachers and State employees with twenty or more years of service, who separated from service prior to July 1, 1941, and who had attained the age of sixty-five on or before August 1, 1959.

§ 135-18: Repealed by Session Laws 1969, c. 1223, s. 14, effective July 1, 1969.

§ 135-18.1. **Transfer of credits from the North Carolina Local Governmental Employees' Retirement System.**—(a) Any person who is a member of the Teachers' and State Employees' Retirement System of North Carolina on July 1, 1951, and who was previously a member of the North Carolina Governmental Employees' Retirement System, hereafter in this section referred to as the local system, shall be entitled to transfer to this Retirement System his credits for membership and prior service in the local system as of the date of termination of membership in the local system, notwithstanding that his membership in the local system may have been terminated prior to July 1, 1951: Provided, such member shall deposit in this Retirement System prior to January 1, 1952, the full amount of any accumulated contributions standing to his credit in, or previously withdrawn from, the local system and shall apply to the board of trustees of this Retirement System for a transfer of credit from the local system. Any person who becomes a member of this Retirement System after July 1, 1951, shall be entitled to transfer to this Retirement System his credits for membership and prior service in the local system: Provided, the actual transfer of employment is made within five years from date of separation from employment covered by the local system and such person shall request the local system to transfer his accumulated contributions, interest, and service credits to this Retirement System; provided further, with respect to any person who becomes a member of this Retirement System after July 1, 1969, the local system agrees to transfer to this Retirement System the amount of reserve held in the local system as a result of previous contributions of the employer on behalf of the transferring employee.

(1965, c. 780, s. 1; 1969, c. 1223, s. 15.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote the last sentence in subsection (a).

The 1969 amendment, effective July 1, 1969, added the second proviso at the end of subsection (a).

Session Laws 1969, c. 1223, s. 18½, provides: "Notwithstanding any other provisions of this act, all new or increased benefits provided herein shall be payable sub-

ject to the availability of funds as determined by the board of trustees of the Retirement System, and no additional appropriations shall be made by the General Assembly of 1969 or any future session of the General Assembly to provide the above referred to new or increased benefits."

As the rest of the section was not changed by the amendments, only subsection (a) is set out.

ARTICLE 2.

Coverage of Governmental Employees under Title II of the Social Security Act.

§ 135-20. Definitions.

(7) The term "State agency" means the director of the Teachers' and State Employees' Retirement System.

(1965, c. 780, s. 1.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "director" for "secretary of the board of trustees" in subdivision (7).

As only subdivision (7) was affected by

the amendment, the rest of the section is not set out.

Opinions of Attorney General. — Mr. J.E. Miller, Director, Local Governmental Employees' Retirement System, 8/11/69.

§ 135-27. **Transfers from State to certain association service.**—(a) Any member whose service as a teacher or State employee is terminated because of acceptance of a position with the North Carolina Education Association, the North Carolina State Employees' Association, North Carolina State Firemen's

Association, the North Carolina State Highway Employees Association, North Carolina Teachers' Association and the State Employees' Credit Union, alumni associations of state-supported universities and colleges, local professional associations of teachers and State employees as defined by the board of trustees, and North Carolina State School Boards Association may elect to leave his total accumulated contributions in this Retirement System during the period he is in such association employment, by filing with the board of trustees at the time of such termination the form provided by it for that purpose.

(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect, by an appropriate resolution of said board, to cause the employees of such association or organization to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the board of trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contribution necessary for such purpose, computed at such rates and in such amount as the board of trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. The provisions of this subsection shall be fully applicable to the North Carolina Symphony Society, Inc. (1953, c. 1050, s. 1; 1959, c. 513, s. 5; 1961, c. 516, s. 5; 1967, c. 720, s. 14; 1969, cc. 540, 847, 1227.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, inserted "alumni associations of state-supported universities and colleges, and North Carolina State School Boards Association" in subsection (a).

The first 1969 amendment inserted "local professional associations of teachers and State employees as defined by the board of trustees" in subsection (a).

The second 1969 amendment inserted "North Carolina State Firemen's Association" in subsection (a).

The third 1969 amendment added the last sentence of subsection (d).

As the rest of the section was not changed by the amendments, only subsections (a) and (d) are set out.

§ 135-28. Transfer of members to employment covered by the North Carolina Local Governmental Employees' Retirement System.—(a) Any member whose services as a teacher or State employee are terminated for any reason other than retirement or death, who, within five years from date of such termination becomes employed by an employer participating in the North Carolina Local Governmental Employees' Retirement System or an employer which brings its employees into participation in said System within five years after such teacher or State employee has ceased to be a teacher or State employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer, or his account remains active in the local system. This subsection shall be effective retroactively as well as prospectively.

(b) Any such member shall retain all the rights, credits and benefits obtaining to him under this Retirement System at the time of such transfer while he is a member of the local system and does not withdraw his contributions hereunder and, in addition, he shall be granted membership service credits under this Retirement System on account of the period of his membership in the local system for the purpose of increasing his years of creditable service hereunder in order to meet any

service requirements of any retirement benefit under this Retirement System and, if he is a member in service under the local system, he shall be deemed to be a member in service under this Retirement System if so required by such benefit: Provided, however, that in lieu of transfer of funds from one retirement system to another, such member who is eligible for retirement benefits shall file application therefor with each retirement system to the end that each retirement system shall pay appropriate benefits without transfer of funds between the systems. (1953, c. 1050, s. 2; 1961, c. 516, s. 6; 1965, c. 780, s. 1.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote subsection (a) and substituted "Any such member" for "Any member who files such an election" at the beginning of subsection (b).

"Each" has been substituted for "such" preceding "retirement system" near the end of the proviso in subsection (b) to correct a typographical error in the replacement volume.

Chapter 136.

Roads and Highways.

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ARTICLE I.

Organization of State Highway Commission.

§ 136-1. **State Highway Commission created; chairman and members; compensation; entire State represented; formulation of general policies; rules and regulations.**—There is hereby created a State Highway Commission, to be composed of a chairman and twenty-three members to be appointed by the Governor, and they shall serve at the pleasure of the Governor. All vacancies shall be filled by appointment by the Governor.

The chairman shall devote his entire time and attention to the work of the Commission, and shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission. The chairman shall be the chief executive officer of the Commission and the Director of Highways, and shall be vested with the authority of the Commission as may be delegated to him by the Commission when the Commission is not in session, and shall execute all orders, rules and regulations established by the Commission. The chairman, when the Commission is not in session, shall be the officer upon whom service of legal process for the State

Highway Commission shall be made; additional process agents may be designated by the Commission.

The members of the Commission shall each receive, while engaged in the discharge of the duties of their office, such per diem, subsistence, and necessary travel expenses as are provided by law for members of State boards and commissions generally.

It is the intent and purpose of this section that the chairman and members of the Commission shall represent the entire State and not represent any particular area. In addition, the State Highway Commission shall, from time to time, provide that one or more of its members or representatives shall publicly hear any person or persons desiring to bring to their attention such highway matters as such person or persons may deem wise, in each of said geographic areas of the State.

The Commission shall formulate general policies and make rules and regulations as it may deem necessary, governing the construction, improvement and maintenance of the roads and highways of the State, with due regard to farm-to-market roads and school bus routes. It is the intent and purpose of this section that there shall be maintained and developed a state-wide system of roads and highways commensurate with the needs of the State as a whole and not to sacrifice the general state-wide interest to the purely local desires of any particular area. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1941, c. 57, s. 1; 1945, c. 895; 1953, c. 115; 1957, c. 5, s. 1; 1961, c. 232, s. 1; 1965, c. 55, s. 1; c. 1054; 1969, c. 237.)

Editor's Note.—

The first 1965 amendment, effective July 1, 1965, rewrote all of the first paragraph except the former last two sentences therein, rewrote the second paragraph with the exception of the first sentence therein, made minor changes in the third paragraph and rewrote the first sentence in the fourth paragraph.

The second 1965 amendment inserted language formerly appearing in the first paragraph.

The 1969 amendment, effective July 1, 1969, again rewrote the first paragraph and deleted the proviso at the end of the first sentence of the fourth paragraph.

The State Highway Commission, etc.—

The State Highway Commission is a State agency or instrumentality, and as such exercises various administrative and

governmental functions. *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

The State Highway Commission was created by the General Assembly as an unincorporated State agency or instrumentality, and is charged with the duty of exercising certain administrative and governmental functions for the purpose of constructing and maintaining State and county public roads. *State Highway Comm'n v. Batts*, 265 N.C. 346, 144 S.E.2d 126 (1965).

The State Highway Commission is an agency of the State of North Carolina duly created and established by act of the General Assembly. *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

§ 136-2. Headquarters; meetings; minutes.—The headquarters and main office of said Commission shall be located in Raleigh, and the Commission shall meet once in each sixty days at such regular meeting time as the Commission by rule may provide and at any place within the State as the Commission may provide, and may hold special meetings at any time or place within the State at the call of the chairman, or the Governor, or any three members of the Commission; provided, however, the Commission shall hold each year at least one meeting in a town or city east of Raleigh, one meeting in a town or city west of Raleigh but east of Hickory, and one meeting in Hickory or in a town or city west of Hickory, at which meetings the Commission shall, in addition to its other business, be available to the members of the public who wish to be heard regarding highway matters.

The Governor and the State Treasurer shall be privileged to attend any and all meetings of said Commission in an advisory capacity, but they shall not have the authority to vote upon any question before said Commission. The Commission shall keep minutes of all its meetings, which shall at all times be open to public

inspection. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1959, c. 1191; 1965, c. 55, s. 2; 1967, c. 217.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, deleted "and as is provided in G. S. 136-1" following "as the Commission may

provide" in the first paragraph and added the proviso at the end of that paragraph.

The 1967 amendment inserted "Hickory or in" in the proviso to the first paragraph.

§ 136-4. State Highway Administrator.—There shall be a State Highway Administrator, who shall be a career official and the administrative officer of the State Highway Commission. The State Highway Administrator shall be appointed by the chairman, subject to the approval of the State Highway Commission, and may be removed at any time by the chairman with the approval of the State Highway Commission. The State Highway Administrator shall be paid a salary fixed by the Governor subject to the approval of the Advisory Budget Commission.

Except as hereinafter provided, the State Highway Administrator shall, in accordance with the State Personnel Act, and with the approval of the chairman of the State Highway Commission, appoint all subordinate officers and employees of the State Highway Commission, and they shall perform duties and have responsibilities as the State Highway Administrator may assign them.

The State Highway Administrator shall have such powers and perform such duties as the State Highway Commission shall prescribe. (1921, c. 2, ss. 5, 6; C. S., s. 3846(g); 1933, c. 172, s. 17; 1957, c. 65, s. 2; 1961, c. 232, s. 2; 1965, c. 55, s. 3.)

Editor's Note.—

The 1965 amendment, effective July 1,

1965, rewrote this section, which formerly related to the Director of Highways.

§ 136-4.1. Controller.—There shall be a Controller, who shall be a career official and the financial officer of the State Highway Commission. The Controller shall be appointed by the chairman of the State Highway Commission, subject to the approval of the State Highway Commission, and may be removed at any time by the chairman of the State Highway Commission with the approval of the State Highway Commission. The Controller shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

The Controller shall, under the direction of the chairman of the State Highway Commission, and in accordance with and subject to the requirements of the Executive Budget Act, develop formalized procedures, budgets, internal audits, systems, and reports covering all financial phases of highway activity.

The Controller shall give a bond, to be fixed and approved by the Governor, conditioned upon the faithful discharge of the duties of his office, and upon proper accounting of all public funds coming into his possession or under his control. The premium on the bond shall be paid from the highway fund. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G. S. 128-8. (1957, c. 65, s. 3; 1961, c. 232, s. 3; 1965, c. 55, s. 4; 1969, c. 844, s. 11.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote the first and second paragraphs. Formerly the Controller was ap-

pointed by the State Highway Commission, subject to the approval of the Governor.

The 1969 amendment added the last sentence of the third paragraph.

§ 136-4.2. Chief Engineer.—There shall be a Chief Engineer who shall be a career official and perform such duties and have such responsibilities as the State Highway Administrator shall assign him. The Chief Engineer shall be appointed by the State Highway Administrator, subject to the approval of the State Highway Commission, and may be removed at any time by the State Highway Administrator with the approval of the State Highway Commission. The Chief Engineer shall be paid a salary fixed by the State Highway Administrator, subject

to the approval of the Governor and the Advisory Budget Commission. (1957, c. 65, s. 3; 1965, c. 55, s. 5.)

Editor's Note.—The 1965 amendment, effective July 1, 1965, substituted "State Highway Administrator" for "Director" throughout the section.

§ 136-4.3. Secondary Roads Officer.—There shall be a Secondary Roads Officer, who shall be appointed by the chairman of the State Highway Commission with the approval of the State Highway Commission, and he may be removed at any time by the chairman of the State Highway Commission with the approval of the State Highway Commission. The Secondary Roads Officer shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

The Secondary Roads Officer shall, in consultation with the commissioner assigned to the geographic area, prepare annual plans for each county providing for maintenance and construction of the secondary roads. In developing the plan, he shall follow the procedures set forth in G. S. 136-61. (1961, c. 232, s. 4; 1965, c. 55, s. 6.)

Editor's Note. — The 1965 amendment, effective July 1, 1965, rewrote the first sentence and substituted "Secondary Roads Officer" for "Director of Secondary Roads" in the second sentence and last paragraph.

§ 136-13. Mafeasance of commissioners, officers, contractors, suppliers and others.—(a) It shall be unlawful for any person, firm, or corporation to, directly or indirectly, corruptly give, offer, or promise anything of value to any member of the State Highway Commission, or any officer or employee of the State Highway Commission, or to promise any member of the State Highway Commission or any officer or employee of the State Highway Commission to give anything of value to any other person with intent :

- (1) To influence any official act of any member of the State Highway Commission or any officer or employee of the State Highway Commission; or
- (2) To influence such member of the State Highway Commission or any officer or employee of the State Highway Commission 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 Highway Commission or the State of North Carolina, or
- (3) To induce a member of the State Highway Commission or any officer or employee of the State Highway Commission to do or omit to do any act in violation of his lawful duty.

(b) It shall be unlawful for any member of the State Highway Commission, or any officer or employee of the State Highway Commission, 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 ; or
- (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 Highway Commission or the State of North Carolina ; or
- (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 felony punishable by a fine of not more than twenty thousand dollars (\$20,000.00), or three times the monetary equivalent of the thing of value, whichever is greater, or imprisonment of not more than ten years, or by both such fine and imprisonment. (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.)

Editor's Note.— 1965, rewrote this section, which formerly The 1965 amendment, effective July 1, consisted of one paragraph.

§ 136-13.1. Use of position to influence elections or political action.

—No member of the State Highway Commission, nor any official or employee of the State Highway Commission, shall be permitted to use his position to influence elections or the political action of any person. (1965, c. 55, s. 8.)

The effective date of this section is July 1, 1965.

§ 136-14. Members not eligible to other employment with Commission; no sales to Commission by employees; members not to sell or trade property with Commission; profiting from official position.—No member of the Highway Commission shall be eligible to any other employment in connection with said Commission, and no member of said Commission, or any salaried employee thereof, shall furnish or sell any supplies or materials, directly or indirectly, to said Commission, nor shall any member of the State Highway Commission, directly or indirectly, engage in any transaction involving the sale of or trading of real or personal property with the State Highway Commission, or profit in any manner by reason of his official action or his official position, except to receive such salary, fees and allowances as by law provided. Violation of this section shall be a felony punishable by fine of not more than twenty thousand dollars (\$20,000.00), or three times the value of the transaction, or by both fine and imprisonment. (1933, c. 172, s. 10; 1957, c. 65, s. 11; 1965, c. 55, s. 9.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, added all of the section that follows the words "directly or indirectly, to said Commission."

§ 136-14.1. Highway engineering divisions; division engineers.—For purposes of administering the field activities of the State Highway Commission, there shall be 14 highway engineering divisions, with boundaries coterminous with the 14 divisions existing on January 1, 1957. Each division shall be under the supervision of a division engineer, who shall be appointed by the State Highway Administrator in accordance with the State Personnel Act. The division engineers shall perform duties and have responsibilities as the State Highway Administrator may assign them. (1957, c. 65, s. 5; 1965, c. 55, s. 10.)

Editor's Note.— The 1965 amendment, effective July 1, 1965, substituted "State Highway Administrator" for "Director of Highways" in the second sentence and for "Director" in the last sentence.

ARTICLE 2.

Powers and Duties of Commission.

§ 136-17. Seal; rules and regulations.

Cited in State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

§ 136-18. Powers of Commission.

(12) The State Highway Commission shall have such powers as are necessary to comply fully with the provisions of the present or future federal aid acts. The said Commission is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all

other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Commission and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Commission to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars (\$2,000,000.00).

- (22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the State Highway Commission or its duly authorized officers. The State Highway Commission is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the State Highway Commission is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The State Highway Commission shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a misdemeanor punishable in the discretion of the court; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority. (1921, c. 2, s. 10; 1923,
- (23) When in the opinion of the State Highway Commission an economy in the expenditure of public funds can be effected thereby, the State Highway Commission shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State Highway System with public roads in adjoining states, and the State Highway Commission shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition

and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the State Highway Commission shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C. S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, s. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2.)

Cross References.—

As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160-61.2.

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1966, added subdivision (22).

Section 2½, c. 879, Session Laws 1965, provides: "Nothing contained herein shall prohibit necessary repairs from being made to or on any airport facilities now in existence regardless of their present location."

The 1967 amendment added subdivision (23).

The 1969 amendment deleted "said" preceding "State" in the first sentence of subdivision (12) and rewrote the second sentence of subdivision (12).

As the rest of the section was not affected by the amendments, it is not set out.

For article on remedies for trespass to land in North Carolina, see 47 N.C.L. Rev. 334 (1969).

Opinions of Attorney General. — Mr. F.L. Hutchinson, Division Engineer, State Highway Commission, 7/24/69.

Authority to Cooperate with Counties in Establishing and Operating Garbage Disposal Facilities.—As to authority of State Highway Commission to cooperate with counties in establishing and operating garbage disposal facilities, see § 153-275.1.

Commission Has Exclusive Control of Highway System.—The State Highway Commission has been granted exclusive control over the State highway system. *Van Leuven v. Akers Motor Lines, Inc.*, 261 N.C. 539, 135 S.E.2d 640 (1964).

Powers of Commission Are Incidental, etc.—

The Commission is vested with the power of "general supervision over all matters relating to the construction of the State highways . . ." All the other powers it possesses are incidental to the purpose for which it was created. State High-

way Comm'n v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1965).

Power to Regulate and Close Grade Crossings.—The Highway Commission is authorized to regulate, abandon, and close grade crossings and intersections. *Snow v. North Carolina State Highway Comm'n* 262 N.C. 169, 136 S.E.2d 678 (1964).

Owner of Land Subject to Highway Easement Is Entitled to Nominal Damages for Encroachment.—It may be conceded that an easement acquired by the State for a public highway is, under existing law, so extensive in nature and the control exercised by the Highway Commission is so exclusive in extent that the subservient estate in the land, from a practical standpoint, amounts to little more than the right of reverter in the event the easement is abandoned. Nevertheless, the subservient estate still exists and any encroachment thereon entitles the owner to nominal damages at least. *Van Leuven v. Akers Motor Lines, Inc.*, 261 N.C. 539, 135 S.E.2d 640 (1964).

Commission Has No Power to Condemn Property for Private Road.—This section and § 136-45 vest in the State Highway Commission broad discretionary powers in establishing, constructing, and maintaining highways as part of a state-wide system of hard-surfaced and other dependable highways, but the State Highway Commission has no power to condemn private property to construct a road for the private use of any person or group of persons, and if it does so, it is an arbitrary act and an abuse of the discretion vested in it. *State Highway Comm'n v. Batts*, 265 N.C. 346, 144 S.E.2d 126 (1965).

Commission's Requirements as to Signs and Flagmen Do Not Give Contractor Right of Way.—Where a contractor for the improvement of an airport is granted permission by the Highway Commission to construct a dirt ramp over the highway to protect it from heavy equipment, the

Commission's requirements with reference to signs and flagmen are primarily for the protection of the users of the highway and do not confer on the contractor special privileges in respect to right of way. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

Use of Highway by Telephone, etc.—

In accord with 1st paragraph in original. See *Van Leuven v. Akers Motor Lines, Inc.*, 261 N.C. 539, 135 S.E.2d 640 (1964).

The State Highway Commission has

full authority to make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles within the right of way, and it may, at any time, require the removal of, change in, or relocation of any such poles. *Van Leuven v. Akers Motor Lines, Inc.*, 261 N.C. 539, 135 S.E.2d 640 (1964).

Quoted in *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

Editor's Note.—

For case law survey as to eminent domain, see 44 N.C.L. Rev. 941, 1003 (1966).

For note on public use in North Carolina, see 44 N.C.L. Rev. 1142 (1966).

For article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

The Commission possesses the sovereign power, etc.—

In accord with original. See *Hughes v. North Carolina State Highway Comm'n*, 2 N.C. App. 1, 162 S.E.2d 661 (1968).

The State Highway Commission as a State agency or instrumentality possesses the sovereign power of eminent domain, and by reason thereof can take private property for public use for highway purposes upon payment of just compensation. *State Highway Comm'n v. Batts*, 265 N.C. 346, 144 S.E.2d 126 (1965).

The General Assembly has expressly granted to the State Highway Commission, under prescribed conditions, the power of eminent domain and has set forth the procedure to be followed in the exercise of such power. This procedure must be followed, and the conditions prescribed therein must be met before the State Highway Commission has the right to exercise the power of eminent domain. *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

Commission Has Power to Acquire Rights of Way. — There is no question about the right of the Commission to procure by dedication, purchase, prescription or condemnation such rights of way as it may deem necessary for highway purposes. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964).

The Commission has authority by virtue of this section to acquire rights-of-way by purchase. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

North Carolina statutes and court decisions set forth the following methods by which the Highway Commission can acquire right-of-way easements: (1) purchase or agreement; (2) donation; (3) dedication; (4) prescription; or (5) condemnation. *Hughes v. North Carolina State Highway Comm'n*, 2 N.C. App. 1, 162 S.E.2d 661 (1968).

But Not to Appropriate Personal Property.—The Highway Commission has no authority to appropriate personal property for public use. *Lyerly v. North Carolina State Highway Comm'n*, 264 N.C. 649, 142 S.E.2d 658 (1965); *Givens v. Sellers*, 273 N.C. 44, 159 S.E.2d 530 (1968).

This section does not authorize Highway Commission to appropriate personal property for public use. *Midgett v. North Carolina State Highway Comm'n*, 260 N.C. 241, 132 S.E.2d 599 (1963).

The existence of a public use is a prerequisite to the right of the State Highway Commission to exercise the power of eminent domain to condemn private property, and final determination as to whether the proposed condemnation and taking of defendants' land by condemnation is for a public use is for judicial determination. *State Highway Comm'n v. Batts*, 265 N.C. 346, 144 S.E.2d 126 (1965).

Any injury to personal property is *damnum absque injuria*. *Lyerly v. North Carolina State Highway Comm'n*, 264 N.C. 649, 142 S.E.2d 658 (1965).

Extent of Right, etc.—

In accord with original. See *Van Leuven v. Akers Motor Lines, Inc.*, 261 N.C. 539, 135 S.E.2d 640 (1964).

The owner of land abutting a highway has a right beyond that which is enjoyed by the general public, a special right of easement in the public road for access purposes, and this is a property right which cannot be damaged or taken from him without due compensation. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

A right of access to a public highway is an easement appurtenant to the land. The Commission stands in the position of a servient owner with the right to locate an access route under the general rule that where an easement is granted or reserved in general terms, which do not fix a specific location, then the owner of the servient estate has the right in the first instance to designate the specific location of such easement, subject to the limitation that this right be exercised in a reasonable manner with due regard to the rights of the owner of the easement. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

The right of direct access from the plaintiff's land to the highway, whether it existed prior to the agreement or was created by it, was an easement appurtenant to the plaintiff's land and was a private property right in the plaintiff, over and above the plaintiff's right, as a member of the public, to use this ramp as a means of getting to the lanes of the highway. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

And Is Subject to Condemnation. — A right of access is an easement, a property right, and as such is subject to condemnation. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

The fact that landowner's right of access arose out of an agreement and a deed does not prevent its being a property right. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

Construing Right-of-Way Agreement. — In construing a right-of-way agreement all of the language contained therein is to be considered and a landowner can rely upon language creating easement rights and property rights greater than those of the general public. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

Consideration for Right-of-Way Agreement. — The Commission cannot only pay money as consideration for a right-of-way agreement, but can grant to the landowner a right of access at a particularly designated point. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

Payment for Elimination of Hazardous Access Point. — While the Commission has the power to eliminate a hazardous access point, it cannot do so without paying the landowner for his property right. *McNeill*

v. North Carolina State Highway Comm'n, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

Condition Precedent to Right of Eminent Domain. — This section is a condition precedent to the State Highway Commission's right of eminent domain. *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

General benefits are those which arise from the fulfillment of the public object which justified the taking. *State Highway Comm'n v. Mode*, 2 N.C. 464, 163 S.E.2d 429 (1968).

Special benefits are those which arise from the peculiar relation of the land in question to the public improvement. *State Highway Comm'n v. Mode*, 2 N.C. App. 464, 163 S.E.2d 429 (1968).

A lessee as tenant of an estate for years takes and holds his term in the same manner as any other owner of realty holds his title, subject to the right of the sovereign to take the hold or any part of it for public use upon the payment to him of just compensation. *Givens v. Sellars*, 273 N.C. 44, 159 S.E.2d 530 (1968).

Removal of Personality from Leasehold Estate. — When a leasehold estate is taken under the power of eminent domain, the ownership of personality kept on the premises taken, but not permanently affixed thereto, is not affected, and the owner is entitled to remove same at his own expense. *Givens v. Sellars*, 273 N.C. 44, 159 S.E.2d 530 (1968).

Compensatory damages for injury to personal property is the difference between its fair market value immediately before and immediately after the injury. If the property has no market value the measure of damages may be gauged by the cost of repairs. *Givens v. Sellars*, 273 N.C. 44, 159 S.E.2d 530 (1968).

Compensation for Land Containing Mineral Deposits. — See *State Highway Comm'n v. Mode*, 2 N.C. App. 464, 163 S.E.2d 429 (1968).

Compensation for Land Containing Stone Deposits. — See *State Highway Comm'n v. Mode*, 2 N.C. App. 464, 163 S.E.2d 429 (1968).

Purchase from One Cotenant Does Affect Interest of Other Cotenant. — The purchase of an easement from one cotenant does not carry with it an easement in the interest of the other cotenant. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964).

A property owner has a constitutional right to just compensation for the taking of his property for a public purpose. *Browning v. North Carolina State High-*

way Comm'n, 263 N.C. 130, 139 S.E.2d 227 (1964.)

And to Reasonable Notice and Opportunity to Be Heard on Damages.—As both the federal and State Constitutions protect all persons from being deprived of their property for public use without the payment of just compensation and a reasonable notice and a reasonable opportunity to be heard, proceedings to condemn property must not violate these guaranties. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964).

But Notice Property Is to Be Appropriated Is Unnecessary.—It is not necessary to notify the owner that his property is to be appropriated provided he is notified and given opportunity to appear and be heard on the question of the compensation that may be due him. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964).

The due process clause is not violated by failure to give the owner of property an opportunity to be heard as to the necessity and extent of appropriating his property to public use; but it is essential to due process that the mode of determining the compensation to be paid for the appropriation be such as to afford the owner an opportunity to be heard. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964)

"Taking" Defined.—See *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964)

Laying Out Right of Way Is Not "Taking."—The mere laying out of a right of way is not in contemplation of law a full appropriation of property. Complete appropriation occurs when the property is actually taken for the specified purpose after due notice to the owner; and the owner's right to compensation arises only from the actual taking or occupation of the property by the Highway Commission. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964).

Nor Is Paving Existing Highway "Taking" or Notice Thereof.—The completion of a project is, in ordinary cases, a clear taking of the owner's property and notice to him of the taking, but this is not true where the project consists of the mere paving of an existing public highway. Such paving, where the rights of the public are unquestioned, would be no assertion of rights over adjacent land or notice to the owners that such rights were being as-

serted. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964).

Registering Maps Covering Adjacent Lands.—

In accord with 1st paragraph in original. See *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964).

The language of this section, providing for the filing of a map with provision that title should vest in the Commission upon such filing, must be construed along with other language of the section which clearly contemplates that such filing should be in addition to and not in lieu of the existing procedures required for condemnation. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964), quoting *Martin v. United States*, 240 F.2d 326 (4th Cir. 1957).

Where there has been an actual entry upon the land and the exercise of dominion pursuant to the statute authorizing the taking, the registration of a map showing the land taken pursuant to the statute will mark the time of the passage of the title. *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964), quoting *Martin v. United States*, 240 F.2d 326 (4th Cir. 1957).

Interference with Natural Flow of Water.—The right to have water flow in the direction provided by nature is a property right, and if such right of a landowner is materially interfered with so that his land is flooded by the manner in which a highway is constructed, it is a nuisance and a taking of property for public use for which compensation must be paid. *Midgett v. North Carolina State Highway Comm'n*, 260 N.C. 241, 132 S.E.2d 599 (1963).

Measure of Damages for Property Injured.—

In accord with 2nd paragraph in original. See *State Highway Comm'n v. Conrad*, 263 N.C. 394, 139 S.E.2d 553 (1965).

Price at Which Land Was Bought as Evidence of Market Value.—It is accepted law that when land is taken in the exercise of eminent domain it is competent, as evidence of market value, to show the price at which it was bought if the sale was voluntary and not too remote in point of time. *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Evidence of Market Value, etc.—

In accord with original. See *State Highway Comm'n v. Phillips*, 267 N.C. 369, 148 S.E.2d 282 (1966).

When the taking renders the remaining land, etc.—

In accord with original. See *State Highway Comm'n v. Phillips*, 267 N.C. 369, 148 S.E.2d 282 (1966).

Loss of profits or injury, etc.—

In accord with original. See *State Highway Comm'n v. Phillips*, 267 N.C. 369, 148 S.E.2d 282 (1966).

Undeveloped Property, etc.—

Under proper circumstances a map of a proposed subdivision of undeveloped land is admissible to illustrate and explain the testimony of witnesses as to the highest and best available use of the property and that it is capable of subdivision. But where such map is admitted in evidence, the inclusion of a price per lot noted thereon or by testimony of witnesses is incompetent and should be excluded. *State Highway Comm'n v. Conrad*, 263 N.C. 394, 139 S.E.2d 553 (1965).

The fair market value of undeveloped land immediately before condemnation is not a speculative value based on an imaginary subdivision and sales in lots to many purchasers. It is the fair market value of the land as a whole in its then state according to the purpose or purposes to which it is best adapted and in accordance to its best and highest capabilities. *State Highway Comm'n v. Conrad*, 263 N.C. 394, 139 S.E.2d 553 (1965).

Cutting Off Access over Private Way or Neighborhood Road to Public Road.—To completely cut off one's access over a private way or neighborhood road to the nearest public road, without providing other reasonable accesses to a public road, may diminish the value of the land involved to the same extent as if access was denied to a public highway abutting the premises. *State Highway Comm'n v. Phillips*, 267 N.C. 369, 148 S.E.2d 282 (1966).

Where a landowner's access to a public highway over a section of neighborhood public road is cut off by the construction of a limited access highway across a portion of his land, leaving no access from the property to a public highway, the deprivation of access affects the value of the property and the landowner is entitled to introduce evidence of such deprivation of access as an element of damages. *State Highway Comm'n v. Phillips*, 267 N.C. 369, 148 S.E.2d 282 (1966).

Right to Jury Trial on Ownership of Land Is Inapplicable to Eminent Domain.

—Article I, § 19, N.C. Const., is a constitutional guaranty of jury trial when the issue determinative of the rights of the litigants is: "Who owns the land, plaintiff or defendant?" This issue does not arise when the state, or its agency, exercises the power of eminent domain. The phrase "eminent domain" by definition admits condemnor did not own, but took or appropriated the property of another for a public purpose. *Wescott v. State Highway Comm'n*, 262 N.C. 522, 138 S.E.2d 133 (1964).

But Where Commission Claims It Is Owner, Issue Must Be Tried by Jury.—When the Highway Commission denies the plaintiff, in a proceeding for compensation for the taking of and damage to his property, is entitled to compensation because it, not the plaintiff, was the owner of the property rights in controversy, the Commission, in effect, converts what began as a condemnation proceeding into an action in ejectment or trespass to try title. On that issue the plaintiff is entitled to a jury trial. *Wescott v. State Highway Comm'n*, 262 N.C. 522, 138 S.E.2d 133 (1964).

For cases involving former limitations on actions for damages, see *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964); *Lewis v. North Carolina State Highway & Pub. Works Comm'n*, 228 N.C. 618, 46 S.E.2d 705 (1948); *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Applied in *Abdalla v. State Highway Comm'n*, 261 N.C. 114, 134 S.E.2d 81 (1964); *State Highway Comm'n v. Luck*, 263 N.C. 125, 139 S.E.2d 8 (1964); *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964); *Northgate Shopping Center, Inc. v. State Highway Comm'n*, 265 N.C. 209, 143 S.E.2d 244 (1965); *State Highway Comm'n v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967); *North Carolina State Highway Comm'n v. Hettiger*, 271 N.C. 152, 155 S.E.2d 469 (1967); *Prestige Realty Co. v. State Highway Comm'n*, 1 N.C. App. 82, 160 S.E.2d 83 (1968).

Cited in *Kaperonis v. North Carolina State Highway Comm'n*, 260 N.C. 587, 133 S.E.2d 464 (1963); *Sherrill v. North Carolina State Highway Comm'n*, 264 N.C. 643, 142 S.E.2d 653 (1965).

§ 136-19.2: Repealed by Session Laws 1969, c. 733, s. 13, effective January 1, 1970.

§ **136-19.3. Acquisition of buildings.**—Where the right of way of a proposed highway necessitates the taking of a portion of a building or structure, the State Highway Commission may acquire, by condemnation or purchase, the entire building or structure, together with the right to enter upon the surrounding land for the purpose of removing said building or structure, upon a determination by the Highway Commission based upon an affidavit of an independent real estate appraiser that the partial taking will substantially destroy the economic value or utility of the building or structure and (i) that an economy in the expenditure of public funds will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building without destroying the entire building; or (iii) that the convenience, safety or improvement of the highway will be promoted thereby; provided, nothing herein contained shall be deemed to give the State Highway Commission authority to condemn the underlying fee of the portion of any building or structure which lies outside the right of way of any existing or proposed public road, street or highway. (1965, c. 660.)

§ **136-19.4. Registration of right-of-way plans.**—(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all State Highway Commission projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified under the State Highway Commission's seal by the secretary of the State Highway Commission to the register of deeds of the county or counties within which the project is located. The secretary shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the State Highway Commission.

(b) The copy of the plans certified to the register of deeds shall consist of a xerox, photographic, or other permanent copy and shall measure approximately 20 inches by 12 inches including no less than 1½ inches binding space on the left-hand side.

(c) Notwithstanding any other provision in the law, upon receipt of said original certified copy of the right-of-way plans, the register of deeds shall record said right-of-way plans and place the same in a book maintained for that purpose, and the register of deeds shall maintain a cross-index to said right-of-way plans by number of road affected, if any, and by project number. No probate before the clerk of the superior court shall be required.

(d) If after the approval of said final right-of-way plans the State Highway Commission shall by resolution alter or amend said right-of-way or control of access, the secretary to the Commission, within two weeks from the adoption by the State Highway Commission of said alteration or amendment, shall certify under seal of the State Highway Commission to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the State Highway Commission and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(e) The register of deeds in each county shall collect a fee from the State Highway Commission of five dollars (\$5.00) for each original or amended plan and profile sheet recorded. (1967, c. 228, s. 1; 1969, c. 80, s. 13.)

Editor's Note.—Section 5, c. 228, Session Laws 1967, makes the act effective July 1, 1967.

The 1969 amendment, effective July 1, 1969, eliminated "fifty cents (50¢) for the indexing of each project and in addition shall collect a fee of" from subsection (e).

Section 14 of c. 80, Session Laws 1969 provides that nothing in the act "shall prevent any register of deeds whose compensation is derived from fees from retaining those fees as heretofore provided by law except that the amount of such fees shall be determined as provided herein."

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

Section Not Binding on Municipality in All Cases Where Railroads Cross City Streets.—The explicit language chosen by the legislature clearly negatives any intention that this section should be construed as the adoption of a state-wide policy binding upon municipalities in administering their city streets which were not parts or links in the State highway system. Had the legislature intended this section to be binding upon municipalities in all cases where railroads crossed its city street, surely the legislature would have employed language which expressed, rather than language which would negative, that intent. *Southern Ry. v. City of Winston-Salem*, 4 N.C. App. 11, 165 S.E.2d 751 (1969).

This section does not adopt a state-wide policy with respect to the allocation of costs of safety devices at railroad crossings which is binding upon municipalities in administering city streets which are not parts of or links in the State highway system. *Southern Ry. v. City of Winston-Salem*, 4 N.C. App. 11, 165 S.E.2d 751 (1969).

Railroad Crossings to Which Section Applies.—This section by its express terms applies to railroad crossings of "any road or street forming a link in or a part of the State highway system." *Southern Ry. v. City of Winston-Salem*, 4 N.C. App. 11, 165 S.E.2d 751 (1969).

The language of this section expressly and clearly limits its applications to railroad crossings of roads or streets which are parts of the State highway system. *Southern Ry. v. City of Winston-Salem*, 4 N.C. App. 11, 165 S.E.2d 751 (1969).

Determining Which Roads Become Part of Highway System.—Under §§ 136-54, 136-58, 136-59 and 136-66.2 it is for the State Highway Commission rather than for the courts to determine which particular roads and streets shall become a part or link in the State highway system. *Southern Ry. v. City of Winston-Salem*, 4 N.C. App. 11, 165 S.E.2d 751 (1969).

Section Applies Only to Construction of Overpasses and Underpasses or Safety Devices.—This section applies only to the construction of an underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices. *State Highway Comm'n v. Clinchfield R.R.*, 260 N.C. 274, 132 S.E.2d 595 (1963).

This section applies only to a factual situation for which provision is made, namely, the construction of an underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices. *Cecil v. High Point, T. & D.R.R.*, 269 N.C. 541, 153 S.E.2d 102 (1967).

And Not to Widening of Crossing.—A proceeding under this section to require railroad to widen solely at its own expense a crossing sequent to the widening of the intersecting highway, will be dismissed. *State Highway Comm'n v. Clinchfield R.R.*, 260 N.C. 274, 132 S.E.2d 595 (1963).

Erection of Signaling Devices.—In accord with 1st paragraph in original. See *Cecil v. High Point, T. & D.R.R.*, 269 N.C. 541, 153 S.E.2d 102 (1967).

Section Does Not Relieve Railroad of Duty to Give Notice and Warning of Existence of Grade Crossing.—This section, giving the Highway Commission exclusive jurisdiction to require gates, alarm signals or other approved safety devices to be installed at railroad crossings does not include signs and notices of the existence of a crossing, and does not relieve a railroad company of the duty to give users of the highway adequate notice and warning of the existence of a grade crossing, even though it be one at which the Highway Commission has not required the erection of gates, gongs or signaling devices. *Cecil v. High Point, T. & D.R.R.*, 269 N.C. 541, 153 S.E.2d 102 (1967).

This section, which empowers the State Highway Commission, under certain circumstances, to require a railroad company to install gates, alarm signals or other safety devices at a crossing, does not relieve the railroad from its common-law duty to give users of a highway adequate warning of the existence of a grade crossing at which the Commission has not required such devices to be installed. *Cox v. Gallamore*, 267 N.C. 537, 148 S.E.2d 616 (1966); *Cecil v. High Point, T. & D.R.R.*, 269 N.C. 541, 153 S.E.2d 102 (1967); *Price v. Seaboard Air Line R.R.*, 274 N.C. 32, 161 S.E.2d 590 (1968).

Cited in *Cecil v. High Point, T. & D.R.R.*, 266 N.C. 728, 147 S.E.2d 223 (1966); *Atlantic Coast Line R.R. v. State Highway Comm'n*, 268 N.C. 92, 150 S.E.2d 70 (1966).

§ 136-26. Closing of State highways during construction; injury to barriers, warning signs, etc.

Purpose of Closing Highways.—The closing or temporary closing of highways or portions thereof during construction and repair operations is designed to avoid interruptions and delays in the prosecution of the work. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

The exercise of authority to close a highway, which relates to a highway "in process of construction or maintenance," is for the public benefit. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

Public Travel, etc.—

This section authorizes the State Highway Commission, through "its officers or appropriate employees, or its contractor," to close a highway to public travel while a ramp is in use by its contractor's equipment. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

Requirements as to Signs and Flagmen Do Not Give Contractor Special Privileges.—Where a contractor for the im-

provement of an airport is granted permission by the Highway Commission to construct a dirt ramp over the highway to protect it from heavy equipment, the Commission's requirements with reference to signs and flagmen are primarily for the protection of the users of the highway and do not confer on the contractor special privileges in respect to right of way. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

Care Required of Traveler.—

Where travel on the highway was closed temporarily by means of warning signs and flagmen's signals, it was the duty of the motorist to stop and yield the right of way to the contractor's earth movers. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

Applied in Luther v. Asheville Contracting Co., 268 N.C. 636, 151 S.E.2d 649 (1966).

Stated in Payne v. Lowe, 2 N.C. App. 369, 163 S.E.2d 74 (1968).

§ 136-28. Letting of contracts to bidders after advertisement; enforcing claims against contractor by action on bond.—All contracts over five thousand dollars (\$5,000.00) that the Commission may let for construction, or any other kinds of work necessary to carry out the provisions of this chapter, shall be let, after public advertising, under rules and regulations to be made and published by the State Highway Commission, to a responsible bidder, the right to reject any and all bids being reserved to the Commission; except that contracts for engineering or other kinds of professional or specialized services may be let after the taking and consideration of bids or proposals from not less than three responsible bidders without public advertisement.

No action shall be brought upon any bond given by any contractor of the Commission, by any laborer, materialman or other person until and after the completion of the work contracted to be done by the said contractor. Any laborer, materialman or other person having a claim against the said contractor and the bond given by such contractor, shall file a statement of the said claim with the contractor and with the surety upon his bond, and, in the event the surety is a corporation, with the general agent of such corporation, within the State of North Carolina, within twelve (12) months from the completion of the contract, and a failure to file such claim within said time shall be a complete bar against any recovery on the bond of the contractor and the surety thereon. Only one suit or action may be brought upon the said bond and against the said surety, which suit or action shall be brought in one of the counties in which the work and labor was done and performed and not elsewhere. The procedure pointed out in § 44-14 shall be followed. No surety shall be liable for more than the penalty of the bond. Any person entitled to bring an action shall have the right to require the Commission to furnish information as to when the contract is completed, and it shall be the duty of the Commission to give to any such person proper notice. If the full amount of the liability of the surety on said bond is insufficient to pay the said amount of all claims and demands, then, after paying the full amount due the Commission, the remainder shall be distributed pro rata among the claimants. Any claim of the Commission against the said bond and the surety thereon shall be preferred as against any cause of action in favor of any laborer, materialman or other persons and shall constitute a first lien or claim against the

said bond and the surety thereon. (1921, c. 2, s. 15; 1923, c. 160, s. 3; C. S., s. 3846(v); 1925, cc. 260, 269; 1933, c. 172, s. 17; 1957, c. 65, s. 11; c. 1194, s. 1; 1963, c. 525; 1969, c. 621.)

Editor's Note.—

The 1969 amendment substituted "twelve (12)" for "six (6)" in the second sentence of the second paragraph.

A statutory requirement for competitive bids constitutes a jurisdictional prerequisite to the exercise of the power of a public corporation to enter into a contract. *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 265 N.C. 1, 143 S.E.2d 247 (1965); *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 4 N.C. App. 126, 166 S.E.2d 705 (1969).

Persons dealing with a public agency are presumed to know the law with respect to the requirement of competitive bidding and act at their peril. *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 265 N.C. 1, 143 S.E.2d 247 (1965).

Persons dealing with a public agency are presumed to know the law with respect to the requirement of competitive bidding and act at their peril. This includes knowledge that the officials and agents of the public agency may not waive the sovereign right of immunity or act in violation of statutory requirements. *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 4 N.C. App. 126, 166 S.E.2d 705 (1969).

Powers of Highway Commission.—See *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 4 N.C. App. 126, 166 S.E.2d 705 (1969).

§ 136-29. Adjustment of claims.—(a) Upon the completion of any contract for the construction of any State highway awarded by the State Highway Commission to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within sixty (60) days from the time of receiving his final estimate, submit to the State Highway Administrator a written and verified claim for such amount as he deems himself entitled to under the said contract setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the State Highway Administrator and present any additional facts and argument in support of his claim. Within ninety (90) days from the receipt of the said written claim or within such additional time as may be agreed to between the State Highway Administrator and the contractor, the State Highway Administrator shall make an investigation of said claim and with the approval of the Highway Commission may allow all or any part or may deny said claim and shall have with the approval of the State Highway Commission the authority to reach a compromise agreement with the contractor and shall notify the contractor in writing of his decision.

(b) As to such portion of the claim as is denied by the State Highway Administrator, the contractor may, within six (6) months from receipt of said decision, institute a civil action for such sum as he claims to be entitled to under said contract by the filing of a verified complaint and issuance of summons in the Superior Court of Wake County or in the superior court of any county wherein the work

Implied Power to Take Action.—Where a course of action is reasonably necessary for the effective prosecution of the Commission's obligation to supervise the construction, repair and maintenance of public highways, the power to take such action must be implied from the general authority given and the duty imposed. *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 4 N.C. App. 126, 166 S.E.2d 705 (1969).

Performance of Extra Remedial Work on Highways under Existing Contract.—See *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 4 N.C. App. 126, 166 S.E.2d 705 (1969).

Invalidity of Subsequent Agreements to Pay Additional Compensation.—In general, but subject to certain limitations and exceptions, statutes requiring the letting of public contracts to the lowest bidder are regarded as rendering invalid and unenforceable subsequent agreements to pay one to whom a public contract has been duly awarded additional compensation for extras or additional labor and materials not included in the original contract, at least where the additional compensation exceeds the amount for which public contracts may be made without competitive bidding. *Nello L. Teer Co. v. North Carolina State Highway Comm'n*, 4 N.C. App. 126, 166 S.E.2d 705 (1969).

under said contract was performed. The procedure shall be the same as in all civil actions except as herein and as hereinafter set out.

(c) All issues of law and fact and every other issue shall be tried by the judge, without a jury; provided that the matter may be referred in the instances and in the manner provided for in article 20 of chapter 1 of the General Statutes.

(d) The submission of the claim to the State Highway Administrator within the time and as set out in subsection (a) of this section and the filing of an action in the superior court within the time as set out in subsection (b) of this section shall be a condition precedent to bringing such an action under this section and shall not be a statute of limitations.

(e) The provisions of this section shall be deemed to enter into and form a part of every contract entered into between the State Highway Commission and any contractor, and no provision in said contracts shall be valid that is in conflict herewith. (1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667; 1965, c. 55, s. 11; 1967, c. 873.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "State Highway Administrator" for "Director of the State Highway Commission" in subsections (a), (b) and (d) and added "with the approval of the State Highway Commission" near the end of subsection (a).

The 1967 amendment inserted "or within such additional time as may be agreed to between the State Highway Administrator and the contractor" in the third sentence of subsection (a).

Section Assumes Valid Contract Is Subsisting.—The procedure under this section is available when the contractor has completed his contract with the Highway Commission and fails to receive "such settlement as he claims to be entitled to under his contract." This assumes a valid contract is subsisting. *Nello L. Teer Co. v. North Carolina State Highway Comm'n.* 265 N.C. 1, 143 S.E.2d 247 (1965).

Unless the claim arises under a contract, the provisions of this section are not applicable. *Nello L. Teer Co. v. North Carolina State Highway Comm'n.* 4 N.C. App. 126, 166 S.E.2d 705 (1969).

Recovery, if any, under the contract must be based on the terms and provisions thereof. *Nello L. Teer Co. v. North Carolina State Highway Comm'n.* 265 N.C. 1, 143 S.E.2d 247 (1965).

The procedure is to resolve any controversy as to what (additional) amount, if any, the contractor is entitled to recover

under the terms of the contract. *Nello L. Teer Co. v. North Carolina State Highway Comm'n.* 265 N.C. 1, 143 S.E.2d 247 (1965).

Recovery, if any, must be within the terms and framework of the provisions of the contract. *Nello L. Teer Co. v. North Carolina State Highway Comm'n.* 4 N.C. App. 126, 166 S.E.2d 705 (1969).

When Final Estimate Received by Contractor.—Where the Highway Commission sent its contractor a warrant for the balance of the contract price less an amount withheld as liquidated damages, with a letter characterizing the payment as "final payment of the contract," and the contractor returned the warrant with a request that it be reissued without words jeopardizing the contractor's right to contest the liquidated damages, the final estimate was received by the contractor within the purview of this section on the date he received a letter returning the warrant with notation permitting its negotiation without jeopardizing the contractor's claim, and the filing of claim by the contractor within sixty days thereafter was timely. *L. A. Reynolds Co. v. State Highway Comm'n.* 271 N.C. 40, 155 S.E.2d 473 (1967).

For case construing provisions for a board of review contained in this section prior to 1963 amendment see *Nello L. Teer Co. v. North Carolina State Highway Comm'n.* 265 N.C. 1, 143 S.E.2d 247 (1965).

§ 136-30.1. Center line and pavement edge line markings.—(a) The State Highway Commission shall mark with center lines and edge lines all interstate and primary roads and all paved secondary roads having an average traffic volume of 200 vehicles per day or more, and which are traffic service roads forming a connecting link in the State highway system. The State Highway Commission shall not be required to mark with center and edge lines local subdivision roads, loop roads, dead-end roads of less than one mile in length or roads the major purpose of which is to serve the abutting property, nor shall the Commis-

sion be required to mark with edge lines those roads on which curbing has been installed or which are less than sixteen feet in width.

(b) Whenever the State Highway Commission shall construct a new paved road, relocate an existing paved road, resurface an existing paved road, or pave an existing road which under the provisions of subsection (a) hereof is required to be marked with lines, the Commission shall, within thirty days from the completion of the construction, resurfacing or paving, mark the said road with the lines required in subsection (a) hereof.

(c) The center and pavement edge lines required by this section shall be installed and maintained in conformance with the Manual on Uniform Traffic Control Devices for Streets and Highways issued by the United States Department of Commerce, Bureau of Public Roads, dated June 1, 1961, or any subsequent revisions thereof approved by the State Highway Commission. (1969, c. 1172, s. 1.)

Editor's Note. — Session Laws 1969, c. 1172, s. 3, makes the act effective July 1, 1969.

§ 136-41.1. Appropriation to municipalities; allocation of funds.— There is hereby annually appropriated out of the State highway fund a sum equal to the amount that was produced during the fiscal year by $\frac{1}{2}$ of one-cent tax on each gallon of motor fuel taxed by §§ 105-434 and 105-435, to be allocated in cash on or before October first each year after March 15, 1951, to the cities and towns of the State in accordance with the following formula:

One half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities as indicated by the latest certified federal decennial census, and one half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which do not form a part of the highway system bears to the total mileage of public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the State Highway Commission such information as it may request for its guidance in determining the eligibility of each municipality to receive funds by virtue of §§ 136-41.1 and 136-41.2 and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the State Highway Commission, the State Highway Commission may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

No allocation to cities and towns shall be made under the provisions of this section from the one-cent per gallon additional tax on gasoline imposed by chapter 1250 of the Session Laws of 1949 and by chapter 46 of the Session Laws of 1965, unless and until said additional one-cent per gallon gasoline tax produces funds which are not needed for or committed by said chapter 1250 of the Session Laws of 1949 and said chapter 46 of the Session Laws of 1965, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the provisions of said chapter 1250 of the Session Laws of 1949 and said chapter

46 of the Session Laws of 1965. The State Highway Commission is hereby authorized to withhold each year an amount not to exceed one percent (1%) of the total amount appropriated in § 136-41.1 for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than sixteen (16) feet. In order to obtain the necessary information to distribute the funds herein allocated, the State Highway Commission may require that each municipality eligible to receive funds under §§ 136-41.1 and 136-41.2 submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The State Highway Commission may in its discretion require the certification of mileage on a biennial basis. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2.)

Editor's Note.—

The 1969 amendment rewrote the first paragraph and added the reference to

chapter 46 of Session Laws 1965 throughout the fifth paragraph.

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.

Cited in *City of Raleigh v. Norfolk S. Ry.*, 4 N.C. App. 1, 165 S.E.2d 745 (1969); *Southern Ry. v. City of Winston-Salem*, 4 N.C. App. 11, 165 S.E.2d 751 (1969).

§ 136-41.3. Use of funds; records and annual statement; contracts for maintenance, etc., of streets.—The funds allocated to cities and towns under the provisions of § 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes.

Each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of §§ 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall file a statement under oath with the chairman of the State Highway Commission showing in detail the expenditure of funds received by virtue of §§ 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

In the discretion of the local governing body of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 it may contract with the State Highway Commission to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The State Highway Commission within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the State Highway Commission in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the State Highway Commission shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Commission may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Commission uses in making charges to one of its own department or against its own department, or the Commission may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Commission free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Commission, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the State Highway Commission and if it desires to dissolve the contract at the end of any two-year period it shall notify the State Highway Commission of its desire to terminate said contract on or before April 1st of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Commission for the fiscal year ending June 30th, by August 1 following the fiscal year, then the Commission shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Commission shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the State Highway Commission in accordance with the provisions of the three preceding paragraphs. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4.)

Editor's Note.—

The 1969 amendment substituted "136-41.1" for "136-41.2" at the end of the fourth

paragraph and near the end of the sixth paragraph, and made minor changes in wording in the fourth paragraph.

ARTICLE 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.

Commission Is Agency Created to Construct and Maintain Highway System. —

The State Highway Commission is the State agency created for the purpose of constructing and maintaining state-wide highways at the expense of the entire State. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965)

Commission Has No Power to Condemn Property for Private Use. — This section and § 136-18 vest in the State Highway Commission broad discretionary powers in establishing, constructing, and maintaining highways as part of a state-wide system of hard-surfaced and other dependable highways, but the State Highway Commission has no power to condemn private

property to construct a road for the private use of any person or group of persons, and if it does so, it is an arbitrary act and an

abuse of the discretion vested in it. *State Highway Comm'n v. Batts*, 265 N.C. 346, 144 S.E.2d 126 (1965).

§ 136-47. Routes and maps; objections; changes.

Powers over Roads of Highway System.—The Highway Commission has authority to change, alter, add to or discontinue roads of the State highway system.

Snow v. North Carolina State Highway Comm'n, 262 N.C. 169, 136 S.E.2d 678 (1964).

Part 3. Power to Make Changes in Highway System.

§ 136-54. Power to make changes.—Subject to the provisions of § 136-60 the State Highway Commission shall be authorized, when in its judgment the public good requires it, to change, alter, add to, or abandon and substitute new sections for, any portion of the State highway system, as now or hereafter, taken over, maintained and established: Provided, no road shall be changed, altered, or abandoned so as to disconnect county seats and principal towns. (1927, c. 46, s. 1; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1965, c. 538, s. 2; 1967, c. 1128, s. 1.)

Cross Reference.—See note to § 136-20.

Editor's Note.—

The 1965 amendment deleted a reference to § 136-57 near the beginning of this section.

The 1967 amendment deleted a reference to § 136-56 near the beginning of this section.

Powers over Roads of Highway System.

The Highway Commission has authority to change, alter, add to or discontinue roads of the State highway system. *Snow v. North Carolina State Highway Comm'n*, 262 N.C. 169, 136 S.E.2d 678 (1964).

§ 136-55. Notice of relocation or abandonment of numbered highways.—Upon the approval by the Commission of the preliminary design for the relocation or construction upon new location of any State, federal or interstate numbered highways, the State Highway Commission shall post a map at the courthouse door in the county or counties where the proposed project is located showing the existing location and the new location of said highway. In addition, said map shall show any segments of the existing highways which are to be abandoned and removed from the State highway system for maintenance by the Commission upon completion and opening to traffic of the new or relocated highway. (1927, c. 46, s. 2; 1931, c. 145; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1967, c. 1128, s. 2.)

Editor's Note.—

The 1967 amendment rewrote this section.

§ 136-55.1. Notice of abandonment. — At least 60 days prior to any action by the State Highway Commission abandoning a segment of road and removing the same from the State highway system for maintenance, except roads abandoned on request of the county commissioners under G.S. 136-63, the State Highway Commission shall notify by registered mail or personal delivery all owners of property adjoining the section of road to be abandoned whose whereabouts can be ascertained by due diligence. Said notice shall describe the section of road which is proposed to be abandoned and shall give the date, place and time of the Commission meeting at which the action abandoning said section of road is to be taken. (1957, c. 1063; 1967, c. 1128, s. 3.)

Editor's Note.—

The 1967 amendment rewrote this section.

§ 136-56: Repealed by Session Laws 1967, c. 1128, s. 4.

§ 136-57: Repealed by Session Laws 1965, c. 538, s. 1.

§ 136-58. Confirmation.

Cross Reference.—See note to § 136-20.

§ 136-59. **No court action against State Highway Commission.**—No action shall be maintained in any of the courts of this State against the State Highway Commission to determine the location of any State highways or portion thereof, by any person, corporation, or municipal corporation. (1927, c. 46, s. 7; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1967, c. 1128, s. 5.)

Cross Reference.—See note to § 136-20.

Editor's Note.—

The 1967 amendment deleted "other than the road-governing body of the county

in which said road is situated, or the county seat or principal town affected as defined in § 136-55 by any change, alteration or abandonment" at the end of the section.

§ 136-62. **Right of petition.**—The citizens of the State shall have the right to present petitions to the board of county commissioners, and through the board to the chairman of the State Highway Commission, concerning additions to the system and improvement of roads. The board of county commissioners shall receive such petitions, forwarding them on to the State Highway Commission with their recommendations. Petitions on hand at the time of the periodic preparation of the secondary road plan shall be considered by the representatives of the Highway Department in preparation of that plan, with report on action taken by these representatives on such petitions to the board of commissioners at the time of consultation. The citizens of the State shall at all times have opportunities to discuss any aspect of secondary road additions, maintenance, and construction, with representatives of the Highway Department in charge of the preparation of the secondary road plan, and if not then satisfied opportunity to discuss any such aspect with the division engineer, the Director of Highways, and the State Highway Commission in turn. (1931, c. 145, s. 14; 1933, c. 172, s. 17; 1957, c. 65, s. 7; 1965, c. 55, s. 12.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "chairman of the State

Highway Commission" for "Director of Highways" in the first sentence.

§ 136-63. **Change or abandonment of roads.**—The board of county commissioners of any county may, on their own motion or on petition of a group of citizens, request the chairman of the State Highway Commission to change or abandon any road in the secondary system, when in the opinion of the board the best interest of the people of the county will be served thereby. The chairman shall thereupon make inquiry into the proposed change or abandonment, and if in his opinion the public interest demands it, shall make such change or abandonment. If the change or abandonment shall affect a road connecting with any street of a city or town, the change or abandonment shall not be made until the street-governing body of the city or town shall have been duly notified and given opportunity to be heard on the question. If not satisfied with the decision of the chairman, the board of county commissioners or the street-governing body of the city or town shall have opportunity to discuss the matter with the State Highway Commission. Any request refused by the chairman of the State Highway Commission may be presented again upon the expiration of twelve (12) months. (1931, c. 145, s. 15; 1957, c. 65, s. 8; 1965, c. 55, s. 13.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "chairman of the State Highway Commission" for "Director of

Highways" in the first and last sentences and substituted "chairman" for "Director" in the second and fourth sentences.

ARTICLE 3A.

Streets and Highways in and around Municipalities.§ 136-66.1. **Responsibility for streets inside municipalities.**

- (3) Maintenance of State Highway System by Municipalities.—Any city or town, by written contract with the State Highway Commission, may undertake to maintain, repair, improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the State Highway Commission, undertake to install, repair and maintain highway signs and markings, electric traffic signals and other traffic control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with State Highway Commission standards, and the consideration to be paid by the State Highway Commission to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work.
- (4) In the event that the governing body of any municipality shall determine that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:
- a. Construction of curbing and guttering;
 - b. Adding of lanes for automobile parking;
 - c. Bearing that portion of the cost of constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;
 - d. Constructing sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes.

In exercising the authority granted herein, the municipality may, with the consent of the State Highway Commission, perform the work itself, or it may enter into a contract with the State Highway Commission to perform such work. Any work authorized by this subdivision may be financed jointly by the municipality and the State Highway Commission pursuant to a cost-sharing agreement entered into by each.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either article 9 of chapter 160 of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978.)

Editor's Note. — The first 1969 amendment added subdivision (3).

The second 1969 amendment added subdivision (4).

As the rest of the section was not changed by the amendments, only subdivisions (3) and (4) are set out.

Highway Commission Is Responsible for City Street in State System.—When a city street becomes a part of the State highway system, the Highway Commission

is responsible for its condition thereafter to the same extent as if originally constructed by it; and this applies to the fill and culvert as well as to the surface areas of the highway. *Sherrill v. North Carolina State Highway Comm'n*, 264 N.C. 643, 142 S.E.2d 653 (1965).

This section and §§ 160-54 and 136-93 indicate that the Highway Commission is under a statutory obligation with reference to the construction, maintenance and re-

pair of all city streets, including culverts which support city streets, which constitute a part of the State highway system. *Milner Hotels, Inc. v. City of Raleigh*, 271 N.C. 224, 155 S.E.2d 543 (1967).

Municipality May Not Contract to Take Over Obligations of Commission.—This section and §§ 160-54 and 136-93 do not authorize a municipality, in the absence of specific legislative authority, to contract to

take over the responsibilities of the Highway Commission with reference to the construction, maintenance and repair of city streets and supporting culverts which constitute a part of the State highway system. *Milner Hotels, Inc. v. City of Raleigh*, 271 N.C. 224, 155 S.E.2d 543 (1967).

Quoted in *Coleman v. Burris*, 265 N.C. 404, 144 S.E.2d 241 (1965).

§ 136-66.2. **Development of a coordinated street system.**—(a) Each municipality, with the cooperation of the State Highway Commission, shall develop a comprehensive plan for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality. The plan shall be based on the best information available including, but not limited to, population growth, economic conditions and prospects, and patterns of land development in and around the municipality, and shall provide for the safe and effective use of streets and highways through such means as parking regulations, signal systems, and traffic signs, markings, construction and other devices. The State Highway Commission may provide financial and technical assistance in the preparation of such plans.

(1969, c. 794, s. 3.)

Local Modification. — *City of Roanoke Rapids*: 1965, c. 987.

Cross Reference.—See note to § 136-20.

Editor's Note. — The 1969 amendment inserted "construction" near the end of the second sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 136-66.3. Acquisition of rights-of-way.

(c) In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the State Highway Commission in this chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in article 9 of this chapter, and wherever the words "Highway Commission" or "State Highway Commission" appear in article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Highway Commission," "chairman" or "chairman of the Highway Commission" appear in article 9 they shall be deemed to include "municipal clerk." It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or article 9 of this chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and article 9 of this chapter.

(1965, c. 867; 1967, c. 1127.)

Editor's Note. — The 1965 amendment rewrote subsection (c).

The 1967 amendment substituted "'Administrator,' 'Administrator of Highways,' 'Administrator of the Highway Commission,' 'chairman' or 'chairman of the Highway Commission'" for "'Director' or 'Di-

rector of Highways' or 'Director of the Highway Commission'" near the end of the second sentence of subsection (c)

As the rest of the section was not affected by the amendments, it is not set out.

Cited in *City of Durham v. Bates*, 273 N.C. 336, 160 S.E.2d 60 (1968).

§ 136-66.5. Improvements in urban area streets to reduce traffic congestion.—(a) The State Highway Commission is authorized to enter into contracts with municipalities for highway improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to facilitate the flow of traffic in urban areas. In connection with these contracts, the State Highway Commission and the municipalities are authorized to enter into contracts for improvement projects on the municipal system of streets, and pursuant to contract with the municipalities, the State Highway Commission is authorized to construct or to let to contract the said improvement projects on streets on the municipal street system; provided that no portion of the cost of the improvements made on the municipal street system shall be paid from State Highway Commission funds except the proportionate share of funds received from the Federal Highway Administration and allocated for the purposes set out in section 135 of Title 23 of the United States Code. Pursuant to contract with the State Highway Commission, the municipalities may construct or let to contract the said improvement projects on the municipal street system and the State Highway Commission is authorized to pay over to the municipalities the proportionate share of funds received pursuant to section 135 of Title 23 of the United States Code; provided that no portion of the costs of the improvements made on the municipal street system shall be paid for from State Highway Commission funds except those received from the Federal Highway Administration and allocated for the purpose set out in section 135 of Title 23 of the United States Code.

(b) The municipalities are authorized to enter into contracts with the State Highway Commission for improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to facilitate the flow of traffic in urban areas, on the State highway system streets within the municipalities with the approval of the Federal Highway Administration. Pursuant to contract for the foregoing improvement projects, the municipalities are authorized to construct or let to contract the said improvement projects and the State Highway Commission is authorized to reimburse the municipalities for the cost of the construction of the said improvement projects.

(c) The municipalities in which improvements are made pursuant to section 135 of Title 23 of the United States Code shall provide proper maintenance and operation of such completed projects and improvements on the municipal system streets or will provide other means for assuring proper maintenance and operation as is required by the State Highway Commission. In the event the municipality fails to maintain such project or provide for their proper maintenance, the State Highway Commission is authorized to maintain the said projects and improvements and deduct the cost from allocations to the municipalities made under the provisions of G.S. 136-41.1. (1969, c. 794, s. 1.)

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

Dangerous Grade Intersection, Underpass or Overpass Eliminated by Highway Commission.—Every segment of a public road which has been abandoned as a part of the State road system coming within the terms of this section is, by legislative enactment, established as a neighborhood public road; however, the elimination by the Highway Commission of a section of a road so as to exclude a dangerous grade

intersection, underpass or overpass, is not a segment of an abandoned road "which remain(s) open and in general use" by the public so as to qualify it as a neighborhood road which must be kept open *Snow v. North Carolina State Highway Comm'n*, 262 N.C. 169, 136 S.E.2d 678 (1964).

Applied in State Highway Comm'n v. Phillips, 267 N.C. 369, 148 S.E.2d 282 (1966).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

This Section and § 136-69, etc.—

This section and § 136-69 are in derogation of the rights of private property and

must be strictly construed. Taylor v. West Virginia Pulp & Paper Co., 262 N.C. 452, 137 S.E.2d 833 (1964).

§ 136-69. Cartways, tramways, etc., laid out; procedure.—If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section, and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than eighteen feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P. R.; 1822, c. 1139, s. 1, P. R.; R. C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; c. 282, s. 1; C. S., s. 3836; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71; 1965, c. 414, s. 1.)

Local Modification. — Gaston, Jackson, Wake and Warren: 1965, c. 970.

Editor's Note.—

The 1965 amendment substituted "eighteen" for "fourteen" near the end of the first sentence. Section 1½ of the act provides that it shall not apply to the counties of Alleghany, Clay, Graham, Jackson, Mitchell, Polk, Swain and Yancey.

Session Laws 1969, c. 653, amended Session Laws 1965, c. 414, s. 1½, by striking Mitchell from the list of counties to which the 1965 amendment does not apply.

Section Strictly Construed.—

This section and § 136-68 are in derogation of the rights of private property and must be strictly construed. Taylor v. West Virginia Pulp & Paper Co., 262 N.C. 452, 137 S.E.2d 833 (1964).

Effect of Permissive Way.—

An adequate permissive way meets the requirements of this section. Taylor v. West Virginia Pulp & Paper Co., 262 N.C. 452, 137 S.E.2d 833 (1964).

Cartway Quasi-Public Road.—

Once established, a cartway becomes a

quasi-public road. *Taylor v. West Virginia Pulp & Paper Co.*, 262 N.C. 452, 137 S.E.2d 833 (1964).

Requisites for Cartways.—

As one taking action preparatory to cutting and removing standing timber from his land, petitioner is entitled to condemn a cartway over another's property, provided (1) there is no public road or other adequate means of transportation affording him necessary and proper access to his own property, and (2) he satisfies the court that it is necessary, reasonable, and just that he have such a private way. *Taylor v. West Virginia Pulp & Paper Co.*, 262 N.C. 452, 137 S.E.2d 833 (1964).

Access to a navigable stream would not in every instance afford an adequate outlet for the purposes enumerated in this section and thus preclude relief under it. *Taylor v. West Virginia Pulp & Paper Co.*, 262 N.C. 452, 137 S.E.2d 833 (1964).

Where a petitioner does, in fact, have access to his lands, albeit by water, if such access affords adequate and proper means of ingress and egress, he is not entitled to another and different way by land,

even though it would prove more convenient and economical. *Taylor v. West Virginia Pulp & Paper Co.*, 262 N.C. 452, 137 S.E.2d 833 (1964).

The laying off of a cartway, etc.—

Even a petitioner qualifying under this section for a private way over the lands of another is not entitled to select his route or to use existing private roads on a respondent's land as a matter of right, however expedient and economical their use would be to him. The location of the way is the task of a jury of view, but its acts are reviewable by the court. *Taylor v. West Virginia Pulp & Paper Co.*, 262 N.C. 452, 137 S.E.2d 833 (1964).

Thus, Petitioner Is Not Entitled to Use of Existing Road as Matter of Law. —

Unless the only avenue over a respondent's land reasonably adequate for access to a petitioner's property happened to be a road already constructed by the respondent, a petitioner entitled to a cartway would have no right, as a matter of law, to the use of that particular road. *Taylor v. West Virginia Pulp & Paper Co.*, 262 N.C. 452, 137 S.E.2d 833 (1964)

ARTICLE 5.

Bridges.

§ 136-72. **Load limits for bridges; liability for violations.**

A violation of this section constitutes negligence per se. *Byers v. Standard Concrete Prods. Co.*, 268 N.C. 518, 151 S.E.2d

38 (1966); *Shephard v. North Carolina State Highway Comm'n*, 2 N.C. App. 223, 162 S.E.2d 520 (1968).

§ 136-76: Repealed by Session Laws 1965, c. 492.

§ 136-79: Repealed by Session Laws 1965, c. 491.

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.48. **Declaration of policy.**

Designating Highways as "Controlled-Access" Is Exercise of Police Power. — When the Highway Commission acts in the interest of public safety, convenience and general welfare, in designating highways as controlled-access highways, its action is the exercise of the police power of the State. *Wofford v. North Carolina State Highway Comm'n*, 263 N.C. 677, 140 S.E.2d 376 (1965).

Impairing Property Value by Exercise of Police Power Gives No Right to Compensation.—The impairment of the value of property by the exercise of police

power, where property itself is not taken, does not entitle the owner to compensation. *Wofford v. North Carolina State Highway Comm'n*, 263 N.C. 677, 140 S.E.2d 376 (1965).

Applied in *Moses v. State Highway Comm'n*, 261 N.C. 316, 134 S.E.2d 664 (1964).

Stated in *Snow v. North Carolina State Highway Comm'n*, 262 N.C. 169, 136 S.E.2d 678 (1964).

Cited in *Prestige Realty Co. v. State Highway Comm'n*, 1 N.C. App. 82, 160 S.E.2d 83 (1968).

§ 136-89.49. Definitions.

Applied in *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Quoted in *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in *Kenco Petroleum Marketers, Inc. v. State Highway Comm'n*, 269 N.C. 411, 151 S.E.2d 508 (1967); *Prestige Realty Co. v. State Highway Comm'n*, 1 N.C. App. 82, 160 S.E.2d 83 (1968).

§ 136-89.50. Authority to establish controlled-access facilities.

Cited in *Prestige Realty Co. v. State Highway Comm'n*, 1 N.C. App. 82, 160 S.E.2d 83 (1968).

§ 136-89.51. Design of controlled-access facility.

Commission May Forbid Construction and Use of Driveway.—There can be no doubt of the authority of the State Highway Commission, upon its finding that the construction and use of a driveway, affording direct access from adjoining property onto a controlled-access highway, would be or is an obstruction to the free flow of traffic thereon, or a hazard to the safety

of travelers upon the highway, to forbid the construction of the driveway or to prohibit its further use. *Kenco Petroleum Marketers, Inc. v. State Highway Comm'n*, 269 N.C. 411, 152 S.E.2d 508 (1967).

Cited in *Prestige Realty Co. v. State Highway Comm'n*, 1 N.C. App. 82, 160 S.E.2d 83 (1968).

§ 136-89.52. Acquisition of property and property rights.—For the purposes of this article, the Commission may acquire private or public property and property rights for controlled-access facilities and service or frontage roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation in the same manner as now or hereafter authorized by law to acquire such property or property rights in connection with highways. The property rights acquired under the provisions of this article may be in fee simple or an appropriate easement for right-of-way in perpetuity. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or frontage road in connection therewith, the Commission may, in its discretion, with the consent of the landowner, acquire an entire lot, parcel, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, parcel, or tract is not immediately needed for the right-of-way proper.

Along new controlled-access highway locations, abutting property owners shall not be entitled to access to such new locations, and no abutters' easement of access to such new locations shall attach to said property. Where part of a tract of land is taken or acquired for the construction of a controlled-access facility on a new location, the nature of the facility constructed on the part taken, including the fact that there shall be no direct access thereto, shall be considered in determining the fair market value of the remaining property immediately after the taking. (1957, c. 993, s. 5; 1969, c. 946.)

Editor's Note. — The 1969 amendment, effective Jan. 1, 1970, substituted "parcel" for "block" twice in the third sentence, rewrote the former last sentence, which is now the first sentence of the second paragraph, and added the second sentence of the second paragraph.

Commission Is Vested with Broad Discretion. — It is well-settled law in this State that the State Highway Commission is vested by statute with broad discretionary authority in the performance of its statutory duties, and the court cannot substitute its judgment for that of the State Highway Commission, and control the

discretion vested in the State Highway Commission to acquire by condemnation property sought to be acquired for "controlled-access facilities"; the exercise by it of such discretionary authority and powers is not subject to judicial review, unless its action is so clearly unreasonable as to amount to oppressive and manifest abuse. *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

Owner of land abutting highway has a right beyond that which is enjoyed by the general public, a special right of easement in the public road for access purposes, and

this is a property right which cannot be damaged or taken from him without due compensation. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

It is generally recognized that the owner of land abutting a highway has a right beyond that which is enjoyed by the general public, a special right of easement in the public road for access purposes, and this is a property right which cannot be damaged or taken from him without due compensation. *State Highway Comm'n v. North Carolina Realty Corp.*, 4 N.C. App. 215, 166 S.E.2d 469 (1969).

A right of access to a public highway is an easement appurtenant to the land. The Commission stands in the position of a servient owner with the right to locate an access route under the general rule that where an easement is granted or reserved in general terms, which do not fix a specific location, then the owner of the servient estate has the right in the first instance to designate the specific location of such easement, subject to the limitation that this right be exercised in a reasonable manner with due regard to the rights of the owner of the easement. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

The right of direct access from the plaintiff's land to the highway, whether it existed prior to the agreement or was created by it, was an easement appurtenant to the plaintiff's land and was a private property right in the plaintiff, over and above the plaintiff's right, as a member of the public, to use this ramp as a means of getting to the lanes of the highway. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

And Is Subject to Condemnation. — A right of access is an easement, a property right, and as such is subject to condemnation. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

"Denial of Such Rights of Access." — The legislature in using the term "denial of such rights of access" recognized that there were such rights to be denied. *State Highway Comm'n v. North Carolina Realty Corp.*, 4 N.C. App. 215, 166 S.E.2d 469 (1969).

Denial of Access Equivalent to Taking. — Since an abutting landowner has rights of access, a denial thereof is the equivalent of the taking thereof. *State Highway Comm'n v. North Carolina Realty Corp.*, 4 N.C. App. 215, 166 S.E.2d 469 (1969).

Authority to Acquire Rights-of-Way by

Purchase.—The Commission has authority by virtue of § 136-19 to acquire rights-of-way by purchase. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

Payment for Elimination of Hazardous Access Point.—While the Commission has the power to eliminate a hazardous access point, it cannot do so without paying the landowner for his property right. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

The fact that landowner's right of access arose out of an agreement and a deed does not prevent its being a property right. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

Construing Right-of-Way Agreement. — In construing a right-of-way agreement all of the language contained therein is to be considered and a landowner can rely upon language creating easement rights and property rights greater than those of the general public. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

Consideration for Right-of-Way Agreement.—The Commission cannot only pay money as consideration for a right-of-way agreement, but can grant to the landowner a right of access at a particularly designated point. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

In connection with the purchase of a right-of-way, the Commission cannot only pay money, but can grant a right of access at a particularly designated point. *McNeill v. North Carolina State Highway Comm'n*, 4 N.C. App. 354, 167 S.E.2d 58 (1969).

The State Highway Commission has authority to expropriate a school board's property for the purpose of acquiring land for a controlled-access highway facility, even though the property sought to be condemned is devoted to a public use and even though the school board itself is vested with power of expropriation. *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

The General Assembly by virtue of the provisions of this section has granted to the State Highway Commission, acting in behalf of the State of North Carolina and for its sovereign purposes in constructing, developing and maintaining "a state-wide system of roads and highways commensurate with the needs of the State as a whole." express and explicit power and authority in plain and unmistakable words to acquire by condemnation property

owned by a city board of education for "controlled-access facilities." *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

Provided Compensation Is Paid Therefor.—There is nothing in the State Constitution inhibiting the legislature from granting express and explicit power and authority to the State Highway Commission to condemn for "controlled-access facilities" property owned by a city board of education and devoted to public use, except that the organic law provides that just compensation shall be paid for property so appropriated. *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

Denial of access is to be considered in determining the fair market value of land immediately after the taking, and an instruction to the effect that the denial of access should not be taken into consideration is prejudicial error. *North Carolina State Highway Comm'n v. Gasperson*, 268 N.C. 453, 150 S.E.2d 860 (1966).

Effect of Stipulation as to Right to Access.—Where the Highway Commission, by agreement for compensation for the taking of a part of a tract of land, stipulates the right of such owner to access to the highway, the right of access as to the owner and his grantees by mesne conveyance is governed by the stipulations. *Kenco Petroleum Marketers, Inc. v. State Highway Comm'n*, 269 N.C. 411, 152 S.E.2d 508 (1967).

Where the agreement between the owner and the Highway Commission for a taking

of a part of land stipulated that the owner should have no right of access to the highway except at a designated survey station, the agreement, in order to have any meaning, must perforce contemplate direct access by the owner to the highway or to a ramp at or near the designated survey station, and the denial by the Highway Commission of such direct access constituted a taking, either of an easement appurtenant or of a right conferred by the agreement, entitling the owner or those claiming under him to compensation. *Kenco Petroleum Marketers, Inc. v. State Highway Comm'n*, 269 N.C. 411, 152 S.E.2d 508 (1967).

Right-of-Way Agreement Made before Enactment of Section.—In determining whether the plaintiff had a property right which had been taken or destroyed by the Highway Commission, the court was not controlled by the provision in this section that "Along new highway locations abutting property owners shall not be entitled, as a matter of right, to access to such new locations; however, the denial of such right of access shall be considered in determining general damages," since this section was not enacted until 1957, four years after the right-of-way agreement between the Commission and the plaintiff's predecessor in title by which the rights of the parties were fixed. *Kenco Petroleum Marketers, Inc. v. State Highway Comm'n*, 269 N.C. 411, 152 S.E.2d 508 (1967).

Cited in French v. State Highway Comm'n, 273 N.C. 108, 159 S.E.2d 320 (1968).

§ 136-89.53. New and existing facilities; grade crossing eliminations.

Abutting Owner Has Right in Street beyond That of General Public.—The owner of property abutting a highway has a right in the street beyond that which is enjoyed by the general public since egress and ingress to his property is a necessity peculiar to himself. *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Access Cannot Be Taken without Compensation.—The right of a property owner to reasonable access to a public highway which abuts his land is a property right which cannot be taken without compensation. *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965); *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

If There Is Taking or Destruction of Preexisting Property Right.—When the

Commission, in the interest of the public safety, convenience and general welfare, without the taking or destruction of a property right, regulates the right to enter upon or to proceed along a controlled-access highway, the owner of land which is thereby diminished in value, such as by the diminution in volume of traffic upon the highway in front of it, is not entitled to compensation. Conversely, if such action by the Commission is a taking or destruction of a preexisting property right, the owner of such right is entitled to compensation for its taking or destruction. In the latter event, the remedy of such property owner is by a proceeding under this chapter. *Kenco Petroleum Marketers, Inc. v. State Highway Comm'n*, 269 N.C. 411, 152 S.E.2d 508 (1967).

But Requiring Circuity of Travel Does Not Give Right to Compensation.—If the

abutting owner is afforded reasonable access, he is not entitled to compensation merely because of circuity of travel to reach a particular destination. *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

Construction of Highway with Different Lanes for Different Kinds and Directions of Traffic.—An abutting property owner is not entitled to compensation because of the construction of a highway with different lanes for different kinds and directions of traffic, if he be afforded direct access by local traffic lanes to points designated for

access to through traffic. *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Power to Regulate and Close Crossings.—The Highway Commission is authorized to regulate, abandon, and close grade crossings and intersections. *Snow v. North Carolina State Highway Comm'n*, 262 N.C. 169, 136 S.E.2d 678 (1964).

Cited in *Wofford v. North Carolina State Highway Comm'n*, 263 N.C. 677, 140 S.E.2d 376 (1965); *Prestige Realty Co. v. State Highway Comm'n*, 1 N.C. App. 82, 160 S.E.2d 83 (1968).

§ 136-89.54. Authority of local units to consent.

Stated in *Wofford v. North Carolina State Highway Comm'n*, 263 N.C. 677, 140 S.E.2d 376 (1965).

§ 136-89.55. **Local service roads.**—In connection with the development of any controlled-access facility the Commission is authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service or frontage roads and streets or to designate as local service or frontage roads and streets any existing road or street, any to exercise jurisdiction over service or frontage roads in the same manner as is authorized over controlled-access facilities under the terms of this article, if in its opinion such local service or frontage roads and streets are necessary or desirable; provided, however, that after a local service or frontage road has been established, the same shall not be vacated or abandoned in such a manner as to reduce access to the facility without the consent of the abutting property owners or the payment of just compensation, so long as the controlled-access facility is maintained as such facility, and the Commission shall not have any authority to control or restrict the right of access of abutting property owners from their property to such local service or frontage roads or streets without the property owners' consent or the payment of just compensation, except such authority as the Commission has with respect to primary and secondary roads under the police power. Such local service or frontage roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable. (1957, c. 993, s. 8; 1969, c. 795.)

Editor's Note. — The 1969 amendment rewrote the proviso to the first sentence.

§ 136-89.57: Repealed by Session Laws 1965, c. 474, s. 1.

§ 136-89.58. **Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.**—On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access facilities it shall be unlawful for any person:

- (1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.
- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

- (4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the State Highway Commission.
- (5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right of way of said highways, except in the case of an emergency or as directed by a peace officer, or as designated parking areas.
- (6) To willfully damage, remove, climb, cross or breach any fence erected within the rights of way of said highways.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not in excess of one hundred dollars (\$100.00) or by imprisonment not in excess of sixty (60) days or by both such fine and imprisonment, in the discretion of the court. (1959, c. 647; 1965, c. 474, s. 2.)

Editor's Note. — The 1965 amendment inserted "and other controlled-access facilities" near the beginning of the section.

ARTICLE 6E.

North Carolina Turnpike Authority.

§ 136-89.59. Turnpike projects.

Article Held Constitutional.—See *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Turnpike Projects Are to Supplement Highway System. — By this article the legislature authorized turnpike projects to augment the State highway system. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

The Authority is the State agency created to provide additional roads at the expense of those who choose to use them. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Powers Properly Delegated.—The complexities of modern life are such that courts of last resort have recognized the necessity of legislative grants of authority to carry forward programs such as provided in this Turnpike Act. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

If it were necessary for the Turnpike Authority to formulate specific plans as to the course of the turnpike through the various municipalities, and as to the manner and method of construction and then seek legislative approval thereof, there would be no purpose in creating the Authority; the legislature might just as well act itself in the entire matter. The prohibition against abdication of legislative power in favor of an agency was never intended to extend to such administrative

details. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Location of Project Left to Discretion of Authority and Commission.—Since toll roads are a departure from a legislative policy of many years' standing, in 1963 the General Assembly was proceeding cautiously and experimentally in authorizing them. Even so, it did not direct the location of the pilot project with which it authorized Authority to begin. This was left to the discretion of Authority and State Highway Commission, uncontrolled except by the same general policies which direct location of roads by the State Highway Commission—plus the policy that it must be located in a section where a toll road might reasonably be expected to pay for itself. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

"Including" Is Not Limitation in Definition.—The statutory definition of a thing as "including" certain things does not necessarily place thereon a meaning limited to the inclusions. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Thus, Other Safety Devices Are Not Excluded by This Section.—By use of the word "including" near the beginning of this section, the lawmakers intended merely to list examples of known safety devices, but not to exclude others equally well known. Had the latter been their intention, the proper expression to have been

used would have been "comprising," "consisting of," or some synonymous term. This is not a situation which calls for the application of the maxim, "expressio

unius est exclusio alterius." *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.60. Credit of State not pledged.

Bonds Are Not Debt within Meaning of Constitution.—The General Assembly has taken great care to make it crystal clear that the credit of neither the State nor any of its political subdivisions can be pledged to pay the Turnpike Authority's revenue bonds. This method of financing creates no debt within the meaning of the Constitution. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Thus, Constitutional Debt Limitations Are Inapplicable.—Since the Turnpike Authority's revenue bonds do not create a debt within the meaning of the Constitution, the limitations of N.C. Const., Art. V, § 4, are inapplicable. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.62. Definitions.

The items embraced in the word "costs," as applied to a turnpike project, are specifically enumerated in this section. *North*

Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.63. General grant of powers.

Approval of Commission Insures Integrated System.—This article insured an integrated highway system by making such projects subject to the approval of the State Highway Commission. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

Reasonable Standards Set for Selecting Routes.—The General Assembly has set, for the selection of routes, reasonable standards which are as specific as the circumstances permit. *North Carolina Turn-*

pike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).
And Establishing Points of Access.—Points of ingress and egress shall be so established as to effectuate the purposes of this article. The legislature could provide no more definite criteria for points of ingress and egress on a road the location of which it has authorized Authority to select. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.64. Acquisition of property.

Cited in *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965); *State v. Core Banks*

Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

§ 136-89.66. Turnpike revenue bonds.

The authority to spend is circumscribed by the authority to do, i.e., to construct and maintain toll roads, to collect the revenues therefrom, and out of them to retire the bonds. Any unrelated expenditures would be illegal. These requirements constitute sufficiently definite standards for both the borrowing and the spending of money. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Thus, Definition of "Costs" Limits Amount Issued.—The amount of revenue bonds to be issued is limited by the costs as defined in § 136-89.62 (3). *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Revenue bonds are authorized only for the purpose of paying the cost of a project. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

Construction in Stages Authorized.—This article contemplates the construction of turnpikes in stages. It provides that bonds may be authorized and issued at one time or from time to time for the payment of any part of the cost of any project. *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.68. Revenues.

Taxes and Tolls Distinguished.—Taxes are levied for the support of government, and their amount is regulated by its necessities. Tolls are the compensation for the use of another's property or improvements made, and their amount is determined by the cost of the property or improvements. North Carolina Turnpike Au-

thority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

Tolls are not taxes. A person uses a toll road at his option; if he does not use it, he pays no toll. North Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.69. Trust funds.

Quoted in North Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.74. Transfer to State.

Toll Roads Will Become Part of Highway System.—It is anticipated that the toll roads, when all indebtedness incurred in connection with their construction shall have been paid, will become a part of the

State highway system and thereafter be free of toll. North Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-89.77: Repealed by Session Laws 1965, c. 1077.

ARTICLE 7.

Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.

Editor's Note.—For article dealing with the legal problems in southern desegregation, see 43 N.C.L. Rev. 689 (1965).

Obstruction a Nuisance.—

Intentionally obstructing the flow of

traffic constitutes an indictable nuisance, a misdemeanor, punishable by fine, or imprisonment not exceeding two years, or both. State v. Fox, 262 N.C. 193, 136 S.E.2d 761 (1964).

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

Editor's Note.—

For article on remedies for trespass to land in North Carolina, see 47 N.C.L. Rev. 334 (1969).

Municipality May Not Contract to Take Over Highway Commission's Responsibilities.—This section and §§ 160-54 and 136-66.1 do not authorize a municipality, in the absence of specific legislative authority, to contract to take over the responsibilities of the Highway Commission with reference to the construction, maintenance and repair of city streets and supporting culverts which constitute a part of the State highway system. Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967).

with reference to the construction, maintenance and repair of all city streets, including culverts which support city streets, which constitute a part of the State highway system. Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967).

Issuance of Sewer Construction Permits.—The State Highway Commission or its duly authorized officers may give in writing a permit to an individual firm or corporation authorizing the holder of such permit to construct or install a sewer line within the right of way along any highway under the control of the Commission, provided the installation of such sewer line is made under the supervision and to the satisfaction of the Commission or its officers or employees. Van Leuven v. Akers Motor Lines, Inc., 261 N.C. 539, 135 S.E.2d 640 (1964).

Statutory Obligation of Highway Commission.—This section and §§ 160-54 and 136-66.1 indicate that the Highway Commission is under a statutory obligation

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

Editor's Note.—

For a note discussing the disposition of property within the boundaries of dedicated streets when use of the street is discontinued, see 45 N.C.L. Rev. 564 (1967).

Owners Are Only Parties, etc.—

In accord with 2nd paragraph in original. See *Owens v. Taylor*, 2 N.C. App. 178, 162 S.E.2d 576 (1968).

Question Is Whether Street Is Rea-

sonably Necessary. — Under certain circumstances a seller-dedicator or other lot owners may abandon and close a street or a portion of a street. As to a purchaser, opposing such closing, the question is whether the street is reasonably necessary for the use of his lot. *Wofford v. North Carolina State Highway Comm'n*, 263 N.C. 677, 140 S.E.2d 376 (1965).

§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing record of results with chairman of Commission.— No person, firm or corporation shall make any test drilling or boring upon the right-of-way of any road or highway, under the jurisdiction of the State Highway Commission, until written authorization has been obtained from the owner or the person in charge of the land on which the highway easement is located. A complete record showing the results of the test drilling or boring shall be filed forthwith with the chairman of the State Highway Commission and shall be a public record. This section shall not apply to the State Highway Commission making test drilling or boring for highway purposes only. (1967, c. 923, s. 1.)

§ 136-102.3. Filing record of results of test drilling or boring with directors of Departments of Administration and Conservation and Development.— Any person, firm or corporation making any test drilling or boring upon any public land, owned or controlled by the State of North Carolina shall, forthwith after completion, file a complete record of the results of the test drilling or boring with the Director of the Department of Administration and with the Director of the Department of Conservation and Development, of each test hole bored or drilled. Such records filed shall become a matter of public record. Provided, that after exploratory drilling and boring has been completed, and a lease or contract has been executed for operation, production or development of the area, the results of test drillings or borings made incidental to the operation, production or development of the area under lease or contract shall not be subject to the provisions of §§ 136-102.2 to 136-102.4 unless otherwise provided in such lease or contract. (1967, c. 923, s. 2.)

§ 136-102.4. Penalty for violation of §§ 136-102.2 and 136-102.3. — Violation of §§ 136-102.2 and 136-102.3 shall be a misdemeanor, punishable in the discretion of the court. (1967, c. 923, s. 3.)

ARTICLE 8.

Citation to Highway Bond Acts.

IX. State Highway Bond Act of 1965. Session Laws 1965, cc. 46, 913; Session Laws 1969, c. 379.

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit.

Editor's Note.—

For an article urging revision and recodification of North Carolina's eminent

domain laws, see 45 N.C.L. Rev. 587 (1967).

For note on expansion of definition of

“taking” in eminent domain proceedings, see 47 N.C.L. Rev. 441 (1969).

The Highway Commission as a State agency or instrumentality possesses the sovereign power of eminent domain, and by reason thereof can take private property for public use for highway purposes upon payment of just compensation. *State Highway Comm'n v. Batts*, 265 N.C. 346, 144 S.E.2d 126 (1965).

Section Inapplicable, etc.—

By express provision of the enacting statute, this section applies only to proceedings begun subsequent to July 1, 1960. *Wescott v. State Highway Comm'n*, 262 N.C. 522, 138 S.E.2d 133 (1964).

Strict Construction.—The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. *Greensboro-High Point Airport Authority v. Irvin*, 2 N.C. App. 341, 163 S.E.2d 118 (1968).

In construing statutes which are claimed to authorize the exercise of the power of eminent domain, a strict rather than a liberal construction is the rule. *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

Power of Eminent Domain Is Prerogative of Sovereign State.—The right to take private property for public use, the power of eminent domain, is one of the prerogatives of a sovereign state. The right is inherent in sovereignty; it is not conferred by constitutions. Its exercise, however, is limited by the constitutional requirements of due process and payment of just compensation for property condemned. *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

Only the legislative branch can authorize the exercise of the power of eminent domain and prescribe the manner of its use. *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain must be conferred by statute, either in express words or by necessary implication. *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain lies dormant in the State until the legislature, by statute, confers the power and points out the occasion, mode, conditions and agencies for its exercise. *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

Hence, the executive branch of the government cannot, without the authority of some statute, proceed to condemn property for its own uses. Once authority is given to exercise the power of eminent domain,

the matter ceases to be wholly legislative. The executive authorities may then decide whether the power will be invoked and to what extent, and the judiciary must decide whether the statute authorizing the taking violates any constitutional rights. *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

Power of Eminent Domain Expressly Granted.—The General Assembly has expressly granted to the State Highway Commission, under prescribed conditions, the power of eminent domain and has set forth the procedure to be followed in the exercise of such power. This procedure must be followed and the conditions prescribed therein must be met before the State Highway Commission has the right to exercise the power of eminent domain. *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

Section Sets Out Procedure and Necessary Allegations. — The General Assembly, by the express provisions of this section, has set out the procedure required and the necessary allegations of a complaint. *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

Inability to Agree on Price of Lands Need Not Be Alleged.—It is not necessary in order for the court to obtain jurisdiction in a condemnation proceeding instituted by the Highway Commission pursuant to this chapter that the Commission allege in its complaint that the Commission and the owners are unable to agree as to the price of the lands sought to be condemned. *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

Nor Good Faith Attempts to Acquire Property by Negotiation.—Since the effective date of this section an allegation of prior good faith attempts to acquire the property by negotiation is not required in a condemnation complaint filed by the State Highway Commission in order to show jurisdiction, but that absent such an allegation a complaint otherwise containing the express allegations required by this section would allege a defective statement of a good cause of action. *City of Charlotte v. Robinson*, 2 N.C. App. 429, 163 S.E.2d 289 (1968).

The fixing of compensation is wholly a judicial question. *State v. Core Banks Club Properties*, 275 N.C. 328, 167 S.E.2d 385 (1969).

The General Assembly made inapplicable the provisions of former § 1-122 insofar as it related to complaints filed in eminent domain cases by the State Highway Commission arising after 1 July 1960.

This is the distinguishing difference between cases brought under the provisions of chapter 40 and by the State Highway Commission under this article. *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

Applied in North Carolina State Highway Comm'n v. Gasperson, 268 N.C. 453, 150 S.E.2d 860 (1966); *State Highway Comm'n v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967); *North Carolina State*

Highway Comm'n v. Nuckles, 271 N.C. 1, 155 S.E.2d 772 (1967).

Cited in North Carolina State Highway Comm'n v. York Industrial Center, Inc., 263 N.C. 230, 139 S.E.2d 253 (1964); *North Carolina State Highway Comm'n v. Moore*, 3 N.C. App. 207, 164 S.E.2d 385 (1968); *State Highway Comm'n v. North Carolina Realty Corp.*, 4 N.C. App. 215, 166 S.E.2d 469 (1969).

§ 136-104. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action.

Cross Reference.—As to right of condemnor to take voluntary nonsuit, see § 1-209.2 and note thereto.

Formerly, the property owner's title was divested by decree in a special proceeding under § 40-11, and then only when fair compensation had been ascertained and paid as directed by decree confirming the award. *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964).

Prior to the enactment of this section, title was not divested until compensation was paid; and the person who owned the property when the award was confirmed was the person to be compensated. *North Carolina State Highway Comm'n v. Hettiger*, 271 N.C. 152, 155 S.E.2d 469 (1967).

Since July 1, 1960, title is divested by a civil action. *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964).

Upon the filing of the complaint and the declaration of a taking, together with the making of a deposit in court, title and right to immediate possession of property condemned by the Highway Commission vests in the Commission. *North Carolina State Highway Comm'n v. Myers*, 270 N.C. 258, 154 S.E.2d 87 (1967).

Filing Memorandum Has Same Effect as Conveyance.—The Highway Commission, when it files its complaint, must file a memorandum of its action with the register of deeds where the land lies, and this has the same effect as a conveyance of the property. *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964).

Person Owning Land Immediately Prior to Filing Complaint Has Right to Compensation.—The right to compensation rests in the person who owned the land immediately prior to the filing of the complaint and declaration of taking. *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964); *North Carolina State*

Highway Comm'n v. Hettiger, 271 N.C. 152, 155 S.E.2d 469 (1967).

But such person has nothing he can sell pending ascertainment of fair compensation. *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964).

"Compensable Interest" Is Interest in Property Condemned.—The "compensable interest" referred to in this section is an interest in the property condemned, not in property conveyed away just prior to condemnation. *North Carolina State Highway Comm'n v. Hettiger*, 271 N.C. 152, 155 S.E.2d 469 (1967).

Statutory Provisions Not Affected by Agreement Made in Anticipation of Condemnation.—Defendants could not, by agreement made in anticipation of the condemnation of a portion of their property, change the statutory provisions relating to the time of, and basis for, the compensation to be paid when the Commission condemns the property for highway purposes. *North Carolina State Highway Comm'n v. Hettiger*, 271 N.C. 152, 155 S.E.2d 469 (1967).

Former Owner Not Entitled to Compensation for Reduced Sale Price of Land Condemned.—Where landowners were forced by business reverses to sell a part of their tract of land to third persons just prior to the time the Highway Commission acquired title to a part of the remainder and they alleged that the price obtained for the tract sold was greatly reduced because of public knowledge of the location of the planned highway, they were not entitled to compensation for the reduced sale price of the land conveyed. *North Carolina State Highway Comm'n v. Hettiger*, 271 N.C. 151, 155 S.E.2d 469 (1967).

Transfer in Condemnation Proceeding Does Not Destroy Estate by Entirety.—Where title to land held by the entirety is transferred to the State Highway Commission upon the payment into court of a sum estimated by the Commission to be just compensation, such involuntary transfer of

title does not destroy the estate by the entirety, and the compensation paid by the Commission has the status of real property owned by the husband and wife as tenants by the entirety. *North Carolina State Highway Comm'n v. Myers*, 270 N.C. 258, 154 S.E.2d 87 (1967).

§ 136-105. Disbursement of deposit; serving copy of disbursing order on State Highway Commission.—The person named in the complaint and declaration of taking may apply to the court for disbursement of the money deposited in the court, or any part thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause to determine just compensation. Upon such application, the judge shall, unless there is a dispute as to title, order that the money deposited be paid forthwith to the person entitled thereto in accordance with the application. The judge shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

No notice to the Highway Commission of the hearing upon the application for disbursement of deposit shall be necessary, but a copy of the order disbursing the deposit shall be served upon the chairman of the State Highway Commission, or such other process agents as may be designated by the Highway Commission. (1959, c. 1025, s. 2; 1961, c. 1084, s. 3; 1965, c. 55, s. 14; 1969, c. 649.)

Cross Reference.—See note to § 136-106.

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "chairman of the State Highway Commission, or such other process agents as may be designated by the Highway Commission" for "Director of the Highway Commission" at the end of the section.

The 1969 amendment deleted "Any time prior to the expiration of two years from service of summons" at the beginning of the section.

There Can Be No Disbursement Unless Specifically Authorized by Order of Court.

—There can be no disbursement of any portion of money deposited as a credit against just compensation for any purpose unless specifically authorized by order of

Cited in *Davis v. North Carolina State Highway Comm'n*, 271 N.C. 405, 156 S.E.2d 685 (1967); *City of Durham v. Bates*, 273 N.C. 336, 160 S.E.2d 60 (1968).

the court entered after hearing pursuant to notice to all interested parties. *North Carolina State Highway Comm'n v. Myers*, 270 N.C. 258, 154 S.E.2d 87 (1967).

A wife separated from her husband and seeking alimony pendente lite under § 50-16 has no present right to disbursement of money deposited by the State Highway Commission as a credit against just compensation for land owned by the wife and her husband as tenants by entirety. *North Carolina State Highway Comm'n v. Myers*, 270 N.C. 258, 154 S.E.2d 87 (1967).

Applied in *Davis v. North Carolina State Highway Comm'n*, 271 N.C. 405, 156 S.E.2d 685 (1967).

Cited in *City of Durham v. Bates*, 273 N.C. 336, 160 S.E.2d 60 (1968).

§ 136-106. Answer, reply and plat.

(b) A copy of the answer shall be served on the chairman of the State Highway Commission, or such other process agents as may be designated by the Highway Commission, in Raleigh, provided that failure to serve the answer shall not deprive the answer of its validity. The affirmative allegations of said answer shall be deemed denied. The Highway Commission may, however, file a reply within thirty (30) days from receipt of a copy of the answer.

(1965, c. 55, s. 15.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, substituted "chairman of the State Highway Commission, or such other process agents as may be designated by the Highway Commission" for "Director of Highways, State Highway Commission" near the beginning of subsection (b).

As only subsection (b) was changed by

the amendment, the rest of the section is not set out.

An answer is "filed" when it is delivered for that purpose to the proper officer and received by him. *State Highway Comm'n v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967).

The word "only" in the first sentence of this section modifies "complaint," not

“praying for a determination of just compensation.” That is, the defendants were authorized by the statutory procedure, established by the State, to file an answer denying that the proposed condemnation is for a public use, and were authorized to do so at any time within twelve months after the summons and complaint were served upon them. If this procedure puts the Commission at a disadvantage in constructing highways to meet the public need, the remedy is in the legislature, not the courts. *State Highway Comm’n v. Thornton*, 271 N.C. 227, 156 S.E.2d 248 (1967), commented on in 46 N.C.L. Rev. 663 (1968).

Presumption That Copy of Answer Mailed to Plaintiff or His Attorney.—Upon admission that answer has been filed it will be presumed that a copy thereof for the use of plaintiff had likewise been filed

§ 136-107. Time for filing answer.

This section expresses a definite, sensible and mandatory meaning concerning procedure in condemnation proceedings under this chapter. *State Highway Comm’n v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967).

Court Has No Discretionary Power to Allow Extension of Time for Filing Answer.—This section, limiting the time for the filing of answer in condemnation proceedings instituted by the Highway Commission, must be construed as an exception to the general power of the court to extend the time for the filing of plead-

§ 136-108. Determination of issues other than damages.

One of the purposes of this section was to eliminate from the jury trial any question as to what land the State Highway Commission is condemning and any question as to its title. *North Carolina State Highway Comm’n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Section Does Not Infringe Right to Trial by Jury.—This section is constitutional and does not deprive the plaintiffs of their right to trial by jury as the same is guaranteed by the North Carolina and United States Constitutions. *Kaperonis v. North Carolina State Highway Comm’n*, 260 N.C. 587, 133 S.E.2d 464 (1963).

When the taking by the sovereign is conceded, questions preliminary to the determination of the amount to be paid are questions of fact to be determined by the court—not issues of fact which must be determined by a jury. This is the basis for the conclusion reached in *Kaperonis v. North Carolina State Highway Comm’n*, 260 N.C. 587, 133 S.E.2d 464 (1963), hold-

and mailed to him or his attorney of record, as required by § 1-125. *State Highway Comm’n v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967).

Petition for Disbursement under § 136-105 Cannot Be Construed as Answer.—A petition under § 136-105 to withdraw the amount deposited by the Highway Commission as compensation cannot be construed as an answer within the meaning of §§ 136-106 and 136-107. *State Highway Comm’n v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967).

Applied in *Kaperonis v. North Carolina State Highway Comm’n* 260 N.C. 587, 133 S.E.2d 464 (1963); *North Carolina State Highway Comm’n v. Myers*, 270 N.C. 258, 154 S.E.2d 87 (1967); *North Carolina State Highway Comm’n v. Hettiger*, 271 N.C. 152, 155 S.E.2d 469 (1967).

ings, § 1-152, so that the court has no discretionary power to allow the filing of an answer after the time limited in the condemnation statute. *State Highway Comm’n v. Hemphill*, 269 N.C. 535, 153 S.E.2d 22 (1967).

Applied in *North Carolina State Highway Comm’n v. Myers*, 270 N.C. 258, 154 S.E.2d 87 (1967).

Quoted in *State Highway Comm’n v. Thornton*, 271 N.C. 227, 156 S.E.2d 248 (1967), commented on in 46 N.C.L. Rev. 663 (1968).

ing this section constitutional. *Wescott v. State Highway Comm’n*, 262 N.C. 522, 138 S.E.2d 133 (1964).

Parties are fixed with notice of all motions or orders made during the session of court in causes pending therein, and the statutory provisions for notice of motions are not applicable in such instances. *State Highway Comm’n v. Stokes*, 3 N.C. App. 541, 165 S.E.2d 550 (1969).

Assessment of Damages to Tracts Other Than Those Taken.—Obviously, it would be an exercise in futility, completely thwarting the purpose of this section to have the jury assess damages to four certain tracts if plaintiff were condemning only two other tracts, and the verdict would be set aside on appeal for errors committed by the judge in determining the issues other than damages. *North Carolina State Highway Comm’n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Immediate Appeal.—Should there be a fundamental error in the judgment ren-

dered under this section resolving the vital preliminary issues of what land is being condemned and the title thereto, ordinary prudence requires an immediate appeal. *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

Applied in *Snow v. North Carolina State Highway Comm'n*, 262 N.C. 169, 136 S.E.2d 678 (1964); *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965); *State Highway Comm'n v. Batts*, 265 N.C. 346, 144

S.E.2d 126 (1965); *North Carolina State Highway Comm'n v. Rankin*, 2 N.C. App. 452, 163 S.E.2d 302 (1968).

Quoted in *State Highway Comm'n v. Thornton*, 271 N.C. 227, 156 S.E.2d 248 (1967), commented on in 46 N.C.L. Rev. 663 (1968).

Cited in *French v. State Highway Comm'n*, 273 N.C. 108, 159 S.E.2d 320 (1968); *North Carolina State Highway Comm'n v. Wortman*, 4 N.C. App. 546, 167 S.E.2d 462 (1969).

§ 136-109. Appointment of commissioners.

Condemnee is only entitled to fair compensation for such of his property, if any, as the Commission has taken. *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964).

Neither the Commission's nor the owner's estimate of the value of the land

taken is conclusive. *North Carolina State Highway Comm'n v. York Industrial Center, Inc.*, 263 N.C. 230, 139 S.E.2d 253 (1964).

Cited in *Kenco Petroleum Marketers, Inc. v. State Highway Comm'n*, 269 N.C. 411, 152 S.E.2d 508 (1967).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.—Any person whose land or compensable interest therein has been taken by an intentional or unintentional act or omission of the Highway Commission and no complaint and declaration of taking has been filed by said Highway Commission may, within twenty-four (24) months of the date of said taking, file a complaint in the superior court setting forth the names and places of residence of the parties, so far as the same can be ascertained by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate and if any such persons are under a legal disability, it must be so stated, together with a statement as to any encumbrances on said real estate; said complaint shall further allege with particularity the facts which constitute said taking together with the dates that they allegedly occurred; said complaint shall describe the property allegedly owned by said parties and shall describe the area and interests allegedly taken. Upon the filing of said complaint, summons shall issue and together with a copy of said complaint be served on the Director of Highways. The allegations of said complaint shall be deemed denied; however, the Highway Commission within sixty (60) days of service of summons and complaint may file answer thereto, and if said taking is admitted by the Highway Commission, it shall, at the time of filing answer, deposit with the court the estimated amount of compensation for said taking and notice of said deposit shall be given to said owner. Said owner may apply for disbursement of said deposit and disbursement shall be made in accordance with the applicable provisions of § 136-105 of this chapter. If a taking is admitted, the Commission shall, within ninety (90) days of the filing of the answer to the complaint, file a map or plat of the land taken. The procedure hereinbefore set out shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

The plaintiff at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located, said memorandum to be recorded among the land records of said county. The memorandum of action shall contain

- (1) The names of those persons who the plaintiff is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;

- (3) A statement of the estate or interest in said land allegedly taken for public use; and
- (4) The date on which plaintiff alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action. (1959, c. 1025, s. 2; 1961, c. 1084, s. 6; 1963, c. 1156, s. 8; 1965, c. 514, ss. 1, 1½.)

Editor's Note.—

The 1965 amendment inserted "an intentional or unintentional act or omission of" near the beginning of the section and substituted, near the beginning of the section, "twenty-four (24)" for "twelve (12)" and "date of said taking" for "completion of highway project for which the land was taken."

Section 2 of the amendatory act provides: "All laws and clauses of laws in conflict with this act are hereby repealed except that as to those actions or proceedings pending upon the effective date of this act or to any takings or causes of actions arising prior to the effective date of this act the present provisions of the law shall remain in full force and effect until such actions or proceedings are concluded."

Statutory Remedy Is Ordinarily Exclusive.—The statutory remedy for the recovery of damages to private property taken for public service is ordinarily exclusive, and when the statutory procedure is available, the owner, failing to pursue the statutory procedure, may not institute an action in superior court to recover his damages. *Midgett v. North Carolina State Highway Comm'n*, 260 N.C. 241, 132 S.E.2d 599 (1963).

But Common Law Provides Action for Taking of Property If Statute Inadequate.—Where the Constitution points out no remedy and no statute affords an adequate remedy under a particular fact situation, the common law will furnish the ap-

propriate action for adequate redress a grievance based on the constitutional prohibition against taking or damaging private property for public use without just compensation. *Midgett v. North Carolina State Highway Comm'n*, 260 N.C. 241, 132 S.E.2d 599 (1963).

Thus, Plaintiff May Recover for Flooding of Land by Ocean from Highway Construction.—The owner of land may maintain an action at common law to recover for the depreciation in the value of land resulting from a nuisance created by the construction of a highway at an elevation which periodically diverts storm waters of the ocean across the land, there being no undertaking by defendant to condemn plaintiff's property under this article. *Midgett v. North Carolina State Highway Comm'n*, 260 N.C. 241, 132 S.E.2d 599 (1963).

Although Statute of Limitations, If Strictly Applied, Would Bar Cause of Action.—See *Midgett v. North Carolina State Highway Comm'n*, 260 N.C. 241, 132 S.E.2d 599 (1963).

Since plaintiff is not restricted to the procedures set out in this article. *Midgett v. North Carolina State Highway Comm'n*, 260 N.C. 241, 132 S.E.2d 599 (1963).

Applied in *Kaperonis v. North Carolina State Highway Comm'n*, 260 N.C. 587, 133 S.E.2d 464 (1963); *Browning v. North Carolina State Highway Comm'n*, 263 N.C. 130, 139 S.E.2d 227 (1964); *Davis v. North Carolina State Highway Comm'n*, 271 N.C. 405, 156 S.E.2d 685 (1967).

§ 136-112. Measure of damages.

This section prescribes the rule for determining what constitutes just compensation. *North Carolina State Highway Comm'n v. Hettiger*, 271 N.C. 152, 155 S.E.2d 469 (1967).

Subdivision (1) states the applicable rule as to the ultimate measure of damages. *North Carolina State Highway Comm'n v. Gasperson*, 268 N.C. 453, 150 S.E.2d 860 (1966).

It contains no provision as to factors to be considered by the jury in determining fair market value. *North Carolina State Highway Comm'n v. Gasperson*, 268 N.C. 453, 150 S.E.2d 860 (1966).

All Pertinent Factors Are to Be Con-

sidered.—All factors pertinent to the fair market value of the remainder immediately after the taking are to be considered by the jury. *North Carolina State Highway Comm'n v. Gasperson*, 268 N.C. 453, 150 S.E.2d 860 (1966).

The rule as to measure of damages stated in subdivision (1) is in accord with that adopted and stated by the Supreme Court in numerous decisions. *North Carolina State Highway Comm'n v. Gasperson*, 268 N.C. 453, 150 S.E.2d 860 (1966).

Statutory Provisions Not Affected by Agreement Made in Anticipation of Condemnation.—Defendants could not, by agreement made in anticipation of the

condemnation of a portion of their property, change the statutory provisions relating to the time of, and basis for, the compensation to be paid when the Commission condemns the property for highway purposes. *North Carolina State Highway Comm'n v. Hettiger*, 271 N.C. 152, 155 S.E.2d 469 (1967).

Admissible Evidence.—

In accord with 1st paragraph in original. See *State Highway Comm'n v. Phillips*, 267 N.C. 369, 148 S.E.2d 232 (1966).

Loss of Use of Property.—Landowners were not entitled to recover any damages, other than interest, for the loss of use of

their property between the time they vacated it and the time the Highway Commission deposited its estimate of just compensation for the property appropriated. Its fair market value as of the day of the taking was the full measure of the damages. *Davis v. North Carolina State Highway Comm'n*, 271 N.C. 405, 156 S.E.2d 685 (1967).

Applied in *North Carolina State Highway Comm'n v. Pearce*, 261 N.C. 760, 136 S.E.2d 71 (1964).

Cited in *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 632, 139 S.E.2d 904 (1965).

§ 136-115. Definitions.—For the purpose of this article

- (1) The word "judge" shall mean the resident judge of the superior court in the district where the cause is pending, or special judge residing in said district, or the judge of the superior court assigned to hold the courts of said district or the emergency or special judge holding court "in the county where the cause is pending.
- (2) The words "person," "owner," and "party" shall include the plural; the word "person" shall include a firm or public or private corporation; and the words "Highway Commission" shall mean the State Highway Commission. (1959, c. 1025, s. 2; 1961, c. 1084, s. 7; 1965, c. 422.)

Editor's Note.—

The 1965 amendment inserted "the word

'person' shall include a firm or public or private corporation;" in subdivision (2).

§ 136-119. Costs and appeal.

Section Is Inapplicable If Commission Found Not To Have Taken Property.—

Where it is adjudicated upon supporting evidence that the Highway Commission had taken no property of the complaining landowners, this section does not apply, and plaintiffs may not complain of the taxing of the costs against them upon the dismissal of their action to recover compensation for the asserted taking. *Kaper-*

onis v. North Carolina State Highway Comm'n, 260 N.C. 587, 133 S.E.2d 464 (1963).

Appeals Governed by § 1-277. — When the State Highway Commission condemns property under this article, appeals by either party are governed by § 1-277, the same as any other civil action. *North Carolina State Highway Comm'n v. Nuckles*, 271 N.C. 1, 155 S.E.2d 772 (1967).

§ 136-121. Refund of deposit.

Cited in *State Highway Comm'n v. Matthis*, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

ARTICLE 10.

Preservation, etc., of Scenic Beauty of Areas along Highways.

§ 136-122. Legislative findings and declaration of policy.—The General Assembly finds that the rapid growth and the spread of urban development along and near the State highways is encroaching upon or eliminating many areas having significant scenic or aesthetic values, which if restored, preserved and enhanced would promote the enjoyment of travel and the protection of the public investment in highways within the State and would constitute important physical, aesthetic or economic assets to the State. It is the intent of the General Assembly in enacting this statute to provide a means whereby the State Highway Commission may acquire the fee or any lesser interest or right in real property in order to restore, preserve and enhance natural or scenic beauty of areas traversed by the highways of the State highway system.

The General Assembly hereby declares that it is a public purpose and in the public interest of the people of North Carolina, to expend public funds, in connection with the construction, reconstruction or improvement of State highways, for the acquisition of the fee or any lesser interest in real property in the vicinity of public highways forming a part of the State highway system, in order to restore, preserve and enhance natural or scenic beauty. The General Assembly hereby finds, determines and declares that this article is necessary for the immediate preservation and promotion of public convenience, safety and welfare. (1967, c. 1247, s. 1.)

§ 136-123. **Restoration, preservation and enhancement of natural or scenic beauty.**—The State Highway Commission is hereby authorized and empowered to acquire by purchase, exchanges or gift, the fee simple title or any lesser interest therein in real property in the vicinity of public highways forming a part of the State highway system, for the restoration, preservation and enhancement of natural or scenic beauty; provided that no lands, rights-of-way or facilities of a public utility as defined by G.S. 62-3 (23), or of an Electric Membership Corporation or Telephone Membership Corporation, may be acquired, except that the Commission upon payment of the full cost thereof may require the relocation of electric distribution or telephone lines or poles; provided further, that such lands may be acquired by the Commission with the consent of the public utility or membership corporation. (1967, c. 1247, s. 2.)

§ 136-124. **Availability of federal aid funds.**—The State Highway Commission shall not be required to expend any funds for the acquisition of property under the provisions of this article unless federal aid funds are made available for this purpose. (1967, c. 1247, s. 3.)

§ 136-125. **Regulation of scenic easements.**—The State Highway Commission shall have the authority to promulgate rules and regulations governing the use, maintenance and protection of the areas or interests acquired under this article. Any violation of such rules and regulations shall be a misdemeanor. (1967, c. 1247, s. 4.)

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. **Title of article.**—This article may be cited as the Outdoor Advertising Control Act. (1967, c. 1248, s. 1.)

§ 136-127. **Declaration of policy.**—The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way of the interstate and primary highways within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for the regulation and control of outdoor advertising. (1967, c. 1248, s. 2.)

§ 136-128. **Definitions.**—As used in this article:

(1) "Information center" means an area or site established and maintained

at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as the State Highway Commission may consider desirable.

- (2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as officially designated, or as may hereafter be so designated, by the State Highway Commission, or other appropriate authorities.
- (3) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or any other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary system.
- (4) "Primary systems" means that portion of connected main highways, as now officially designated, or as may hereafter be so designated by the North Carolina State Highway Commission as primary system, or other appropriate authorities.
- (5) "Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public. (1967, c. 1248, s. 3.)

§ 136-129. Limitations of outdoor advertising devices.—No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right-of-way of the interstate or primary highways in this State so as to be visible from the main-traveled way thereof after July 6, 1967, except the following:

- (1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.
- (2) Outdoor advertising which advertises the sale or lease of property upon which it is located.
- (3) Outdoor advertising which advertises activities conducted on the property upon which it is located.
- (4) Outdoor advertising, in conformity with the rules and regulations promulgated by the State Highway Commission, located in areas which are zoned industrial or commercial under authority of State law.
- (5) Outdoor advertising, in conformity with the rules and regulations promulgated by the State Highway Commission, located in unzoned commercial or industrial areas. (1967, c. 1248, s. 4.)

§ 136-130. Regulation of advertising.—The State Highway Commission is authorized to promulgate rules and regulations governing the erection and maintenance of outdoor advertising permitted in subdivisions (1), (4) and (5) of § 136-129 herein, as may be necessary to carry out the policy of the State declared in this article. (1967, c. 1248, s. 5.)

§ 136-131. Removal of existing nonconforming advertising.—The State Highway Commission is authorized to acquire by purchase, gift or condemnation all outdoor advertising and all property rights pertaining thereto which are prohibited under the provisions of § 136-129, provided such outdoor adver-

tising is in lawful existence on July 6, 1967, or provided that it is lawfully erected after July 6, 1967.

In any acquisition, purchase or condemnation, just compensation to the owner of the outdoor advertising, where the owner of the outdoor advertising does not own the fee, shall be limited to the fair market value at the time of the taking of the outdoor advertising owner's interest in the real property on which the outdoor advertising is located and such value shall include the value of the outdoor advertising.

In any acquisition, purchase or condemnation, just compensation to the owner of the fee or other interest in the real property upon which the outdoor advertising is located where said owner does not own the outdoor advertising located thereon shall be limited to the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Commission of the right to erect and maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration.

In any acquisition, purchase or condemnation, just compensation to the owner of the fee in the real property upon which the outdoor advertising is located, where said owner also owns the outdoor advertising located thereon, shall be limited to the fair market value of the outdoor advertising plus the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Commission of the right to erect and maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration. (1967, c. 1248, s. 6.)

§ 136-132. Condemnation procedure.—For the purpose of this article, the State Highway Commission shall use the procedure for condemnation of real property as provided by article 9 of chapter 136 of the General Statutes. (1967, c. 1248, s. 7.)

§ 136-133. Permits required.—No person shall construct or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those permitted under § 136-129, subdivisions (2) and (3) of this article, without first obtaining a permit from the State Highway Commission. The permit shall be valid until revoked for the nonconformance with this article or rules and regulations promulgated by the State Highway Commission thereunder. Any person aggrieved by any action of the State Highway Commission in refusing to grant or in revoking a permit may appeal in accordance with the terms of article 33 of chapter 143 of the General Statutes. (1967, c. 1248, s. 8.)

§ 136-134. Unlawful advertising. — Any outdoor advertising erected after July 6, 1967, in violation of the provisions of this article, shall be unlawful and shall constitute a nuisance. The State Highway Commission shall give 30 days' notice by certified mail to the owner of the nonconforming outdoor advertising if such owner is known or can by reasonable diligence be ascertained, to move the outdoor advertising or to make it conform to the provisions of this article and rules and regulations promulgated by the State Highway Commission hereunder. The State Highway Commission or its agents shall have the right to remove the nonconforming outdoor advertising at the expense of the said owner, if the said owner fails to act within 30 days after receipt of such notice. The State Highway Commission or its agents may enter upon private property for the purpose of removing outdoor advertising prohibited by this article or rules and regulations promulgated by the State Highway Commission hereunder without civil or criminal liability. (1967, c. 1248, s. 9.)

§ 136-135. **Enforcement provisions.**—Any person, firm, corporation or association placing or erecting outdoor advertising along the interstate system or primary system in violation of this article shall be guilty of a misdemeanor. In addition thereto, the State Highway Commission may seek injunctive relief in the superior court of the county in which the said nonconforming outdoor advertising is located and require the outdoor advertising to conform to the provisions of this article and rules and regulations promulgated pursuant hereto, or require the removal of the said nonconforming outdoor advertising. (1967, c. 1248, s. 10.)

§ 136-136. **Zoning changes.**—All zoning authorities shall give written notice to the State Highway Commission of the establishment or revision of any commercial and industrial zones within 660 feet of the right-of-way of interstate or primary highways. Notice shall be by registered mail sent to the offices of the State Highway Commission in Raleigh, North Carolina, within 15 days after the effective date of the zoning change or establishment. (1967, c. 1248, s. 11.)

§ 136-137. **Information directories.**—The State Highway Commission is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas and to establish information centers at safety rest areas and install signs on the right-of-way for the purpose of informing the public of facilities for food, lodging and vehicle services and of places of interest and for providing such other information as may be considered desirable. (1967, c. 1248, s. 12.)

§ 136-138. **Agreements with United States authorized.**—The State Highway Commission is authorized to enter into agreements with other governmental authorities relating to the control of outdoor advertising in areas adjacent to the interstate and primary highway systems, including the establishment of information centers and safety rest areas, and to take action in the name of the State to comply with the terms of the agreements. (1967, c. 1248, s. 13.)

§ 136-139. **Alternate control.**—In addition to any other control provided for in this article, the State Highway Commission may regulate outdoor advertising in accordance with the standards provided by this article and regulations promulgated pursuant thereto, by the acquisition by purchase, gift, or condemnation of easements or any other interests in real property prohibiting or controlling the erection and maintenance of advertising within 660 feet of the right-of-way line of the interstate and primary system of the State. (1967, c. 1248, s. 14.)

§ 136-140. **Availability of federal aid funds.** — The State Highway Commission shall not be required to expend any funds for the regulation of outdoor advertising under this article, nor shall the provisions of this article, with the exception of § 136-138 hereof, have any force and effect until federal funds are made available to the State for the purpose of carrying out the provisions of this article, and the State Highway Commission has entered into an agreement with the Secretary of Transportation as authorized by § 136-138 hereof and as provided by the Highway Beautification Act of 1965 or subsequent amendment thereto. (1967, c. 1248, s. 15.)

ARTICLE 12.

Junkyard Control Act.

§ 136-141. **Title of article.**—This article may be cited as the Junkyard Control Act. (1967, c. 1198, s. 1.)

§ 136-142. **Declaration of policy.**—The General Assembly hereby finds and declares that although junkyards are a legitimate business, the establishment and use and maintenance of junkyards in the vicinity of the interstate and primary highways within the State should be regulated and controlled in order to promote

the safety, health, welfare and convenience and enjoyment of travel on and the protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for regulation and control of junkyards. (1967, c. 1198, s. 2.)

§ 136-143. Definitions.—As used in this article:

- (1) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
- (2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as now officially designated, or as may hereafter be so designated as interstate system by the State Highway Commission, or other appropriate authorities.
- (3) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
- (4) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.
- (5) "Primary system" means that portion of connected main highways, as now officially designated, or as may hereafter be so designated as primary system by the State Highway Commission or other appropriate authorities. (1967, c. 1198, s. 3.)

§ 136-144. Restrictions as to location of junkyards. — No junkyard shall be established, operated or maintained, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, except the following:

- (1) Those which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main-traveled way of the highway at any season of the year or otherwise removed from sight or screened in accordance with the rules and regulations promulgated by the State Highway Commission.
- (2) Those located within areas which are zoned for industrial use under authority of law.
- (3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the State Highway Commission.
- (4) Those which are not visible from the main-traveled way of an interstate or primary highway at any season of the year. (1967, c. 1198, s. 4.)

§ 136-145. Enforcement provisions.—Any person, firm, corporation or association that establishes, operates or maintains a junkyard within 1,000 feet of the nearest right-of-way of any interstate or primary highway, after July 6, 1967, that does not come within one or more of the exceptions contained in § 136-144 hereof, shall be guilty of a misdemeanor, and each day that the junkyard remains within the prohibited distance shall constitute a separate offense. In addition thereto, said junkyard is declared to be a public nuisance and the

State Highway Commission may seek injunctive relief in the superior court of the county in which the said junkyard is located to abate the said nuisance and to require the removal of all junk from the prohibited area. (1967, c. 1198, s. 5.)

§ 136-146. **Removal of junk from unlawful junkyards.**—Any junkyard established after July 6, 1967, in violation of the provisions of this article, or after July 6, 1967, and in violation of the rules and regulations issued by the State Highway Commission pursuant to this article shall be unlawful and shall constitute a public nuisance. The State Highway Commission shall give 30 days' notice by certified mail, to the owner of the said junkyard to remove the junk or to make the junkyard conform to the provisions of this article and rules and regulations promulgated by the State Highway Commission hereunder. The State Highway Commission or its agents may remove the junk from the nonconforming junkyard at the expense of the owner, if the said owner fails to act within 30 days after receipt of such notice. The State Highway Commission or its agents may enter upon private property for the purpose of removing junk from the junkyards prohibited by this article without civil or criminal liability. (1967, c. 1198, s. 6.)

§ 136-147. **Screening of junkyards lawfully in existence.**—Any junkyard lawfully in existence on July 6, 1967, which does not conform to the requirements for exceptions in § 136-144 hereof, and any other junkyard lawfully in existence along any highway which may be hereafter designated as an interstate or primary highway and which does not conform to the requirements for exception under § 136-144 hereof, shall be screened, if feasible, by the State Highway Commission at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way in such manner that said junkyard shall not be visible from the main-traveled way of such highways. The State Highway Commission is authorized to acquire fee simple title or any lesser interest in real property for the purpose required by this section, by gift, purchase or condemnation. (1967, c. 1198, s. 7.)

§ 136-148. **Acquisition of existing junkyards where screening impractical.**—(a) In the event that the State Highway Commission shall determine that screening of any existing junkyard designated in § 136-147 hereof would be inadequate to accomplish the purposes of this article, the said Commission is authorized to secure the relocation, removal or disposal of such junkyard by acquiring the fee simple title, or such lesser interest in land as may be necessary, to the land upon which said junkyard is located, through purchase, gift, exchange or condemnation.

(b) The State Highway Commission is authorized to move and relocate junk located on lands within the provisions of this section, and is authorized to pay the costs of such moving or relocation.

(c) The State Highway Commission is authorized to acquire by purchase, gift, exchange or condemnation, fee simple title or any lesser interest in real property for the purpose of placing and relocating the junk required to be moved under this section or permitted by § 136-146 hereof to be removed. The State Highway Commission is authorized to convey in the manner provided by law for the conveyance of State-owned property, the lands on which junk is to be relocated, to the owner of the junk with or without consideration, under such conditions and reservations as it deems to be in the public interest.

(d) The State Highway Commission is authorized to convey in the manner provided by law for the conveyance of State-owned property any property acquired under the provisions of this section, under such conditions and reservations as it deems to be in the public interest.

(e) The State Highway Commission upon a determination that the same is necessary for the removal of any junkyard which is prohibited by § 136-144 may acquire by gift, exchange, purchase or condemnation, the junk located on any

junkyard which is acquired under this section and may acquire by gift, exchange, purchase or condemnation the fee simple title or lesser interest in land for the purpose of storing said junk by the State Highway Commission and may dispose of said junk in any manner which is not inconsistent with this article. (1967, c. 1198, s. 8.)

§ 136-149. **Permit required for junkyards.**—No person shall establish, operate or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of the interstate or primary system, without obtaining a permit from the State Highway Commission. No license shall be issued under the provisions of this section for the operation or maintenance of a junkyard within 1,000 feet of the nearest edge of the right-of-way of interstate or primary system except those junkyards which conform to one or more of the exceptions of § 136-144. The permit shall be valid until revoked for noncompliance with this article. Any person aggrieved by any action of the State Highway Commission in refusing to grant or in revoking a permit may appeal in accordance with the terms of article 33 of chapter 143 of the General Statutes. (1967, c. 1198, s. 9.)

§ 136-150. **Condemnation procedure.**—The State Highway Commission shall use the condemnation procedure as provided by article 9 of chapter 136 of the General Statutes for the purposes of this article. (1967, c. 1198, s. 10.)

§ 136-151. **Rules and regulations by State Highway Commission.**—The State Highway Commission is authorized to promulgate rules and regulations which shall govern the location, planting, construction and maintenance of and materials used in the screening or fencing required by this article, and to promulgate rules and regulations for determining unzoned industrial areas for the purpose of this article. (1967, c. 1198, s. 11.)

§ 136-152. **Agreements with United States.**—The State Highway Commission is authorized to enter into agreements with other governmental authorities relating to the control of junkyards and areas in the vicinity of interstate and primary systems, and to take action in the name of the State to comply with the terms of such agreement. (1967, c. 1198, s. 12.)

§ 136-153. **Zoning changes.**—All zoning authorities shall give written notice to the State Highway Commission of the establishment or revision of any industrial zone within 660 feet of the right-of-way of interstate or primary highways. Notice shall be by registered mail sent to the offices of the State Highway Commission in Raleigh, North Carolina, within 15 days after the effective date of the zoning change or establishment. (1967, c. 1198, s. 13.)

§ 136-154. **Alternate control.**—In addition to any other provisions of this article, the State Highway Commission shall have the authority to acquire by purchase, gift, exchange, or condemnation, such interests in real property as may be necessary to control the establishment and maintenance of junkyards in accordance with the policy, standards and regulations set out herein. (1967, c. 1198, s. 14.)

§ 136-155. **Availability of federal aid funds.**—The State Highway Commission shall not be required to expend any funds for the regulation of junkyards under this article, nor shall the provisions of this article, with the exception of § 136-152 hereof, have any force and effect until federal funds are made available to the State for the purpose of carrying out the provisions of this article, and the State Highway Commission has entered into an agreement with the Secretary of Transportation as authorized by § 136-152 hereof and as provided by the Highway Beautification Act of 1965 or subsequent amendment thereto. (1967, c. 1198, s. 15.)

ARTICLE 13.

Highway Relocation Assistance Act.

§ 136-156. **Short title.**—This article may be cited as the Highway Relocation Assistance Act. (1969, c. 733, s. 1.)

Editor's Note. — Session Laws 1969, c. 733, s. 12, effective Jan. 1, 1970, provides: "If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or ap-

plication of this article which can be given effect without such invalid provision or application, and to this end the provisions of this article shall be severable."

Session Laws 1969, c. 733, s. 14, makes the act effective Jan. 1, 1970.

§ 136-157. **Declaration of purpose.**—The General Assembly hereby finds and declares that it is in the public interest that the State Highway Commission be authorized to fairly compensate those persons displaced by the construction of highways for certain expenses incurred and for certain inconveniences suffered as a result of highway programs designed for the benefit of the public as a whole and to provide relocation assistance in order to insure that a few individuals do not suffer disproportionate injuries as a result of displacement caused by the highway program, and to insure adequate housing for those persons displaced, and further to insure continuing eligibility for federal aid highway funds to the State in accordance with the provisions of the Federal Aid Highway Act of 1968. The General Assembly further finds and declares that relocation assistance and assistance in the acquisition of adequate replacement housing are proper costs for the acquisition of right-of-way for highways and the construction of designated highways on the State highway system. (1969, c. 733, s. 2.)

§ 136-158. **Definitions.** — (a) "Business" shall mean any lawful activity conducted primarily (i) for the purchase and resale, manufacture, processing, or marketing of products, commodities or any other personal property; (ii) for the sale of services to the public; or (iii) by a nonprofit organization.

(b) "Displaced person" shall mean any person who moves from real property on or after January 1, 1970 as a result of the acquisition or reasonable expectation of acquisition of such real property, which is subsequently acquired, in whole or in part, for highway purposes or as the result of the acquisition for highway purposes of other real property on which such person conducts a business or farm operation.

(c) "Family" shall mean two or more individuals living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Farm operation" shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(e) "Person" shall mean (i) any individual, partnership, corporation or association which is the owner of a business; (ii) any owner, part owner, tenant, or sharecropper operating a farm; (iii) an individual who is the head of a family; or (iv) an individual not a member of a family. (1969, c. 733, s. 3.)

§ 136-159. **Administration of relocation assistance program.**—In order to prevent unnecessary expenses and duplication of functions, the State Highway Commission may make relocation payments or provide relocation assistance or otherwise carry out the functions authorized under this article by utilizing the facilities, personnel, and services of any other federal, State or local governmental agency having an established organization for conducting relocation assistance programs. Cities furnishing right-of-way for a State highway project may utilize services of the State or federal government. In the acquisition of right-of-way for any State highway system street, the municipality shall be vested with the same au-

thority to render such services and make such payments as is given the State Highway Commission in this article. (1969, c. 733, s. 4.)

§ 136-160. **Relocation services.**—The State Highway Commission is authorized to provide a relocation advisory assistance program which shall include such measures, facilities, or services as may be necessary or appropriate:

- (1) To determine the needs for relocation, if any, of families, individuals, business concerns, and farm operators to be relocated by reason of a State highway project;
- (2) To assure that within a reasonable period of time prior to displacement, there will be available to the extent as can be reasonably accomplished a sufficient amount of housing meeting the standards to satisfy the State Highway Commission for decent, safe and sanitary dwellings, reasonably accessible to the places of employment of the families and individuals displaced and in areas which are generally at least as desirable as the areas in which they are displaced, in regard to public utilities and public and commercial utilities and at rent or prices within the financial means of families and individuals displaced from their homes;
- (3) To assist owners of displaced businesses and displaced farm operators in obtaining and becoming established in suitable locations; and
- (4) To supply information concerning the Federal Housing Administration home acquisition program under section 221(d)(2) of the National Housing Act, the small business disaster loan program under section 7(b)(3) of the Small Business Act, and other programs of the federal government and the State. (1969, c. 733, s. 5.)

§ 136-161. **Relocation payments.**—(a) Payments for Actual Expenses: As part of the cost of right-of-way acquisition for a highway construction project, the State Highway Commission may compensate displaced persons for the actual and reasonable expenses for the relocation of a household and for the relocation of a business including farm operations and nonprofit organizations.

(b) Optional Payments (Dwellings): Any person displaced from a dwelling who moves and elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive:

- (1) A moving expense allowance, determined according to a schedule established by the State Highway Commission not to exceed two hundred dollars (\$200.00) and;
- (2) A dislocation allowance in the amount of one hundred dollars (\$100.00).

(c) Optional Payments (Business and Farm Operations): Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this section in lieu of the payment authorized by subsection (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation or five thousand dollars (\$5,000.00), whichever is the lesser. In the case of a business, no payment shall be made under this subsection unless the State Highway Commission is satisfied that the business (i) cannot be relocated without a substantial loss of its existing patronage, and (ii) is not part of a commercial enterprise having at least one other establishment, not being acquired by the State or by the United States, which is engaged in the same or similar business. For purposes of this subsection the term "average annual net earnings" means one half of any net earnings of the business or farm operation, before federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such two-year period. To be eligible for the payment authorized by this subsection, the business or farm oper-

ation must make its State income tax returns available and its financial statements and accounting records available for audit for confidential use to determine the payment authorized by this subsection. (1969, c. 733, s. 6.)

Opinions of Attorney General. — Mr. Agent, State Highway Commission, W. H. Webb, Jr., State Right-of-Way 9/2/69.

§ 136-162. Replacement housing.—(a) In addition to amounts otherwise authorized by this article, as part of the cost of right-of-way acquisition, the State Highway Commission may make a payment to the owner of real property acquired for a project which is improved by a single-, two-, or three-family dwelling actually occupied by the owner for not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment, not to exceed five thousand dollars (\$5,000.00), shall be the amount, if any, which when added to the acquisition payment, equals the average price required for a comparable dwelling determined in accordance with standards established by the State Highway Commission to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired for the project. ¹¹

(b) In addition to payments otherwise authorized by this article, the State Highway Commission is authorized to make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (a) of this section which dwelling was actually and lawfully occupied by such individual or family for not less than ninety days prior to the initiation of negotiations for acquisition of such property. Such payment, not to exceed fifteen hundred dollars (\$1,500.00), shall be the amount which is necessary to enable such person to lease or rent for a period not to exceed two years or to make the down payment on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such individuals or family in areas not generally less desirable in regard to public utilities and public and commercial facilities. (1969, c. 733, s. 7.)

Opinions of Attorney General. — Mr. Agent, State Highway Commission W.H. Webb, Jr., State Right-of-Way 9/2/69.

§ 136-163. Expenses incidental to transfer of property.—In addition to amounts otherwise authorized by this article, the State Highway Commission is authorized to reimburse the owners of real property acquired for a project for reasonable and necessary expenses incurred for (i) recording fees, transfer taxes, and similar expenses incidental to conveying such property; (ii) penalty costs for prepayment of any mortgage entered into in good faith encumbering such real property if such mortgage is on record or has been filed for record as provided by law on the date of approval by the State Highway Commission of the location of such project; and (iii) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the State, or the effective date of possession of such real property by the State Highway Department, whichever is earlier. (1969, c. 733, s. 8.)

§ 136-164. Status of payments.—No payment received under this article shall be considered as income for purposes of the State income tax law; nor shall such payments be considered as income or resources to any recipient of public assistance and such payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled to under the State Welfare Act. (1969, c. 733, s. 9.)

§ 136-165. Delegation of authority to adopt rules and regulations.—The State Highway Commission is authorized to adopt such rules and regulations

as it deems necessary and appropriate to carry out the provisions of this article. The State Highway Commission is authorized and empowered to adopt all or any part of applicable federal rules and regulations which are necessary or desirable to implement this article. Such rules and regulations shall include, but not be limited to, provisions relating to:

- (1) Payments authorized by this article to assure that such payments shall be fair and reasonable and as uniform as possible on those highway projects to which this article is applicable;
- (2) Prompt payment after a move to displaced persons who make proper application and are entitled to payment, or, in hardship cases, payment in advance;
- (3) Moving expense allowances as provided for in § 136-161, subsections (a) and (b) of this article;
- (4) Standards for decent, safe and sanitary dwellings;
- (5) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments, and the amounts thereof;
- (6) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the State Highway Commission or its administrative officers;
- (7) Projects or classes of projects on which payments as herein provided will be made. (1969, c. 733, s. 10.)

§ 136-166. **Eminent domain.**—Nothing contained in this article shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the date of enactment of this article. Payments made and services rendered under this article are administrative payments and in addition to just compensation as provided by the law of eminent domain. Nothing contained in this article shall be construed as creating any right enforceable in any court and the determination of the State Highway Commission under the procedure provided for in subdivision (6) of § 136-165 shall be conclusive and not subject to judicial review. (1969, c. 733, s. 11.)

Editor's Note. — Session Laws 1969, c. 733, was ratified June 9, 1969, and made effective Jan. 1, 1970.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 24, 1969

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1969 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN
Attorney General of North Carolina

