THE GENERAL STATUTES OF NORTH CAROLINA

1971 CUMULATIVE SUPPLEMENT

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

UNDER THE DIRECTION OF
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Volume 3B

Place in Pocket of Corresponding 1970 Replacement Volume of Main Set

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1971

Preface

This Cumulative Supplement to Replacement Volume 3B contains the general laws of a permanent nature enacted at the 1963, 1965, 1966, 1967, 1969 and 1971 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

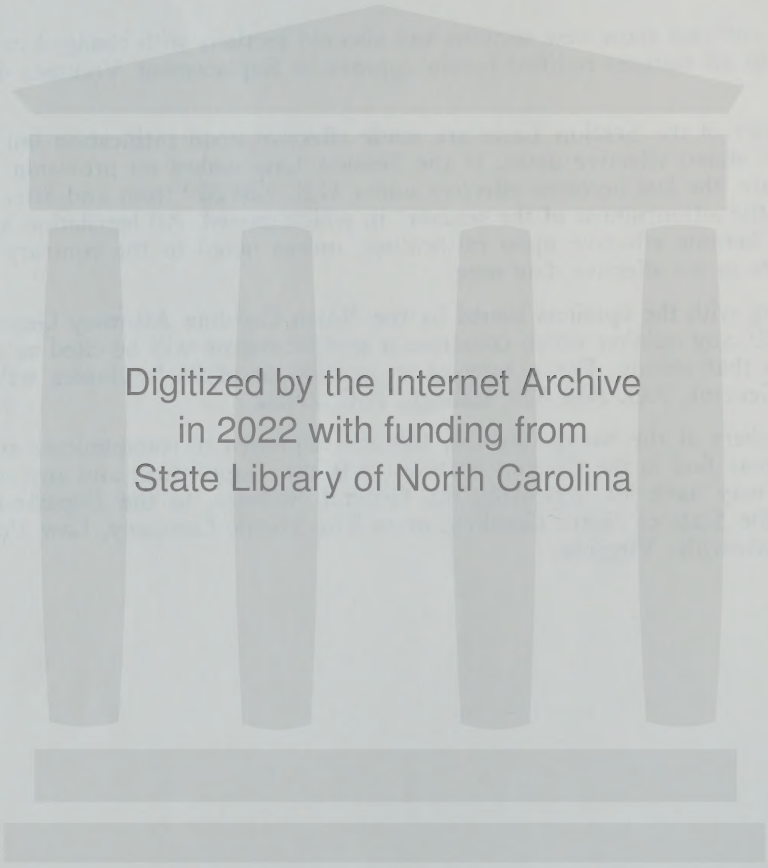
Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

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

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.



Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1963, 1965, 1966, 1967, 1969 and 1971 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)-279 (p. 191).
North Carolina Court of Appeals Reports volumes 1-11 (p. 596).
Federal Reporter 2nd Series volumes 317-443 (p. 1216).
Federal Supplement volumes 217-328 (p. 224).
United States Reports volumes 373-403 (p. 442).
Supreme Court Reporter volumes 83 (p. 1560)-91 (p. 1976).
North Carolina Law Review volumes 41 (p. 665)-49 (pp. 1-591).
Wake Forest Intramural Law Review volumes 2-6 (p. 568).
Opinions of the Attorney General.

The General Statutes of North Carolina
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VOLUME 3B

Chapter 117.

Electrification.

Article 1.

Rural Electrification Authority.

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

State Government Reorganization.—The Rural Electrification Authority was transferred to the Department of Commerce by § 143A-185, enacted by Session Laws 1971, c. 864.

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 elec-

tric 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.

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.—

The 1969 amendment substituted "thirty dollars ($30.00)" for "twenty dollars ($20.00)" in the proviso near the end of the section.

§ 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 relative 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 resolu-

tion 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 deleted "not exceeding six per centum per annum, payable semiannually" following "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 substituted "§§ 117-8, 117-9, 117-10.1, 117-10.2, 117-16.1, 117-19 and 117-24" for "§§ 117-8 and 117-9" near the middle of the section.

§ 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 pro-

vided, 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.

§ 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 Cherryville: 1971, c. 608; city of Clinton: 1969, c. 177; city of Durham: 1971, c. 614, amending 1951, c. 576; city of Fayetteville: 1969, c. 351; 1971, c. 660; city of Greenville: 1967, c. 570; city of Henderson: 1969, c. 374, amending 1959, c. 810; city of Lexington: 1971, c. 123; 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. 48; city of Rocky Mount: 1969, c. 434; city of Shelby: 1969, cc. 496, 552; city of Whiteville: 1971, c. 308; city of Wilson: 1969, c. 138; town of Black Mountain: 1965, c. 672; town of Elkin: 1969, c. 169; 1971, c. 391; town of Mount Airy: 1967, c. 302, s. 9; town of Wadesboro: 1967, c. 596; village of Kannapolis: 1971, c. 408.

§ 118-7. Disbursement of funds by trustees.

Local Modification. — Hickory: 1971, c. 65.

§ 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 de-

posited 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.

State Government Reorganization.—The Firemen's Pension Fund was transferred to the Department of State Auditor by § 143A-27, enacted by Session Laws 1971, c. 864.

§ 118-22. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures and investments.—The State Treasurer shall be the custodian of the North Carolina Firemen's Pension Fund. The appropriations made by the General Assembly out of the general fund to provide money for administrative expenses shall be handled in the same manner as any other general fund appropriation. One fourth of the appropriation made out of the general fund to provide for the financing of the pension fund shall be transferred quarterly to a special fund to be known as the North Carolina Firemen's Pension Fund. There shall be set up in the State Treasurer's office a special fund to be known as the North Carolina Firemen's Pension Fund, and all contributions made by the members of this pension fund shall be deposited in said special fund. All expenditures for refunds, investments or benefits shall be in the same manner as expenditures of other special funds. The interest on such investments shall be credited to this special fund. The State Treasurer shall have authority to invest all moneys in said fund not immediately needed for refunds or benefits, 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, and federal land banks;
(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;
(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 commissioners, 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) In certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the Federal Deposit Insurance Corporation not to exceed the sum of twenty thousand dollars ($20,000.00) in any one bank or trust company; and
(9) In the shares of federal savings and loan associations and State chartered building or savings and loan associations in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed twenty thousand dollars ($20,000.00) in any one of such associations.

Subject to the limitations set forth above, the Treasurer 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. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 30.)

Editor's Note.—

The 1971 amendment substituted "General Assembly" for "legislature" in the second sentence, added the present sixth sentence, substituted the language following "immediately needed for refunds or benefits" for "in the same manner as provided for investment of the sinking fund" in the present seventh sentence, and rewrote the last sentence.

§ 118-25. Monthly pensions upon retirement. — Any member who has served 20 years as a fireman in the State of North Carolina, who has been an "eligible fireman" for two years immediately preceding his application for the payment of a pension hereunder and who is otherwise eligible as provided in G.S. 118-23 hereof, and who has attained the age of 55 years shall be entitled to be paid from the fund herein created a monthly pension. Said monthly pension shall be in the amount of fifty dollars ($50.00) per month or less as below set forth, provided that those members retiring after the age of 55 and before attaining the age of 60 may elect to receive the reduced amount to account for longer expectancy, said amount of monthly pension available at various retirement ages to be as follows:

Retirement Age	Amount	Retirement Age	Amount
55	$36.00	58	$44.00
56	38.00	59	47.00
57	41.00	60 and above	50.00

Members shall pay five dollars ($5.00) per month as required by G.S. 118-24 until retirement from active service or until they shall have made said monthly payments for a period of 20 years, whichever first occurs; provided, any member retiring after 20 years of service, but before reaching the age of 55 years, shall continue to pay the monthly payments required by G.S. 118-24 in order to continue his membership in the fund until he shall reach the age of 55 or until he shall have paid said monthly payments into the fund for 20 years, whichever is the earlier. Upon reaching retirement age and being otherwise eligible he shall receive a pension as set out above. Notwithstanding the above provisions, no person shall receive a pension hereunder prior to January 1, 1960, but those persons eligible and retiring prior to said date who have paid into said fund five dollars ($5.00) per month with respect to a period of not less than 12 months or sixty dollars ($60.00) whichever occurs first, shall be entitled to a pension in the amount of fifty dollars ($50.00) per month or such reduced amount as set out above commencing January 1, 1960. No person shall be entitled to a pension hereunder until his official duties as a fireman shall have been terminated and he shall have retired as such according to standards or rules fixed by the Board of Trustees.

The pension herein provided for shall be in addition to all other pensions or benefits provided for under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 336.)

Editor's Note.—

The 1971 amendment substituted "20 years" for "30 years" in the first sentence of the first paragraph and in three places in the first sentence of the second paragraph.

§ 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 118A.

Firemen's Death Benefit Act.

§ 118A-1. Purpose.—In consideration of hazardous public service rendered to the State by firemen, there is hereby provided a system of benefits for dependents who are closely related to such firemen as may be killed in the discharge of their official duties. (1971, c. 914.)

§ 118A-2. Definitions.—The following words and phrases, when used in this Chapter, shall have the meanings assigned to them by this section unless the context clearly indicates another meaning:

(1) The term "dependent child" shall mean any unmarried child of the deceased fireman, whether natural, adopted or posthumously born, who was under 18 years of age and dependent upon and receiving his chief support from said fireman at the time of his death;

(2) The term "dependent parent" shall mean a parent of a fireman, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the fireman at the time of the injury which resulted in his death;

(3) The term "eligible fireman" or "fireman" as used in this Chapter shall have the same definition as set out in G.S. 118-23;

(4) The term "killed in the line of duty" shall apply to any fireman who is killed or dies as a result of extreme exertion or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties;

(5) The term "widow" shall mean the wife of a fireman who survives him and who was residing with such fireman at the time of injury to such fireman which resulted in his death and who also resided with such fireman from the date of injury up to and at the time of his death. (1971, c. 914.)

§ 118A-3. Payments; determination.—When any fireman shall be killed while in the discharge of his official duties, the Industrial Commission shall award the total sum of five thousand dollars ($5,000.00) as follows:

(1) To the widow of such fireman if there be a surviving widow; or

(2) If there be no widow qualifying under the provisions of this Chapter, then said sum shall be awarded to any surviving dependent child of said fireman; and if there is more than one surviving dependent child, then said sum shall be awarded to and equally divided among all surviving dependent children; or

(3) If there be no widow and no dependent child or children qualifying under the provisions of this Chapter, then the sum shall be awarded to the surviving dependent parent of such fireman; and if there be more than one surviving dependent parent, then said sum shall be awarded to and equally divided between the surviving dependent parents of said fireman. (1971, c. 914.)

§ 118A-4. Funds; conclusiveness of award.—Such award of benefits as is provided for by this Chapter shall be paid from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this Chapter shall be allocated from said fund for this special purpose.

The Industrial Commission shall have power to make necessary rules and regulations for the administration of the provisions of this Chapter. It shall be vested with power to make all determinations necessary for the administration of this Chapter and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Industrial Commission itself. The Industrial Commission shall keep a record of all proceedings conducted under this Chapter and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Industrial Commission shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Industrial Commission may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder or to testify with respect to any matter relevant to proceedings conducted under this Chapter, the Superior Court of Wake County, on application of the Industrial Commission, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt. (1971, c. 914.)

§ **118A-5. Other benefits not affected.**—None of the other benefits now provided for eligible firemen or their dependents by the Workmen's Compensation Act or other laws shall be affected by the provisions of this Chapter and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1971, c. 914.)

§ **118A-6. Awards exempt from taxes.**—Any award made under the provisions of this Chapter shall be exempt from taxation by the State or any political subdivision. The Industrial Commission shall not be responsible for any determination of the validity of any claims against said awards and shall distribute the death benefit awards directly to the dependent or dependents entitled thereto under the provisions of this Chapter. (1971, c. 914.)

§ **118A-7. Applicability of Article.**—The provisions of this Chapter shall also apply and be in full force and effect with respect to any fireman killed in the discharge of his official duties on or after July 1, 1971. (1971, c. 914.)

Chapter 118B.

Members of a Rescue Squad Death Benefit Act.

§ **118B-1. Purpose.**—In consideration of hazardous public service rendered to the State by members of a rescue squad, there is hereby provided a system of benefits for dependents who are closely related to such members of a rescue squad as may be killed in the discharge of their official duties. (1971, c. 1131.)

§ **118B-2. Definitions.**—The following words and phrases, when used in this Chapter, shall have the meanings assigned to them by this section unless the context clearly indicates another meaning:

(1) "Dependent child" shall mean any unmarried child of the deceased member of a rescue squad, whether natural, adopted or posthumously born, who was under 18 years of age and dependent upon and receiving his chief support from said member of a rescue squad at the time of his death;

(2) "Dependent parent" shall mean a parent of a member of a rescue squad, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the member of a rescue squad at the time of the injury which resulted in his death;

(3) "Killed in the line of duty" shall apply to any member of a rescue squad who is killed while in the discharge of his official duty or duties;

(4) "Member or members of a rescue squad" as used in this Chapter shall apply to those persons who are members of a rescue squad which meets the requirements and are members of the N. C. State Association of Rescue Squads, Inc.

(5) "Widow" shall mean the wife of a member of a rescue squad who survives him and who was residing with such member of a rescue squad at the time of and during the six months next preceding the time of injury to such member of a rescue squad which resulted in his death and who also resided with such member of a rescue squad from the date of injury up to and at the time of his death. (1971, c. 1131.)

§ **118B-3. Payments; determination.**—When any member of a rescue squad shall be killed while in the discharge of his official duties, or dies as a result of extreme exertion or extreme activity in the course and scope of his activity, the Industrial Commission shall award the total sum of five thousand dollars ($5,000) as follows:

(1) To the widow of such member of a rescue squad if there be a surviving widow; or

(2) If there be no widow qualifying under the provisions of this Chapter, then said sum shall be awarded to any surviving dependent child of said member of a rescue squad; and if there is more than one surviving dependent child, then said sum shall be awarded to and equally divided among all surviving dependent children; or

(3) If there be no widow and no dependent child or children qualifying under the provisions of this Chapter, then the sum shall be awarded to the surviving dependent parent of such member of a rescue squad; and if there be more than one surviving dependent parent, then said sum shall be awarded to and equally divided between the surviving dependent parents of said member of a rescue squad. (1971, c. 1131.)

§ **118B-4. Funds; conclusiveness of award.**—Such award of benefits as is provided for by this Chapter shall be paid from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this Chapter shall be allocated from said fund for this special purpose.

The Industrial Commission shall have power to make necessary rules and regulations for the administration of the provisions of this Chapter. It shall be vested with power to make all determinations necessary for the administration of this Chapter and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Industrial Commission itself. The Industrial Commission shall keep a record of all proceedings conducted under this Chapter and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Industrial Commission shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Industrial Commission may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder or to testify with respect to any matter relevant to proceedings conducted under this Chapter, the Superior Court of Wake County, on application of the Industrial Commission, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt. (1971, c. 1131.)

§ **118B-5. Other benefits not affected.**—None of the other benefits now provided for eligible members of a rescue squad or their dependents by the Workmen's Compensation Act or other laws shall be affected by the provisions of this Chapter and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1971, c. 1131.)

§ **118B-6. Awards exempt from taxes.**—Any award made under the provisions of this Chapter shall be exempt from taxation by the State or any political subdivision. The Industrial Commission shall not be responsible for any determination of the validity of any claims against said awards and shall distribute the death benefit awards directly to the dependent or dependents entitled thereto under the provisions of this Chapter. (1971, c. 1131.)

§ **118B-7. Applicability of Chapter.**—The provisions of this Chapter shall not apply to eligible firemen as defined in G.S. 118-23. (1971, c. 1131.)

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

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 (¼ 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; renaming, 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.

State Government Reorganization.—The Gasoline and Oil Inspection Board was transferred to the Department of Agriculture by § 143A-62, enacted by Session Laws 1971, c. 864.

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

Where a person is not a retail dealer, this section has no application. Stegall v. Catawba 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 gasoline 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.

§ 120-1. Senators.—For the purpose of nominating and electing members of the Senate in 1972 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 Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties and shall elect two Senators.

District 2 shall consist of Carteret, Craven, and Pamlico Counties and shall elect one Senator.

District 3 shall consist of Onslow County and shall elect one Senator.

District 4 shall consist of New Hanover and Pender Counties and shall elect one Senator.

District 5 shall consist of Duplin, Jones, and Lenoir Counties and shall elect one Senator.

District 6 shall consist of Edgecombe, Halifax, Martin, and Pitt Counties and shall elect two Senators.

District 7 shall consist of Franklin, Nash, Vance, Warren, and Wilson Counties and shall elect two Senators.

District 8 shall consist of Greene and Wayne Counties and shall elect one Senator.

District 9 shall consist of Johnston and Sampson Counties and shall elect one Senator.

District 10 shall consist of Cumberland County and shall elect two Senators.

District 11 shall consist of Bladen, Brunswick, and Columbus Counties and shall elect one Senator.

District 12 shall consist of Hoke and Robeson Counties and shall elect one Senator.

District 13 shall consist of Durham, Granville, and Person Counties and shall elect two Senators.

District 14 shall consist of Harnett, Lee, and Wake Counties and shall elect three Senators.

District 15 shall consist of Alleghany, Ashe, Caswell, Rockingham, Stokes, and Surry Counties and shall elect two Senators.

District 16 shall consist of Chatham, Moore, Orange, and Randolph Counties and shall elect two Senators.

District 17 shall consist of Anson, Montgomery, Richmond, Scotland, Stanly, and Union Counties and shall elect two Senators.

District 18 shall consist of Alamance County and shall elect one Senator.

District 19 shall consist of Guilford County and shall elect three Senators.

District 20 shall consist of Forsyth County and shall elect two Senators.

District 21 shall consist of Davidson, Davie, and Rowan Counties and shall elect two Senators.

District 22 shall consist of Cabarrus and Mecklenburg Counties and shall elect four Senators.

District 23 shall consist of Alexander, Catawba, Iredell, and Yadkin Counties and shall elect two Senators.

District 24 shall consist of Avery, Burke, Caldwell, Mitchell, Watauga, and Wilkes Counties and shall elect two Senators.

District 25 shall consist of Cleveland, Gaston, Lincoln, and Rutherford Counties and shall elect three Senators.

District 26 shall consist of Buncombe, Madison, McDowell, and Yancey Counties and shall elect two Senators.

District 27 shall consist of Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Polk, Swain, and Transylvania Counties and shall elect two Senators. (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; 1971, c. 1177.)

Editor's Note.— The 1971 amendment rewrote this section as previously amended in 1963 and 1966.

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

§ **120-2. House apportionment specified.**—For the purpose of nominating and electing members of the North Carolina House of Representatives in 1972 and every two years thereafter, the State of North Carolina shall be divided into 45 districts as follows:

District 1 shall consist of Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans, Tyrrell and Washington Counties and shall elect two Representatives.

District 2 shall consist of Beaufort and Hyde Counties and shall elect one Representative.

District 3 shall consist of Craven, Jones, Lenoir and Pamlico Counties and shall elect three Representatives.

District 4 shall consist of Carteret and Onslow Counties and shall elect three Representatives.

District 5 shall consist of Bertie, Gates, Hertford, and Northampton Counties and shall elect two Representatives.

District 6 shall consist of Halifax and Martin Counties and shall elect two Representatives.

District 7 shall consist of Edgecombe, Nash and Wilson Counties and shall elect four Representatives.

District 8 shall consist of Greene and Pitt Counties and shall elect two Repsentatives.

District 9 shall consist of Wayne County and shall elect two Representatives.

District 10 shall consist of Duplin County and shall elect one Representative.

District 11 shall consist of Brunswick and Pender Counties and shall elect one Representative.

District 12 shall consist of New Hanover County and shall elect two Representatives.

District 13 shall consist of Caswell, Granville, Person, Vance and Warren Counties and shall elect three Representatives.

District 14 shall consist of Franklin and Johnston Counties and shall elect two Representatives.

District 15 shall consist of Wake County and shall elect six Representatives.

District 16 shall consist of Durham County and shall elect three Representatives.

District 17 shall consist of Chatham and Orange Counties and shall elect two Representatives.

District 18 shall consist of Harnett and Lee Counties and shall elect two Representatives.

District 19 shall consist of Bladen, Columbus and Sampson Counties and shall elect three Representatives.

District 20 shall consist of Cumberland County and shall elect five Representatives.

District 21 shall consist of Hoke, Robeson and Scotland Counties and shall elect three Representatives.

District 22 shall consist of Alamance and Rockingham Counties and shall elect four Representatives.

District 23 shall consist of Guilford County and shall elect seven Representatives.

District 24 shall consist of Randolph County and shall elect two Representatives.

District 25 shall consist of Moore County and shall elect one Representative.

District 26 shall consist of Anson and Montgomery Counties and shall elect one Representative.

District 27 shall consist of Richmond County and shall elect one Representative.

District 28 shall consist of Alleghany, Ashe, Stokes, Surry and Watauga Counties and shall elect three Representatives.

District 29 shall consist of Forsyth County and shall elect five Representatives.

District 30 shall consist of Davidson and Davie Counties and shall elect three Representatives.

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

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

District 33 shall consist of Cabarrus and Union Counties and shall elect three Representatives.

District 34 shall consist of Caldwell, Wilkes and Yadkin Counties and shall elect three Representatives.

District 35 shall consist of Alexander and Iredell Counties and shall elect two Representatives.

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

District 37 shall consist of Catawba County and shall elect two Representatives.

District 38 shall consist of Gaston and Lincoln Counties and shall elect four Representatives.

District 39 shall consist of Avery, Burke and Mitchell Counties and shall elect two Representatives.

District 40 shall consist of Cleveland, Polk and Rutherford Counties and shall elect three Representatives.

District 41 shall consist of McDowell and Yancey Counties and shall elect one Representative.

District 42 shall consist of Henderson County and shall elect one Representative.

District 43 shall consist of Buncombe and Transylvania Counties and shall elect four Representatives.

District 44 shall consist of Haywood, Jackson, Madison and Swain Counties and shall elect two Representatives.

District 45 shall consist of Cherokee, Clay, Graham and Macon Counties and shall elect one Representative. (Code, s. 2845; Rev., c. 4399; 1911, c. 151; C. S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1; 1971, c. 483.)

Editor's Note.—

The 1971 amendment rewrote this section as previously amended in 1966.

Former 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) 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 presiding officers of the two houses shall receive as additional compensation twenty dollars ($20.00) per day for each day of the regular session and for each day of any extra or special session. When the General Assembly by joint action of the two houses adjourns to a day certain, which day certain is more than three days after the date of such adjournment, the presiding officers shall not receive the additional compensation provided in this subsection for the period between the date of adjournment and the date of reconvening.

(c) Members of the General Assembly wishing to be paid on an annual or semiannual 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. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5.)

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, effective on the first day of the convening of the 1971 session of the General Assembly, rewrote this section as previously amended in 1965 and 1967.

The 1971 amendment rewrote subsection (b).

§ 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) Members and presiding officers of the General Assembly shall be paid a weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or special session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round trip mileage from that member's home to the City of Raleigh by the rate per mile allowed by statute to State employees for official travel.

In addition to the weekly travel allowance provided in the preceding paragraph of this section, members and presiding officers of the General Assembly shall receive travel allowance at the rate allowed by statute for State employees whenever the members or presiding officers are traveling as representatives of the General Assembly or of its committees or commissions, whether in or out of session, when such travel has been authorized by the Legislative Services Commission.

(c) Members and presiding officers of the General Assembly shall be paid a subsistence allowance in the sum of twenty-five dollars ($25.00) per day for each day of the period during which the General Assembly remains in session.

When the General Assembly is not in session, members and presiding officers of the General Assembly shall be paid a subsistence allowance in the sum of twenty-five dollars ($25.00) per day for each day spent away from home on official legislative business when traveling as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.

(d) Payment of travel and subsistence allowances shall be made to members and presiding officers of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed and furnished by the Legislative Services Commission. Claims for travel and subsistence payments shall be paid at such times as may be prescribed by the Legislative Services Commission.

(e) When the General Assembly by joint action of the two houses adjourns to a day certain, which day certain is more than three days after the date of the adjournment, the period between the date of adjournment and the date of reconvening shall for the purposes of this section be deemed to be a period when the General Assembly is not in session, and no member shall be entitled to subsistence and travel allowance during such period except under circumstances which would entitle him to subsistence and travel allowance when the General Assembly is not in session. (1957, c. 8; 1959, c. 939; 1961, c. 889; 1965, c. 86, s. 1; 1969, c. 1257, s. 1; 1971, c. 1200, ss. 1-4.)

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.

The 1971 amendment rewrote subsections (b), (c), and (d), and added subsection (e).

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."

Session Laws 1971, c. 1200, s. 9 provides: "As used in this act, the term 'presiding officer' shall not include the Lieutenant Governor after December 31, 1972."

§ **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. (1967, c. 1015, s. 1; 1969, c. 1257, s. 2; c. 1278, s. 2.)

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.

Session Laws 1969, c. 1278, s. 2, effective on the first day of the convening of the 1971 session of the General Assembly, deleted "the Speaker of the House of Representatives and" preceding "the President" in the first sentence. The section is set out above as it appears in c. 1278.

§ 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 during the period from the time of convening until the time of adjournment. 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 or elected officer 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 or elected officer for which said member or elected officer makes the contribution required by G.S. 120-4.1(1); provided, that a member or elected officer may make a contribution as calculated by G.S. 120-4.1(1) on the salary received in terms prior to the 1971 term so as to receive credit for terms served prior to the 1971 term. Credit shall be given to any member or elected officer serving in the 1969 session who has attained the age of 70 years, has a total of three terms of creditable service, has made the contribution required by G.S. 120-4.1(1) for the number of terms sought to be credited, and the member or elected officer qualifying shall be entitled to the retirement benefits provided for in this section.

Notwithstanding any other provisions of this section or subsection, any person who has served as a member or as an elected officer of the General Assembly for a total of four or more regular sessions and does not qualify under the provisions set out above in this subsection, may file an application with the Director of the Legislative Retirement Fund, together with a certification as to his legislative service including a certification as to his total salary for such legislative service together with a remittance of a sum equal to five percent (5%) of such total salary. Any such person shall be entitled to the retirement benefits provided herein, computed in the manner provided herein, and subject to the age and service limits provided herein in the same manner as any other person entitled to retirement benefits under this section. Benefits payable under this provision shall commence on the first day of the month following receipt of a qualifiying application.

Notwithstanding anything herein to the contrary, no person shall be entitled to receive a retirement allowance hereunder unless his service as a member or elected officer 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.

(l) There shall be deducted from the salary of each member and elected officer of the General Assembly on each and every payroll of the General Assembly for each and every payroll period the same per centum thereof as is provided for with respect to State employee payroll deductions under the provisions of G.S. 135-8, of the Teachers' and State Employees' Retirement System Act. There is

hereby established in the office of the State Treasurer a fund to be known as the "Legislative Retirement Contributions Fund," and the amounts deducted as provided above shall be paid into this Fund. The management and investment of moneys in the Fund shall be the same as provided in subsection (e) of this section. The contributions made by members and elected officers of the General Assembly pursuant to this section shall be subject to all the provisions of Chapter 135 of the General Statutes relating to refund or return of contributions to employee members of that system. Upon retirement of a member of the General Assembly or elected officer, all funds credited to the retiring member's account in the Fund, including both contributions and interest, shall be transferred to the Legislative Retirement Fund, to be expended in defraying, to the extent possible, the expense in paying the retirement allowance authorized in this section.

No service credit shall be allowed under this section for any period of service with respect to which a member or elected officer has made contributions as provided herein and received a refund thereof. (1969, c. 1269, ss. 1-10; 1971, c. 905, ss. 1, 1.1, 1.2.)

Editor's Note.—The 1971 amendment, effective Jan. 13, 1971, added "during the period from the time convening until the time of adjournment" at the end of the second sentence in subsection (f), in subsection (g), inserted "or elected officer" near the beginning of the first sentence, rewrote the second sentence, deleted "and" following "70 years" in the third sentence, inserted "has made the contribution required by G.S. 120-4.1(1) for the number of terms sought to be credited" in that sentence, inserted "or elected officer" therein, added the second paragraph, inserted "or elected officer" in the next-to-last sentence, and added subsection (1).

Session Laws 1969, c. 1269, s. 12, 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."

State Government Reorganization.—The Legislative Retirement Fund was transferred to the Department of State Treasurer by § 143A-37, enacted by Session Laws, 1971, c. 864.

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, § 11.

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.)

Editor's Note.—Subdivision (4) of § 120-30.17, referred to in this section, was repealed by Session Laws 1969, c. 1184, s. 8.

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, six Senators appointed by the President pro tempore of the Senate, the Speaker of the House of Representatives, and six 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 after 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 six 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 six 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; 1971, c. 1116, ss. 1-3.)

Editor's Note.—The 1971 amendment, in subsection (a), substituted "six" for "three" in two places in the first sentence, substituted "after" for "upon" in the third sentence, and substituted "six" for "three" in the fifth and sixth sentences.

Revision of Article. — Session Laws 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. 116; 1919, c. 170; C. S., ss. 3848, 3855, 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 indexing and printing of the session laws of each regular, extra or special session of the General Assembly and provide for the printing of the journal of each house of the General Assembly.

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.

(8) Approve or disapprove the authorization for travel for all members of the General Assembly, when traveling as representatives of the General Assembly or of its committees or commissions, when the expenses of such travel are to be paid from funds appropriated to the General Assembly. (1969, c. 1184, s. 2; 1971, c. 685, s. 2; c. 1200, s. 8.)

Editor's Note. — The first 1971 amendment deleted "and distribution" following "printing" and substituted "the journal of each house of the General Assembly" for "the North Carolina Manual Directory, and journals of each house" in subdivision (7)a.

The second 1971 amendment added subdivision (8).

Authority of Legislative Services Commission to Purchase Electronic Voting Equipment.—See opinion of Attorney General to Honorable Philip P. Godwin, Chairman, Legislative Services Commission, 2/25/70.

§ 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 Legislative Services Commission, immediately upon the termination of each session of the General Assembly, shall cause to be published all the laws and joint resolutions passed at that session, whether the laws and resolutions be 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 Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State. In printing, the signatures of the presiding officers shall be omitted.

(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 2,500 volumes of the session laws and 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; 1971, c. 685, s. 1.)

Editor's Note. — The 1971 amendment substituted "Legislative Services Commission" for "Secretary of State" near the beginning and again near the end of the first sentence of subsection (a), and substituted "that" for "such" and inserted "the laws and resolutions be" near the beginning of the first sentence and rewrote the second sentence of subsection (a).

§ 120-35. Payment for expenses.—Actual expenses for the joint operation of the General Assembly shall be paid by the State Treasurer upon authorization of the President pro tempore of the Senate and the Speaker of the House of Representatives. Expenses for the operation of the Senate shall be paid upon authorization of the President pro tempore of the Senate. Expenses for the operation of the House shall be paid upon authorization of the Speaker of the House. (1969, c. 1184, s. 5; 1971, c. 1200, s. 6.)

Editor's Note. — The 1971 amendment, in the first sentence, inserted "pro tempore," and, in the second sentence, substituted "the Senate" for "a single house," deleted "by the State Treasurer" following "paid," and substituted "President pro tempore of the Senate" for "presiding officer of the appropriate house." The amendment also rewrote the third sentence.

§ 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.)

ARTICLE 7A.

Fiscal Research Division.

§ 120-36.1. Fiscal Research Division of Legislative Services Commission established.—There is hereby established the Fiscal Research Division of the Legislative Services Commission, which shall be solely a staff agency of the General Assembly, shall be responsible to the General Assembly through the Commission, and shall be independent of all other officers, agencies, boards, commissions, divisions, and other instrumentalities of State government. The Division shall not be subject to the Executive Budget Act or the State Personnel Act. (1971, c. 659, s. 1.)

Editor's Note.—Former § 120-36.1, codified from Session Laws 1965, c. 1131, s. 1, as amended by Session Laws 1967, c. 25, s. 1, and relating to subsistence allowances for the principal clerks, reading clerks and sergeants-at-arms, and the chief enrolling clerk of the General Assembly, was repealed by Session Laws 1969, c. 1184, s. 1, which revised and rewrote Article 7 of this Chapter.

Session Laws 1971, c. 659, s. 4, makes the act effective July 1, 1971.

§ 120-36.2. Organization. — (a) The Legislative Services Commission shall elect a Director of Fiscal Research, who shall serve at the pleasure of the Commission. The Director of Fiscal Research shall be responsible to the Legislative Services Officer in the performance of his duties.

(b) The Director of Fiscal Research shall appoint and may remove, after

consultation with the Legislative Services Officer and subject in each case to the approval of the Commission, the professional and clerical employees of the Division. He shall assign the duties and supervise and direct the activities of the employees of the Division.

(c) The Director and employees of the Division shall receive salaries that shall be fixed by the Commission, shall receive the travel and subsistence allowances fixed by G.S. 138-6 and 138-7, and shall be entitled to the other benefits available to State employees. (1971, c. 659, s. 1.)

§ **120-36.3. Functions.**—In addition to the functions prescribed in Article 7 of Chapter 120, the Legislative Services Commission, acting through the Fiscal Research Division, shall have the following powers and duties:

(1) To make periodic and special analyses of past receipts and expenditures and of current requests and recommendations for appropriations of State departments, agencies, and institutions, giving special consideration to the requests and recommendations for appropriations to continue current programs and services;

(2) To review and evaluate compliance by State departments, agencies, and institutions with such legislative directions as may be contained in the State budget;

(3) To examine the structure and organization of State departments, agencies, and institutions and recommend such changes as considerations of increased efficiency might indicate;

(4) To make such other studies, analyses, and inquiries into the affairs of State government as may be directed by the Legislative Services Commission, by the Committee on Appropriations of either house, or by either house of the General Assembly.

(5) To make periodic reports on the activities of the Division and special reports on the above-mentioned studies, reviews, analyses, evaluations, examinations, and inquiries to the Committee on Appropriations of either house of the General Assembly, or to either house of the General Assembly, as may be appropriate. The reports of the Division shall, where feasible, include estimates of the financial savings achieved by or anticipated to result from its recommendations. (1971, c. 659, s. 1.)

Cross Reference.—As to participation by legislative fiscal research staff members in meetings and hearings of the Advisory Budget Commission, see § 143-34.3.

§ **120-36.4. Information to be supplied.** — Every State department, agency, or institution shall furnish the Fiscal Research Division with any information or records requested by it. (1971, c. 659, s. 1.)

§ **120-36.5. Office space, etc.** — The Fiscal Research Division shall be provided with suitable office space and equipment in the State Legislative Building. (1971, c. 659, s. 1.)

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.

Article 3.

Salvage of Abandoned Shipwrecks and Other Underwater Archeological Sites.

Article 1.

General Provisions.

§ 121-1. Name.

State Government Reorganization.—The Department of Archives and History was transferred to the Department of Art, Culture and History by § 143A-193, enacted by Session Laws 1971, c. 864.

§ **121-2. Powers and duties of the Department.**—The State Department of Archives and History shall have the following powers and duties:

(8) To select suitable sites on property owned by the State of North Carolina or any subdivision of the State for the erection of historical markers calling attention to nearby historic sites and to prepare appropriate inscriptions to be placed on such markers. The Department shall have all markers manufactured and when completed, each marker shall be delivered to the State Highway Commission for erection under the provisions of G.S. 136-42.2 and G.S. 136-42.3.

(1971, c. 345, s. 3.)

Editor's Note.—

The 1971 amendment substituted "G.S. 136-42.2 and G.S. 136-42.3" for "G.S. 136-42 and G.S. 136-43" at the end of the second sentence in subdivision (8).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (8) are set out.

§ **121-7. Acquisition of historic properties.**—For the purpose of protecting or preserving any property of historical, archaeological, architectural or cul-

tural importance to the people of North Carolina, and subject to the provisions of Subchapter II of Chapter 146 of the General Statutes, the Department of Archives and History may acquire, preserve, restore, hold, maintain, operate, or dispose of such properties, together with such adjacent lands as may be necessary for their protection, preservation, maintenance, and operation. Such property may be real or personal in nature, and in the case of real property, the acquisition may include the fee or any lesser interest therein. Property may be acquired by gift, grant, bequest, devise, lease, purchase, condemnation pursuant to the provisions of Article 2 of Chapter 40 of the North Carolina General Statutes, or otherwise. Property may be acquired by the Department, using such funds as may be appropriated for the purpose or moneys available to it from any other source. (1955, c. 543, s. 1; 1963, c. 210, s. 1; 1971, c. 480, s. 1.)

Editor's Note.— The 1971 amendment rewrote this section. Session Laws 1971, c. 480, s. 8, contains a severability clause.

§ **121-7.1**: Repealed by Session Laws 1971, c. 885, s. 14.

§ **121-7.2. Conveyance of property for preservation purposes.**—In appropriate cases, the Department may acquire or dispose of the fee or lesser interest to any such property for the specific purpose of conveying or leasing the property back to its original owner or of conveying or leasing it to such other person, firm, association, corporation or other organization under such covenants, deed restrictions, lease or other contractual arrangements as will limit the future use of the property in such a way as to insure its preservation. Where such action is taken, the property may be conveyed or leased by private sale. In all cases where property is conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation and other conditions or restrictions of operation, maintenance, restoration and repair as the Department may prescribe, or to such conditions as may be agreed upon between the Department and the grantee or lessee to accomplish the purposes of this section. (1971, c. 480, s. 2.)

Editor's Note. — Session Laws 1971, c. 480, s. 8, contains a severability clause.

§ **121-7.3. Use of property so acquired.**—Any historical property acquired, whether in fee or otherwise, may be used, maintained, improved, restored, or operated by the Department for any public purpose within its powers and not inconsistent with the purpose of the continued preservation of the property. The property shall not be subject to condemnation by the State of North Carolina or any of its agencies or political subdivisions at any time, unless such method of acquisition is first approved by the Governor and Council of State. (1971, c. 480, s. 2.)

§ **121-7.4. Cooperation with federal government.**—The Department of Archives and History and/or the Department of Administration may enter into and carry out contracts with the federal government or any agency thereof under which said government or agency grants financial or other assistance to the Department of Archives and History to further the purposes of this Chapter. The Department of Archives and History may agree to and comply with any reasonable conditions not inconsistent with State law which are imposed on such grants. Such grant funds or other assistance may be accepted from a federal government or agency and expended whether or not pursuant to a contract. (1971, c. 480, s. 2.)

§ **121-7.5. Acquisition procedures where assistance extended to cities, counties, and other agencies or individuals.**—In consideration of the public purpose thereby achieved, the Department may assist any county, city, or other political subdivision, corporation or organization, or private individual in the acquisition, maintenance, preservation, restoration, development, or operation of historical property by providing a portion of the cost therefor; provided, that no acquisition, maintenance, preservation, restoration, development, or operation of

any property, nor any assistance therefor, may be made by the State of North Carolina and no contribution for these purposes may be made from State funds until (i) the property or properties shall have been approved for these purposes by the Department of Archives and History according to criteria adopted by the North Carolina Advisory Council on Historic Preservation, (ii) the report and recommendations of the Advisory Council have been received and considered by the Department of Archives and History, and (iii) the Department has found that there is a feasible and practical method of providing funds for the acquisition, restoration, preservation, operation and maintenance of such property. In all cases where any assistance is extended to private owners of property, whether from State funds or otherwise, it shall be a condition of assistance that (i) the property assisted shall, upon its acquisition and restoration, be made accessible to the public at such times and upon such terms as the Department shall by rule prescribe; (ii) that the expenditure of such funds be supervised by the Department; and (iii) that such expenditures be accounted to the Department in a manner and at such times as are satisfactory to it. (1971, c. 480, s. 2.)

§ 121-7.6. Emergency acquisition where funds not immediately available.—If funds or contributions for the acquisition of needed property are not available, the Governor and Council of State may, upon the recommendation of the Department of Archives and History, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on the property or properties, which option shall continue until 90 days after the adjournment sine die of the next General Assembly. Upon recommendation of The Department of Archives and History, the Governor and Council of State may allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of historically, archaeologically, architecturally, or culturally important properties. All funds hereinafter appropriated to purchase, restore, maintain, develop, or operate historic or archaeological or other important property shall be administered subject to the provisions of Article 1 of Chapter 143 of the General Statutes unless the statute making the appropriation shall in specific and express terms provide otherwise. (1971, c. 480, s. 2.)

§ 121-7.7. Power to acquire property by condemnation.—In the event that a property which has been found by the Department of Archives and History to be important for public ownership or assistance is in danger of being sold, used, or neglected to such an extent that its historical or cultural importance will be destroyed or seriously impaired, or that the property is otherwise in danger of destruction or serious impairment, the Department of Archives and History, after receiving the approval of the Governor and Council of State, may acquire the historical property or any interest therein by condemnation under the provisions of Article 2 of Chapter 40 of the General Statutes of North Carolina. The Department, upon finding that destruction or serious impairment of the value of the property is imminent, shall file with the Governor and Council of State a report on the importance of the property and the desirability of ownership of the property, or the ownership of an interest therein, by the State of North Carolina. Upon giving their approval, the Governor and Council of State shall cause to have filed such approval with the clerk of the superior court in the county or counties where the property is situated. Until the approval is filed, the power of condemnation may not be exercised. All condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina. The power of condemnation as authorized in this section shall extend only to a property or interest therein whose total acquisition cost to the State does not exceed five hundred thousand dollars ($500,000). (1955, c. 543, s. 1; 1971, c. 480, s. 3.)

Editor's Note. — The above section was formerly numbered § 121-8. It was rewritten and renumbered § 121-7.7 by Session Laws 1971, c. 480, s. 3.

Session Laws 1971, c. 480, s. 8, contains a severability clause.

§ 121-8. Creation and composition of North Carolina Advisory Council on Historic Preservation.—There is established the North Carolina Advisory Council on Historic Preservation, hereinafter referred to as "the Council," which shall be the successor to the former Historic Sites Advisory Committee and which shall be composed of 12 members with due regard for geographic representation, as follows: The seven members of the Executive Board, ex officio, of the Department of Archives and History as provided for in G.S. 121-3; the State Budget Officer; the State Property Control and Construction Officer; one member appointed biennially on the first day of July by the Governor, which member so long as he serves on the Council shall be a full member of the North Carolina Chapter of the American Institute of Architects; one member appointed biennially on the first day of July by the Governor, which member so long as he serves on the Council shall be a full member of the American Association of Museums; and one archaeologist appointed by the Director of the Department of Archives and History. The chairman and vice-chairman of the Executive Board of the Department of Archives and History shall serve, ex officio, as the chairman and vice-chairman of the Council respectively. The Director of the Department of Archives and History or his designee shall serve ex officio as Secretary of the Council. Membership on the Council is hereby declared to be an office that may be held concurrently with any other elective or appointive office pursuant to article VI, § 9 of the North Carolina Constitution. Members of the Council shall hold office until their successors are appointed and qualified. A vacancy in the Council shall not affect its powers, and all vacancies shall be filled in the same manner as the original appointment and for the balance of any unexpired term. (1963, c. 210, s. 2; 1971, c. 480, s. 4.)

Editor's Note.—The above section was formerly numbered § 121-8.1, and provided for the creation and composition of the Historic Sites Advisory Committee. It was rewritten and renumbered § 121-8 by Session Laws 1971, c. 480, s. 4.

Session Laws 1971, c. 480, s. 8, contains a severability clause.

State Government Reorganization.—The Advisory Council on Historic Preservation was transferred to the Department of Art, Culture and History by § 143A-194, enacted by Session Laws 1971, c. 864.

§ 121-8.1. Powers and duties of Council.—It shall be the duty of the Council, meeting at such times and according to such procedures as it shall by rule prescribe, to provide an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and, where possible, resolved, giving due consideration to the competing public interests that may be involved.

To this end, the head of any State agency having direct or indirect jurisdiction over a proposed State or State-assisted undertaking, or the head of any State department, board, commission, or independent agency having authority to build, construct, operate, license, authorize, assist or approve any State or State-assisted undertaking, shall, prior to the approval of any State funds for the undertaking, or prior to any approval, license, or authorization, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 15 U.S.C.A. section 470(a).

Where, in the judgment of the Advisory Council, an undertaking will have an effect upon any listed district, site, building, structure, area, or object, the head of the appropriate State agency shall afford the Council a reasonable opportunity to comment with regard to such undertaking.

The Council shall act with reasonable diligence to insure that all State departments, boards, commission[s], or agencies potentially affected by the provisions of G.S. 121-7 through G.S. 121-8.3 be kept currently informed with respect to the name, location, and other significant particulars of any district, site, building, structure, or object listed or placed upon the National Register of Historic Places. Each

affected State department or agency shall furnish, either upon its own initiative or at the request of the Council, such information as may reasonably be required by the Council for the proper implementation of G.S. 121-7 through G.S. 121-8.3. (1971, c. 480, s. 4.)

Editor's Note.—Former § 121-8.1, relating to creation and composition of the Historic Sites Advisory Committee, was rewritten and renumbered § 121-8 by Session Laws 1971, c. 480, s. 4.

Session Laws 1971, c. 480, s. 8, contains a severability clause.

§ 121-8.2. Further duties of Council.—The Council shall prepare and adopt criteria for the evaluation of State historic sites and all other real and personal property which it may consider to be of such historical, architectural, archaeological, or cultural importance as would justify the acquisition and ownership thereof by the State of North Carolina, or for the extension of any assistance or aid thereto by the State, acting by itself or in connection with any county, city, corporation, organization or individual. The Council shall cooperate to the fullest practical extent with any local historical organization, and with any city or county historic district or historic properties commission.

The Council shall also prepare and adopt criteria for the evaluation of all properties of historic or archaeological importance owned by, under option to, or being considered for acquisition by a county, city, historic properties commission or other organization or individual for which State aid or assistance is requested. The Council shall investigate, evaluate, and prepare a written report on all historic or archaeological property for which State aid or appropriations are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Archives and History, shall set forth the following opinions or recommendations of the Council:

(1) Whether the property is historically authentic;
(2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a balanced State program of historic and archaeological sites and properties;
(3) The estimated total cost of the project under consideration and the apportionment of said cost among State and nonstate sources;
(4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;
(5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance; and
(6) Such further comments and recommendations that the Council may make. (1963, c. 210, s. 2; 1971, c. 480, s. 4.)

Editor's Note.—The 1971 amendment rewrote this section.

Session Laws 1971, c. 480, s. 8, contains a severability clause.

§ 121-8.3. Director of Archives and History to furnish recommendations to legislative committees.—The Director of the Department of Archives and History shall furnish as soon as practicable to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds for the purpose of acquiring, preserving, restoring or operating, or otherwise assisting, any property having historic, architectural, archaeological or cultural value or significance, at least five copies of a report on the findings and recommendations of the Advisory Council relating to such property. (1963, c. 210, s. 2; 1971, c. 480, s. 4.)

Editor's Note.—The 1971 amendment rewrote what was formerly the first sentence of the section and deleted the former second sentence, requiring copies of the findings and recommendations of the Historic Sites Advisory Committee to be furnished to the legislative committee chairmen as soon as practicable.

Session Laws 1971, c. 480, s. 8, contains a severability clause.

§ 121-13.1. Preservation and custodial care of State Capitol.—The rotunda, corridors, and stairways of the first floor of the State Capitol and all portions of the second, third, and loft floors of the said building shall be placed in the custody of the Department of Archives and History, and the Department shall, subject to the availability of funds for the purpose, care for and administer these areas for the edification of present and future generations. The aforesaid areas shall be preserved as historic shrines and shall be maintained insofar as practicable as they shall appear following the restoration of the Capitol. The Department is authorized to deny the use of the legislative chambers for meetings in order that they, with their historic furnishings, may be better preserved for posterity; provided, however, that the General Assembly may hold therein such sessions as it may by resolution deem proper.

The Department of Archives and History is hereby entrusted with the responsibilities herein specified as being the agency with the experience best qualified to preserve and administer historic sites and shrines in a suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such cooperation and assistance shall be made available to the said Department of Archives and History, and such labor supplied, as may be feasible, by the Department of Administration.

The offices and working areas of the first floor as well as all washrooms and the exterior of the Capitol shall remain under the jurisdiction of the Department of Administration; provided, however, that the Department of Administration shall seek the advice of the Department of Archives and History in matters relating to any alteration, renovation, and furnishing of said offices and areas. (1961, c. 724; 1965, c. 1129; 1971, c. 480, s. 5.)

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

The 1971 amendment again rewrote the first paragraph, deleted "State" preceding "Department" and "and staff" following experience" and inserted "and administer" in the first sentence of the second paragraph, deleted "the General Services Division of" preceding "the Department of Administration" in the second sentence of the second paragraph and added the third paragraph.

Session Laws 1971, c. 480, s. 8, contains a severability clause.

§ 121-13.2. Editing and publishing of official messages and other papers of Governor.—During the term of office of each Governor of this State, a copy of all official messages delivered to the General Assembly, addresses, speeches, statements, news releases, proclamations, executive orders, weekly calendars, articles, transcripts of news conferences, lists of appointments, and other official releases and papers of the Governor shall be kept in the Governor's office for delivery to the State Department of Archives and History at the end of each quarter during the Governor's administration. These papers shall be compiled and a selection made therefrom by a skilled and competent editor designated by the Director of the State Department of Archives and History. The editor shall edit, according to acceptable scholarly standards, the selected materials which shall be published in a documentary volume as soon as practicable after the conclusion of the term of office of each Governor. If, for any reason, a Governor serves less than a full term, a documentary volume shall be edited and published for such portion of a term as he shall have served. If a Governor serves more than one term, a documentary volume shall be edited and published for each term served.

Funds for editorial assistance, printing, binding, and distribution shall be paid from the Contingency and Emergency Fund. The number of copies of each volume to be printed shall be determined by the Department in consultation with the Governor whose papers are being published. (1971, c. 480, s. 6.)

Editor's Note. — Session Laws 1971, c. 480, s. 8, contains a severability clause.

Article 2.

Tryon's Palace and Tryon's Palace Commission.

§ 121-19. Purpose, establishment and composition of Tryon's Palace Commission.

State Government Reorganization.—The Tryon's Palace Commission was transferred to the Department of Art, Culture and History by § 143A-202, enacted by Session Laws 1971, c. 864.

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 property 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.

Article 2.

Officers and Employees.

Article 2A.

Local Mental Health Clinics.

Article 2B.

Rehabilitation of Alcoholics.

Article 2C.

Establishment of Area Mental Health Programs.

Sec.

Article 2D.

Community Drug Abuse Programs.

Article 3.

Admission of Patients; General Provisions.

Article 7.

Judicial Hospitalization.

Article 7A.

Chronic Alcoholics.

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).

State Government Reorganization.—The Department of Mental Health was transferred to the Department of Human Resources by § 143A-138, enacted by Session Laws 1971, c. 864.

§ 122-1.1. Creation of State Board of Mental Health; appointment of members; terms of office; removal; vacancies; organization; powers and duties; compensation.

State Government Reorganization.—The Board of Mental Health was transferred to the Department of Human Resources by § 143A-139, enacted by Session Laws 1971, c. 864.

§ 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.

Article 2 of Chapter 143, referred to in this section, was repealed by Session Laws 1965, c. 640, s. 1. For present provisions as to the State Personnel System, see §§ 126-1 to 126-12.

§ 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.

§ 122-8.1. Disclosure of information, records, etc.

Editor's Note.—For note on reporting patients for review of driver's license, see 48 N.C.L. Rev. 1003 (1970).

§ 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.)

Editor's Note.—For note on reporting patients for review of driver's license, see 48 N.C.L. Rev. 1003 (1970).

§ 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 director" following "superintendent" and substituted "facilities" for "institutions."

§ 122-16.1. Motor vehicle laws applicable to streets, alleys and driveways on the grounds of institutions of the Department of Mental Health; State Board of Mental Health authorized to adopt traffic regulations; registration and regulation of motor vehicles.—(a) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys, roads and driveways on the grounds of all State institutions operated by the State Department of Mental Health. Any person violating any of the provisions of said Chapter in or on such streets, alleys, roads or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys, roads and driveways on the grounds of the State institutions operated by the Department of Mental Health as is now vested by law in the State Board of Mental Health.

(b) Authority is hereby conferred upon the State Board of Mental Health to make such additional rules and regulations and adopt such additional ordinances, not inconsistent with the provisions of Chapter 20, General Statutes of North Carolina, as in its opinion may be necessary, with respect to the use of the streets, alleys, roads and driveways of facilities of the Department of Mental Health, and to establish parking areas on the grounds of such institutions. Provided, however, that, based upon a traffic and engineering investigation, the State Board of Mental Health may determine and fix speed limits on streets, roads and highways subject to such rules, regulations and ordinances lower than those provided in G.S. 20-141,

and the State Board of Mental Health may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of other rules, regulations and ordinances. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment not exceeding 30 days.

(c) The State Board of Mental Health may adopt reasonable rules and regulations governing the registration and parking of motor vehicles maintained and operated by employees or their families on the grounds of the respective institutions, and may in connection with such registration charge an annual fee therefor, which fee shall be placed in a special fund at each institution, to be used by appropriate resolution of the local governing body of such institution to develop, maintain, and supervise parking areas and facilities.

(d) The State Board of Mental Health is hereby empowered to prescribe civil penalties for the violation of the rules and regulations adopted pursuant to this section, not to exceed five dollars ($5.00). All penalties received pursuant to this section shall be placed in a special fund at each institution to be used by appropriate resolution of the local governing body of such institution to develop, maintain, and supervise parking areas and facilities. (1971, c. 984, s. 1.)

Editor's Note. — Session Laws 1971, c. 984, s. 2, provides: "The grant of authority provided by this section shall be in addition to and not in lieu of existing authority vested in the State Board of Mental Health."

§ 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.

§ 122-32. State Board of Mental Health to keep record of proceedings; clerk.—The State Board of Mental Health shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk, and pay him a reasonable compensation for his services. The books shall, at all times, be open to the inspection of the General Assembly. (1899, c. 1, s. 36; Rev., s. 4568; 1917, c. 150, s. 1; C. S., s. 6180; 1963, c. 1166, s. 13.)

Editor's Note.—
This section is set out to correct an error in the catchline in the 1964 Replacement Volume.

§ 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 deleted "Community Mental Health Services Division of the" preceding "Department" at the end of the first sentence and substituted "Department" for "Division" at the beginning of the second and third sentences.

§ 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 Contingency 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 health and mental health center reserve 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 percent (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 2C.

Establishment of Area Mental Health Programs.

§ 122-35.18. Definitions.—For purposes of this Article, the following definitions shall apply:

(1) "Area" means a geographic entity consisting of one or more counties, or portions of one or more counties, designated by the Board of Mental Health as a basic unit for the development of mental health programs to serve the population of that geographic entity.

(2) "Mental health program" means any services or activities, or combination thereof, for the diagnosis, treatment, care, or rehabilitation of mentally impaired persons or for the promotion of mental health, which is offered

by or on behalf of the geographic entity established pursuant to this Article. (1971, c. 470, s. 1.)

Editor's Note.—Section 2, c. 470, Session Laws 1971, makes the Article effective July 1, 1971.

§ **122-35.19. Area mental health programs.**—The North Carolina Board of Mental Health is authorized to establish area mental health programs. These shall be joint undertakings of the counties or portions thereof, included in the designated area, and the Department of Mental Health for the following purposes:

(1) To develop area mental health programs, to consist of a combining and interrelationship of resources, personnel, and facilities of the Department of Mental Health, and of the community mental health program to serve the population of the area designated pursuant to this Article. The area mental health program shall include, but not be limited to, programs for general mental health, mental disorder, mental retardation, alcoholism, drug dependence, and mental health education.

(2) With the approval of the Department of Administration, to develop and test budgeting procedures for combining local and State grants-in-aid funds with a proportional share of funds appropriated for the operation of departmental facilities serving the population of the area. Provided that "local funds" and "State grants-in-aid" shall be defined and determined in accordance with the provisions of G.S. 122-35.11 and G.S. 122-35.12, and shall be unaffected by the addition of funds appropriated for the operation of State facilities.

(3) To evaluate the effectiveness and efficiency of area mental health programs. (1971, c. 470, s. 1.)

§ **122-35.20. Area mental health boards.** — (a) In areas where area mental health programs are established in accordance with this Article, an area mental health board shall be appointed for each designated area. The area mental health board shall consist of 15 members and shall meet at least six times per year.

(b) In areas consisting of only one county, the board of county commissioners shall appoint all of the members of the area mental health board. In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area mental health board. These members shall appoint the other members of the area mental health board in such a manner as to provide equitable area-wide representation.

(c) The area mental health board shall include:

(1) At least one commissioner from each county;

(2) At least two persons duly licensed to practice medicine in North Carolina;

(3) At least one representative from the professional fields of psychology, or social work, or nursing, or religion;

(4) At least three representatives from local citizen organizations active in mental health, or in mental retardation, or in alcoholism, or in drug dependence;

(5) At least one representative from local hospitals or area planning organizations;

(6) At least one attorney practicing in North Carolina.

(d) Any member of an area mental health board who is a public official shall be deemed to be serving on the board in an ex officio capacity to his public office. The ex officio members shall serve to the end of their respective terms as public officials. The other members shall serve four-year terms, except that upon initial formation of an area mental health board, three members shall be appointed for one year, two members for two years, three members for three years, and all remaining members for four years.

(e) Subject to the supervision, direction, and control of the State Board of Mental Health, the area mental health board shall be responsible for reviewing and evaluating the area needs and programs in mental health, mental impairment, mental retardation, alcoholism, drug dependence, and related fields, and for developing jointly with the State Department of Mental Health an annual plan for the effective development, use and control of State and local facilities and resources in a comprehensive program of mental health services for the residents of the area. (1971, c. 470, s. 1.)

§ 122-35.21. Appointment of area mental health director.—The area mental health board of each area established pursuant to this Article shall appoint, with the approval of the Commissioner of Mental Health and the State Board of Mental Health, an area mental health director. The area mental health director shall be the employee of the area mental health program, responsible to the area mental health board for carrying out the policies and programs of the area mental health board, and of the State Board of Mental Health. (1971, c. 470, s. 1.)

§ 122-35.22. Clinical services.—All clinical services under an area mental health program shall be under the supervision of a person duly licensed to practice medicine in North Carolina. (1971, c. 470, s. 1.)

§ 122-35.23: Reserved for future codification purposes.

ARTICLE 2D.

Community Drug Abuse Programs.

§ 122-35.24. Establishment of community-based drug abuse programs.—The Commissioner of Mental Health is hereby authorized and directed to establish as the need arises and as funds permit, in areas to be designated by the Commissioner of Mental Health, community-based programs for the treatment and prevention of drug abuse. Such programs shall be as comprehensive as fiscal limitations permit and may include, but need not be limited to, the following services relative to the treatment and prevention of drug abuse: In-patient services, out-patient services, partial hospitalization, emergency services, consultation and education services, diagnostic services, rehabilitation services, pre-care and after-care services, training, and research and evaluation. (1971, c. 1123, s. 1.)

Editor's Note. — Session Laws 1971, c. 1123, s. 5, effective on and after July 1, 1971, appropriates certain funds and provides as follows: "The funds hereby appropriated shall be expended in the selected areas in the following ratio: One State dollar to one local dollar for the approved drug abuse program budget. Where the actual expenditures of the local mental health authority are less than the approved budget, the State portion shall be determined by the actual expenditures rather than the approved budget. No State funds shall be spent on a program until the local mental health authority provides the necessary matching funds."

§ 122-35.25. Funding of community-based drug abuse programs.—Moneys appropriated to the State Department of Mental Health to be used for funding community-based drug abuse programs shall be allocated and expended in such manner as is provided in the act appropriating same. (1971, c. 1123, s. 2.)

§ 122-35.26. Local mental health authorities to operate drug abuse programs.—The local mental health authorities representing the areas selected by the Commissioner of Mental Health for the establishment of community-based drug abuse programs shall be responsible for the operation of such programs in accordance with standards set by the Commissioner of Mental Health governing the operation of community-based drug abuse programs. Failure to comply with these standards, as determined by the Commissioner of Mental Health, shall be grounds for the State Department of Mental Health to cease participating in the funding of the particular community-based drug abuse program. Where necessary or ex-

pedient the local mental health authority, or its administrative agent, may contract with other agencies, institutions, or resources for the provisions of one or more of the services needed for the proper operation of the community-based drug abuse program, but it shall remain the responsibility of the local mental health authority to insure that such contracted services meet the standards as set by the Commissioner of Mental Health. (1971, c. 1123, s. 3.)

§ 122-35.27. Selection of areas in which community-based drug abuse programs are to be established.—As funds available to the State Department of Mental Health for such purpose permit, the Commissioner of Mental Health shall select areas in which there shall be established, pursuant to this Article, community-based drug abuse programs. One or more political subdivisions of the State may be included in such areas. In selecting areas in which such programs shall be established, the Commissioner of Mental Health shall give due consideration of the degree of need that an area has for the program, the availability of resources to serve the program, and the demonstrated desire of the local mental health authority serving the area to cooperate fully in making the program as comprehensive as possible. (1971, c. 1123, s. 4.)

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).

§ 122-38. Proceedings in case of mentally ill or inebriate citizen of another state.—If any person not a citizen of this State but of another state of the United States shall be ascertained to be a proper subject for care and treatment in an institution of this State for the mentally ill or inebriate, the clerk of the superior court shall hospitalize such person to the proper State institution and shall record on the order of hospitalization that the person being hospitalized is not a resident of this State. He shall also give on the order of hospitalization such information as is available in regard to the proper residence of the person being hospitalized. Upon the admission of such person to the hospital, the superintendent of the hospital shall notify the State Department of Mental Health that such person appears to be a resident of another state, so that the State Department of Mental Health can take steps to establish such person's residence and have him transferred to the state in which he is legally resident.

After the legal residence of such alleged mentally ill person or alleged inebriate has been verified and confirmed by the state of his residence, such person shall be transferred to the state of his residence. If that state shall not provide for his removal to that state within a reasonable time, the superintendent of the State hospital shall cause him to be conveyed directly from the State hospital to the state of his legal residence and delivered there to the superintendent of the proper state hospital.

The cost of such proceedings and conveyance away from the State shall be borne

by the State of North Carolina. (1899, c. 1, s. 16; Rev., s. 4584; C.S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, s. 18; 1963, c. 1184, s. 1; 1971, c. 1140.)

Editor's Note. — The 1971 amendment substituted "State of North Carolina" for "county in which the person shall have been adjudged a proper subject for restraint, care, and treatment" in the last paragraph.

§ 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 procedures 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.

Common Law.— At common law there was a right to detain a mentally ill person in order to protect such person from self-injury, and the public from injury at the hands of such deranged person. This doubtless accounts for the action of the legislature in authorizing such an emergency commitment. The action of the legislature supplanted the common-law rule.

Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

This section is not ambiguous. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

It is sufficiently broad to take care of any emergency situation. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

And the legislature meant exactly what it says. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

Section to Be Used with Care and Exactness.—Since this section provides for such a drastic remedy, it is encumbent upon all that use it to do so with care and exactness, even though the user may think it impractical. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

Commitment without Compliance with Statutory Requirements a Denial of Legal Process.—In an action for false imprisonment arising out of a commitment to a mental institution, the act of defendant physician in committing plaintiff under the statutory emergency proceeding without complying with the statutory requirement that his statement as to plaintiff's condition be made under oath, is a deprivation of plaintiff's liberty without legal process. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

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).

§ 122-61. Detention of persons alleged to be mentally ill or inebriate and dangerous to themselves or others.—If the affidavit filed in accordance with the provisions of G.S. 122-60 states that the alleged mentally ill person or alleged inebriate is likely to endanger himself or others, he may be taken into custody and detained in his own home, in a private or general hospital, or in any other suitable facility as approved by the local health director for such detention, upon an order of the clerk of the court. He shall not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The Department of Mental Health shall make available to the clerk of court such medical services and transportation necessary to effect the detention deemed necessary.

The clerk shall expedite the hearing, and, if the alleged mentally ill person or alleged inebriate is found to be in need of hospitalization, the clerk shall expedite the transmission of this information to the proper State hospital so that the alleged mentally ill person or alleged inebriate can be admitted without any undue delay. (1941, c. 179; 1955, c. 887, s. 5; 1963, c. 1184, s. 2; 1971, c. 1193, s. 1.)

Editor's Note.—

The 1971 amendment, effective July 1, 1972, rewrote the second sentence and added the third sentence.

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

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

Clerk of Superior Court Has Authority to Order Physicians to Perform Examination.—See opinion of Attorney General to Honorable J.C. Taylor, Clerk of Superior Court of Halifax County, 7/15/70.

Commitment Order Issued Pursuant to Clerk's Knowledge, Not upon Defendant's Application.—In an action for false imprisonment arising out of commitment to a mental institution, the trial court properly directed verdicts in favor of the defendants who had incorrectly filled out an application for plaintiff's commitment by the superior court clerk, since the commitment order of the clerk is issued pursuant to the clerk's own knowledge of plaintiff's condition and not upon the application of the defendants. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

A commitment under a clerk's order is based upon legal process. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

And such commitment does not constitute false imprisonment. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

§ 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.

For note on liability of physicians for violation of certification requirements in commitment process, see 48 N.C.L. Rev. 412 (1970).

Constitutional Safeguards and Appeal.—See opinion of Attorney General to Mr. John C. Davis, Assistant Clerk of Superior Court, Forsyth County, 41 N.C.A.G. 219 (1971).

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

§ 122-63.1. Authorization for admission of patients to local mental health centers and other facilities designated by the Board of Mental Health.—Local mental health centers and other facilities operated by, or in conjunction with, the Department of Mental Health, may be designated by the Board of Mental Health, and upon such designation, shall be authorized to receive alleged mentally ill or inebriate persons in the same manner as a State hospital. In regard to persons involuntarily committed under Article 7 of Chapter 122, the clerk of superior court shall order such persons to be hospitalized to the facility serving his county as designated by the Board of Mental Health. Provided that such designation shall be filed in compliance with the requirements regarding the filing of rules and regulations of State agencies.

All provisions of Chapter 122 relating to the care, treatment, and maintenance of patients shall be applicable to any facility authorized to receive alleged mentally ill or inebriate patients pursuant to this section. Such facilities shall be subject to the rules and regulations relating to the care, treatment, and maintenance of patients as promulgated by the Board of Mental Health.

The clinical director of a facility designated to receive patients pursuant to this section is hereby authorized and directed to perform all acts and duties in regard to such patients in his program as would normally be performed by the superintendent of a State hospital. (1971, c. 471, s. 1.)

Editor's Note.—Section 2, c. 471, Session Laws 1971, makes the act effective July 1, 1971.

§ 122-64. Place for hearings; judicial hospitalization of persons already in hospitals.

Editor's Note.—For note on liability of physicians for violation of certification requirements in commitment process, see 48 N.C.L. Rev. 412 (1970).

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 ac-

tion 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 9A.

Mentally Retarded Services Funds.

§ 122-71.4. Department control of funds.—The Department of Mental Health with the approval of the Council on Mental Retardation and Developmental Disabilities is hereby authorized and directed to expend any moneys appropriated for the purpose of funding subsidy or grant-in-aid programs providing day care or sheltered workshop services from nonprofit facilities to severely or moderately mentally retarded individuals in such a manner as to obtain, insofar as is practicable and expedient, the maximum monetary participation or assistance available from any appropriate federal or other program. Provided that such funds shall not be expended in any manner which will result in fewer individuals receiving services from such programs than received such services during fiscal year 1970, and that no eligible person will receive less than $40.00 monthly grant-in-aid from the combination of all funds. Any additional funds generated from appropriate federal or other programs shall be used to provide additional services to severely or moderately mentally retarded individuals. (1971, c. 1227, s. 1.)

§ 122-71.5. Application of funds.—The funds herein shall be applied to the mentally retarded and developmentally handicapped in sheltered environments and day care facilities and for the mentally retarded and developmentally handi-

capped children below the age of six years in a licensed nonprofit residential facility. Said facilities shall be selected by the Department of Mental Health to provide more adequately for the mentally retarded in the community, and to encourage care for those persons near their families. The funds herein shall be administered through the Department of Mental Health with the approval of the Council on Mental Retardation and Developmental Disabilities to only State-licensed day care facilities and residential facilities. (1971, c. 1227, s. 1.1.)

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 nonmedical 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 person 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).

Section Distinguished from § 122-84.—This section applies to a person "charged with crime" while § 122-84 is applicable to a person "accused of the crime of murder, attempt at murder, rape, assault with intent to commit rape, highway robbery, train wrecking, arson, or other crime," and this points out that one of the distinguishing provisions of the two sections is the type of crime to which it applies. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

No Irreconcilable Conflict with § 122-84.—When the second and third paragraphs of § 22-84 are considered and harmonized with the first paragraph, and also with this section, the provisions of the two sections are not in irreconcilable conflict. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Common-Law Method of Determining Mental Condition.—At common law, the method of determining the defendant's present mental condition rests in the discretion of the trial judge. He may impanel a jury or decide the question himself. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Applies in Absence of Statutory Provision.—Under this section and § 122-84, it is not specifically stated that the judge may impanel a jury to try the issue of mental illness, but the common-law rule applies and such determination may be made by the court with or without the aid of a jury. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Ability to Plead and Conduct Defense Should Be Determined Prior to Trial.—Whether defendant is able to plead to the indictment and conduct a rational defense should be determined prior to the trial of defendant for the crime charged in the indictment. Rutledge v. Rutledge, 10 N.C. App. 427, 179 S.E.2d 163 (1971).

And May Be Determined with or without a Jury.—Under this section and § 122-84, the question of whether the defendant had sufficient mental capacity to plead to the indictment and conduct a rational defense may be determined by the judge or he may submit the issue to a jury prior to

the trial of defendant for the crime charged. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Because Formal Inquiry as to Defendant's Mental Capacity to Plead and Conduct Defense Discretionary with Court.— In a criminal case, 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, and such determination may be made by the court with or without the aid of a jury. Rutledge v. Rutledge, 10 N.C. App. 427, 179 S.E.2d 163 (1971).

Proper to Request Court-Conducted Inquiry of Defendant's Mental Capacity.— It is proper for the defendant's counsel to request the court to conduct an inquiry to determine whether the defendant has sufficient mental capacity to plead to the indictment and conduct a rational defense. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

No Rules Provided for Inquisition Proceeding other than Due Process.—No rules or procedure are provided in this section or § 122-84 other than "by due course of law" (set out in this section) as to how the judge shall conduct the inquisition when he is called upon to determine whether a person accused of crime is unable to plead because of mental illness. However, due process must be observed. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

The distinction between the test of the competency of a person to stand trial and the test of the mental responsibility in the commission of a crime is set forth in State v. Propst, 274 N.C. 62, 161 S.E.2d 560 (1968). State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Findings Sufficient to Show Defendant Mentally Ill at Time of Arraignment.— The findings by the judge that the defendant was unable to plead to the bill "for that he does not have the capacity at this time to stand trial or to comprehend his position, to understand the nature and object of the proceedings against him, to conduct his defense in a rational manner, or to cooperate understandingly with his counsel with respect to his defense" in the context of the order were sufficient findings that the defendant was mentally ill at the time of arraignment and for that reason could not plead. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Finding Commitment in Best Interest of Defendant or for Protection of Society Not Required. — If the defendant could have been committed under this section, it is clear that this section does not require a finding by the judge that the commitment is in the defendant's best interest or that the protection of society demands that the defendant be committed before sending such person to a State hospital. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Commitment by District Court Judge of Person Incompetent to Stand Trial.—See opinion of Attorney General to Mr. J.W.H. Roberts, 41 N.C.A.G. 259 (1971).

§ 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.

Cross Reference.—See note to § 122-83.

Common-Law Rule to Determine Defendant's Capacity to Stand Trial.—If a defendant is capable of understanding the nature and object of the proceedings against him and to conduct his defense in a rational manner, he is sane for the purpose of being tried, though on some other subject his mind may be deranged. This is the common-law rule to determine a defendant's capacity to stand trial. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971); State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Authority to Detain for Inquisition.— The first sentence of the first paragraph of this section deals with the authority of the judge to detain a person temporarily until an inquisition can be held. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Finding Before Commitment That Defendant Is Dangerous Not Required.— While the portion of paragraph one after the first sentence is suggestive of procedures which are proper to follow in determining whether a person has sufficient mental capacity to undertake his defense, it does not require a finding before commitment thereunder that "the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it." State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Procedures for Committing Person after Acquittal. — The remainder of the first paragraph of this section specifically establishes procedures for committing a person after he has been acquitted, and does not specifically apply to a person accused of

crime and found to be without sufficient mental capacity to undertake his defense. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

The second sentence in the first paragraph of this section begins a new thought which provides procedure for an inquisition to be held by the judge after a person is acquitted of a crime importing serious menace to others. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

The third sentence in the first paragraph refers to witnesses for the "person so acquitted." The next two sentences point to "such inquisition." The remaining sentences in the paragraph all have to do with the inquisition and commitment of the person acquitted. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Scope of Second and Third Paragraphs.—The second and third paragraphs of this section are concerned, among other things, with procedures for dealing with the person accused of crime and committed under this section as unable to plead who subsequently becomes mentally able to stand trial and is thereupon acquitted. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

The second paragraph in this section applies to a person already committed to a State hospital as unable to plead under the section. This second paragraph provides procedures for after-commitment dealings with a person unable to plead as well as in the event such person is later tried and then acquitted. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

High Degree, etc.—

The felony of breaking and entering with intent to steal is a crime importing serious menace to others, and it is proper in such case for the judge to proceed under this section. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Incompetency to Stand Trial.—If a defendant is incapable of understanding the nature and object of the proceedings against him and to conduct his defense in a rational manner, he is not competent to stand trial. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

And Presumption of Need of Psychiatric Treatment.—Ordinarily it may be presumed that a person charged with a crime of the nature of those set forth in this section, who is without sufficient mental capacity to plead to the bill of indictment and undertake his defense, is in need of psychiatric treatment. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

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).

Elements of Proof Required Before Commitment of Person Charged with Crime.—It is required before the issuance of a commitment to a State hospital of a person charged with crime of the nature referred to in this section, that the judge or the jury first ascertain by due course of law that such person is "charged with" or "accused of" the commission of such a crime and is without sufficient mental capacity to undertake his defense at the time of arraignment and for that reason cannot be put on trial. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Distinction between Types of Insanity.—A clear distinction must be drawn between the insanity which precludes responsibility for crime and insanity which precludes trial. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

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).

The test for insanity which precludes responsibility for crime is the ability to distinguish the difference between right and wrong. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

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); State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

Circumstances Insufficient to Raise Doubt As to Competency.—While a defendant may possess a sociopathic personality and suffer from psychological and social disturbances, these circumstances without more are not sufficient to raise a bona fide doubt as to his competence. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

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).

The action of the trial judge in accepting the plea, but then sending defendant to the hospital for treatment before sentencing, created an apparent contradiction. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

Then Judge Should Request Necessary Medical Treatment for Defendant.—Where the defendant has ample mental capacity both to plead and to be sentenced, the trial judge should sentence defendant after accepting the plea and then request the prison authorities to give defendant such medical treatment as he might require. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

Capacity to Plead Indicates Capacity to Receive Sentence.—If defendant has sufficient mental capacity to plead, he has sufficient mental capacity to receive sentence. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

Failure to Act under § 122-91 Not a Bar to Proceeding under This Section in Proper Cases. — Where the superintendent of the State hospital has not reported his findings and recommendations to the clerk of the superior court as required in § 122-91, the clerk could not institute proceedings under that section. But the failure to act under the provisions of § 122-91 does not prevent a judge of the superior court from proceeding under the provisions of this section in proper cases. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

Applied in Bell v. Smith, 263 N.C. 814, 140 S.E.2d 542 (1965); State v. Swann, 275 N.C. 644, 170 S.E.2d 611 (1969); State v. Swann, 9 N.C. App. 18, 175 S.E.2d 382 (1970); In re Tew, 11 N.C. App. 64, 180 S.E.2d 434 (1971).

Cited in In re Custody of Wright, 8 N.C. App. 330, 174 S.E.2d 27 (1970).

§ 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.

Cited in State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971); State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

§ 122-86. Persons acquitted of crime on account of mental illness; how discharged from hospital.

Constitutionality. — The provision of the statute requiring a certificate from the superintendents of the several State hospitals is not violative of due process of law as guaranteed by the federal and State constitutions. In re Tew, 11 N.C. App. 64, 180 S.E.2d 434 (1971).

While the passage of time since the enactment of this section and the increase in the number of superintendents of the several State hospitals increases the difficulty of procuring the necessary certificate, this in no way violates due process and any change in the procedure is a matter for the legislative branch of the government and not the judicial and the proceeding as now enacted provides due process. In re Tew, 11 N.C. App. 64, 180 S.E.2d 434 (1971).

Due Process in Proceeding Sufficient.—The superintendents of the State hospitals constitute a commission, and if a commission could make the determination at the time of the initial commitment proceeding and thus constitute due process, the same proceeding should be sufficient to constitute due process in determining whether or not the commitment should terminate. In re Tew, 11 N.C. App. 64, 180 S.E.2d 434 (1971).

§ 122-87. Proceedings in case of recovery of patient charged with crime.

Applied in State v. Swann, 275 N.C. 644, 170 S.E.2d 611 (1969); State v. Swann, 9 N.C. App. 18, 175 S.E.2d 382 (1970).

§ 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.

Failure to Act under This Section Not a Bar to Proceeding under § 122-84 in Proper Cases. — Where the superintendent of the State hospital has not reported his findings and recommendations to the clerk of the superior court as required in this section, the clerk could not institute proceedings under this section. But the failure to act under the provisions of this section does not prevent a judge of the superior court from proceeding under the provisions of § 122-84 in proper cases. State v. Lewis, 11 N.C. App. 226, 181 S.E.2d 163 (1971).

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); State v. Swann, 275 N.C. 644, 170 S.E.2d 611 (1969); State v. Swann, 9 N.C. App. 18, 175 S.E.2d 382 (1970).

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); State v. Baldwin, 276 N.C. 690, 174 S.E.2d 526 (1970); State v. Williams, 276 N.C. 703, 174 S.E.2d 503 (1970); State v. Adams, 277 N.C. 427, 176 S.E.2d 381 (1970); State v. Smith, 278 N.C. 36, 178 S.E.2d 597 (1971).

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 13.

Interstate Compact on Mental Health.

§ 122-99. Compact entered into; form of compact.

A Patient Found Not Guilty of a Crime by Reason of Insanity May Not Be the Subject of Interstate Transfer.—See opinion of Attorney General to Dr. Eugene A. Hargrove, Commissioner of Mental Health, 3/11/70.

§ 122-100. Compact Administrator.

State Government Reorganization.—The administration of the compact was transferred to the Department of Human Resources by § 143A-153, enacted by Session Laws 1971, c. 864.

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 Commissioner of Social Services, the Chief of the Psychological Services Section of the State Department of Social Services, the State Health Director, the Chief of the Mental Retardation and Developmental 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, the Director of the Division of Exceptional Children, North Carolina State Department of Public Instruction, North Carolina Personnel and Guidance Association, Association of Mental Health Centers of North Carolina, State Council of NASW Chapters, North Carolina Extension Homemakers Association, North Carolina Council on Mental Retardation, Division of Recreation of North Carolina Department of Local Affairs, North Carolina Department of Veterans Affairs, North Carolina Academy of General Practice, North Carolina State Nurses' Association and State League for Nursing, North Carolina Council of Child Psychiatry, Inc., Alcoholism Professionals of North Carolina, North Carolina Council of Family Service Agencies, North Carolina Association for Retarded Children, North Carolina Medical Care Commission, Divisions of Mental Retardation and of Alcoholism of the State Department of Mental Health. 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; 1971, c. 596.)

Editor's Note.—

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

The 1971 amendment, effective July 1, 1971, deleted "Chairman of the North Carolina Board of Mental Health" and substituted "Commissioner of Social Services" for "Commissioner of Public Welfare" and "Department of Social Services" for "Department of Public Welfare" near the beginning of the first sentence, substituted "Director of the Division of Exceptional Children" for "Director of the Special Education Section, Division of Instructional Services" near the middle of the first sentence and added, at the end of the first sen-

tence, all of the associations and agencies following "State Department of Public Instruction."

State Government Reorganization.—The Mental Health Council was transferred to the Department of Human Resources by § 143A-141, enacted by Session Laws 1971, c. 864.

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).

§ **122-106. Functions; meetings; annual report.**—The function of the Mental Health Council shall be to consider ways and means to promote mental health in North Carolina and to study needs for new legislation pertaining to mental health of the citizens of the State. The Council shall meet at least twice a year and file an annual report with the Governor. (1945, c. 952, s. 61; 1963, c. 1184, s. 13; 1971, c. 596.)

Editor's Note.—Session Laws 1971, c. 596, effective July 1, 1971, reenacted this section without change.

§ **122-107. Members not State officers.**—The members of the Mental Health Council shall not be considered as State officers within the meaning of Article VI, § 9 of the North Carolina Constitution. (1945, c. 952, s. 61; 1963, c. 1184, s. 13; 1971, c. 596.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "Article VI, § 9" for "article XIV, section seven."

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.)

State Government Reorganization.—The Advisory Council on Alcoholism was transferred to the Department of Human Resources by § 143A-142, enacted by Session Laws 1971, c. 864.

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

(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.

§ 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.)

State Government Reorganization.—The North Carolina Housing Corporation was transferred to the Department of Administration by § 143A-85, enacted by Session Laws 1971, c. 864.

Constitutionality. — This Chapter is not unconstitutional on its face or when considered with reference to the facts set forth in the instant case. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The West Virginia Housing Development Fund Act is similar to this Chapter. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The public purpose of this Chapter is to make additional residential housing available to persons and families of lower income by promoting the construction thereof. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

This Chapter was enacted for a public purpose and the North Carolina Housing Corporation's authorized activities pursuant thereto are for a public purpose. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

General Assembly Determines Wisdom of Public Policy and Program. — Whether the public policy and program established by the North Carolina Housing Corporation Act is wise or unwise is for determination by the General Assembly. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 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.)

Purpose of North Carolina Housing Corporation. — The North Carolina Housing Corporation was created as a public agency, an instrumentality of the State of North Carolina, and empowered to act on behalf of the State for the purpose of providing residential housing "for sale or rental to persons and families of lower income." Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ **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 rahabilitation 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.)

The North Carolina Housing Corporation does not legislate but determines factually, by application of the factors the General Assembly has prescribed, what persons or families are persons and families of lower income and therefore entitled to the benefits of this Chapter. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 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 per-

son, 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.)

Corporation Is Not a Legislative Body.—The North Carolina Housing Corporation does not legislate but determines factually, by application of the factors the General Assembly has prescribed, what persons or families are persons and families of lower income and therefore entitled to the benefits of this Chapter. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Nor Is It Vested with Power of Eminent Domain.—The North Carolina Housing Corporation is not vested with the power of eminent domain. Rather, its function is to foster the planning, construction and financing of modest residences which would not otherwise be available to "persons and families of lower income." Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Public Purpose of Chapter.—This Chapter was enacted for a public purpose and the North Carolina Housing Corporation's authorized activities pursuant thereto are for a public purpose. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Scope of Corporation's Activities.—The North Carolina Housing Corporation's authorized activities respond to a serious need of deep public concern but do so only when the planning, construction and financing of residential housing is not otherwise available to "persons and families of lower income." Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Function of Corporation.—The evident function of the North Carolina Housing Corporation created by this Chapter is to assist "persons and families of lower income" who desire and seek residential housing elsewhere than as tenants in a low-cost housing project. Such persons would include those who were or are ineligible to be tenants in a housing project. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The reason and justification for the corporation's existence is to make available decent, safe and sanitary housing to "persons and families of lower income" who cannot otherwise obtain such housing accommodations. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Nature of Loans Made by Corporation.—A loan which the North Carolina Housing Corporation is authorized to make or participate in making or to purchase or participate in purchasing is an "insured construction loan" or an "insured mortgage loan," which, as provided in §§ 122A-3(7) and 122A-3(8) means a loan secured by a federally insured mortgage or 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 loan or mortgage. This provides sufficient standards for the use of the proceeds from the sale of the Corporation's tax-exempt bonds. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 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.)

The method of financing set forth in this section does not create a debt within the meaning of the Constitution and therefore the limitations of former N.C. Const., Art. V, § 3 (see now N.C. Const., Art. V, § 2), are inapplicable. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Legislative Appropriations Precluded.—The North Carolina Housing Corporation has no authority to incur any debt which would obligate the General Assembly to make appropriations. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ **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 10 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 or make 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 twenty percent (20%) of such construction 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; 1971, c. 753, ss. 1, 2.)

Editor's Note. — The 1971 amendment inserted "or make" in subdivision (3)a of the fifth paragraph and deleted at the end of subdivision (3)b of the fifth paragraph "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."

The function of the Housing Development Fund is to initiate the North Carolina Housing Corporation's program. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The North Carolina Housing Corporation must exercise its discretion and judgment with reference to the choice of sites and the identity of the sponsor, builder or developer with whom the Corporation will deal in connection with a particular project. It is contemplated that such sponsor, builder or developer will continue until completion of the program. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ **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.)

Quoted in Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ **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.)

Appropriations for Reserve Fund Not a Pledge of Faith and Credit of State or Subdivisions. — The fact that such appropriations as the General Assembly may see fit to make may be used for 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 North Carolina Housing Corporation, does not constitute a pledge of the faith and credit of the State or of any political subdivision thereof for the payment of the principal of and the interest on any bonds or notes of the Corporation. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ **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.)

Property and Obligations of Corporation May Be Exempted from Taxation.—Since this Chapter and the North Carolina Housing Corporation's activities pursuant thereto are for a public purpose, it is permissible for the General Assembly to exempt from taxation the property of the Corporation and the obligations incurred by the Corporation to effectuate such public purpose. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ **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.

§ 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.)

Chapter Unconstitutional. — The North Carolina Industrial Financing Authority's primary function, to acquire sites and to construct and equip facilities for private industry, is not for a public use or purpose; it may not expend the challenged appropriation of tax funds for its organizations; and the act which purports to authorize the expenditure violates former N.C. Const., Art. V, § 3 (see now N.C. Const., Art. V, § 2). Mitchell v. North Carolina Indus. Dev. Financing Authority, 273 N.C. 137, 159 S.E.2d 745 (1968).

In Mitchell v. North Carolina Indus. Dev. Financing Authority, 273 N.C. 137, 159 S.E.2d 745 (1968), the Supreme Court held unconstitutional the North Carolina Industrial Development Financing Act. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 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, assemblying, 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 Develop-

ment 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 brackets in the last sentence of subsection (a) is suggested as a correction of "offices," 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 redemption 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 fasimile 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 pay-

ment 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 mentioned 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 depositary of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifyng 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, protect 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 1.

State Library.

§ 125-1. Name.

State Government Reorganization.—The State Library was transferred to the Department of Art, Culture and History by § 143A-195, enacted by Session Laws 1971, c. 864.

§ 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).

As only subsection (c) was changed by the amendment, the rest of the section is not set out.

§ 125-9. Library Certification Board.

State Government Reorganization.—The Library Certification Board was transferred to the Department of Art, Culture and History by § 143A-201, enacted by Session Laws 1971, c. 964.

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 govern-

ment, 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.)

State Government Reorganization.—The Interstate Library Compact administration was transferred to the department of Art, Culture and History by § 143A-196, enacted by Session Laws 1971, c. 864.

§ **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.

§ 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.

State Government Reorganization.—The State personnel system was transferred to the Department of Administration by § 143A-84, enacted by Session Laws 1971, c. 864.

§ 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 pro-

visions 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.)

Editor's Note.— The reference to the Constitution in subsection (c) is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. VI, § 9.

§ 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; blind or visually handicapped employees of the State Commission for the Blind, Bureau of Employment for the Blind Division; 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 Personnel 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; 1971, c. 1025, s. 2.)

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."

Session Laws 1971, c. 1025, s. 2, effective July 1, 1971, inserted "blind or visually handicapped employees of the State Commission for the Blind, Bureau of Employment for the Blind Division" near the end of the first sentence in subsection (b).

§ 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 main tained.

(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.)

State Government Reorganization.—The Adjutant General's department was transferred to the Department of Military and Veteran's Affairs by § 143A-233, enacted by Session Laws 1971, c. 864.

§ 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.)

ARTICLE 6.

Equal Employment Opportunity.

§ 126-16. Equal employment opportunity by State departments and agencies and local political subdivisions.—All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment, without regard to race, religion, color, creed, national origin or sex, to all persons otherwise qualified. (1971, c. 823.)

Chapter 127.

Militia.

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 "approved" 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 therefore [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 12 times the minimum hourly wage per day as provided for in G.S. 95-87, that officers and enlisted men 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 and enlisted men serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted man 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; 1971, c. 204.)

Editor's Note.—
The 1969 amendment inserted in the second sentence "provided that no such officer or enlisted man shall receive less than eight dollars ($8.00) per day."

The 1971 amendment substituted "12 times the minimum hourly wage per day as provided for in G.S. 95-87, that officers and enlisted men" for "eight dollars ($8.00) per day; but officers" in the second sentence, inserted "and enlisted men" in the third sentence, and inserted "or enlisted man" in the fourth sentence.

§ 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 settle-

ment 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 to 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 deleted, at the end of the section, "which certificate shall exempt the holder from 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," and "Against Armory Construction Facility Tax," or "For Armory Facility Improvement, Equipment, Maintenance and Operation 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.

State Government Reorganization.—The National Guard Mutual Assistance Compact was transferred to the Department of Military and Veterans Affairs by § 143A-238, enacted by Session Laws 1971, c. 864.

§ 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 officals 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.

ARTICLE 1.

General Provisions.

§ 128-1. No person shall hold more than one office; exception.—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 except as provided in G.S. 128-1.1. (Const., art. 14, s. 7; Rev., s. 2364; C. S., s. 3200; 1967, c. 24, s. 24; 1969, c. 1070; 1971, c. 697, s. 1.)

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."

The 1971 amendment, effective July 1, 1971, substituted "except as provided in G.S. 128-1.1" for the former proviso at the end of the section.

§ 128-1.1. Dual-office holding allowed.—(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, § 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, § 9 of the North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system is hereby authorized to hold concurrently therewith one position in State or local government. (1971, c. 697, s. 2.)

Editor's Note. — Session Laws 1971, c. 697, s. 4, makes the act effective July 1, 1971.

§ 128-2. Holding office contrary to the Constitution; penalty.—If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to Article VI, Sec. 9 of the North Carolina Constitution, he shall forfeit all rights and emoluments incident thereto. (1790, c. 319, P. R.; 1792, c. 366, P. R.; 1793, c. 393, P. R.; 1796, c. 450, P. R.; 1811, c. 811, P. R.; R. C., c. 77, s. 1; Code, s. 1870; Rev., s. 2365; C. S., s. 3201; Ex. Sess. 1924, c. 110; 1971, c. 697, s. 3.)

Editor's Note.—

The 1971 amendment, effective July 1, 1971, substituted "Article VI, § 9 of the North Carolina Constitution" for "the seventh section of the fourteenth article of the Constitution of the State" and "all rights and emoluments incident thereto" for "and pay two hundred dollars to any person who will sue for the same." The amendment also deleted a proviso relating to the action for the penalty.

§ 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).

§ 128-7.1. Failure to qualify creates vacancy.—If any person who has been elected to public office (i) dies or becomes disqualified for the office before qualifying for the office, or (ii) for any reason refuses to qualify for the office, the office shall be declared vacant. Unless otherwise provided by law, such vacancy shall be filled by appointment by the authority having the power to fill vacancies as prescribed by law. (1971, c. 183.)

§ 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.

§ 128-15.3. Discrimination against handicapped prohibited in hiring.—There shall be no discrimination in the hiring policies of the State Personnel System against any applicant for employment based upon any physical defect or impairment of the applicant unless the defect or impairment to some degree prevents the applicant from performing the duties required by the employment sought. (1971, c. 748.)

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 justices 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.—The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(5) "Average final compensation" shall mean the average annual compensation of a member during the five consecutive calendar years of creditable service producing the highest such average.

(7a) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work.

(11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(19) "Retirement" shall mean withdrawal from active service with a retire-

ment allowance granted under the provisions of this Article. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(1965, c. 781; 1971, c. 325, ss. 1-4.)

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).

The 1971 amendment, effective July 1, 1971, substituted "of creditable service" for "within the last ten calendar years of his creditable service" in subdivision (5), added subdivisions (7a) and (11a) and added the second sentence of subdivision (19).

As the rest of the section was not changed by the amendment, only the opening paragraph and subdivisions (5), (7a), (11a) and (19) are 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, Session Laws 1969, c. 132, Session Laws 1971, c. 860, and Session Laws 1971, c. 903, s. 2.

§ 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.

State Government Reorganization.—The Local Governmental Employees' Retirement System was transferred to the Department of State Treasurer by § 143A-35, enacted by Session Laws 1971, c. 864.

§ 128-23. Acceptance by cities, towns and counties.—(a) Pursuant to the favorable vote of a majority of the employees of any incorporated city or town, the governing body may, by resolution legally adopted and approved by the Board of Trustees, elect to have its employees become eligible to participate in the Retirement System, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

(b) Pursuant to the favorable vote of a majority of the employees of any county, the board of commissioners may, by resolution legally adopted and approved by the Board of Trustees, elect to have its employees become eligible to participate in the Retirement System, and the said county board of commissioners may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same as a special purpose, in addition to any tax allowed by any special statute for the purposes enumerated in G.S. 153-9 and in addition to the rates allowed by the Constitution.

(1971, c. 325, s. 5.)

Editor's Note.—

The 1971 amendment, effective July 1, 1971, substituted "Pursuant to the favorable vote of a majority of the employees of any incorporated city or town, the governing body" for "The governing body of any incorporated city or town" at the beginning of subsection (a) and "Pursuant to the favorable vote of a majority of the employees of any county the board of commissioners" for "The board of commissioners of any county" at the beginning of subsection (b).

As the rest of the section was not changed by the amendment, only subsections (a) and (b) are set out.

§ 128-24. Membership.—The membership of this Retirement System shall be composed as follows:

(1) All employees entering or reentering 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 G.S. 143-166, may elect to become members of the Law-Enforcement Officers' Benefit and Retire-

ment 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; provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

(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 90 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 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 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 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 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 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(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 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 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 30 days nor more than 90 days next following the date of filing such application, 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 age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 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 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 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 his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in (1) below reduced by the amount in (2) below.

(1) The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.

(2) The actuarial equivalent of the retirement benefits he previously received.

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 (beginning January 1 and ending December 31) will not exceed the member's average final compensation. 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 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(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 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; 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; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27 (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 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 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 upon attaining the age of 50 years or at any time thereafter; 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. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	*Percentage Reduction*
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

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; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2.)

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).

The first 1971 amendment, effective July 1, 1971, rewrote the second sentence of paragraph c of subdivision (4), inserted "(beginning January 1 and ending December 31)" in the first sentence of paragraph d of subdivision (4), substituted "average final compensation" for "annual rate of compensation when he retired" at the end of that sentence and rewrote the portion of the first sentence of paragraph b of subdivision (5) preceding the proviso.

The second 1971 amendment, effective July 1, 1971, added the proviso at the end of subdivision (1a), added the last proviso to the first sentence of paragraph a of subdivision (5) and rewrote the last sentence of paragraph (b) of subdivision (5).

As the rest of the section was not changed by the amendments, only the opening paragraph and subdivisions (1), (1a), (2), (3a), (4) and (5) are set out.

§ 128-26. Allowance for service.—(a) Each person who becomes a member during the first year of his employer's participation, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him to that employer prior to the date of participation for which he claims credit.

A participating employer may allow prior service credit to any of its employees on account of their earlier service to the aforesaid employer, or on account of earlier service to any other employer as the term employer is defined in G.S. 128-21(11).

With respect to a member 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 if 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 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; provided further, that a member will receive credit for military service under the provisions of this paragraph only if he submits satisfactory evidence of the military service claimed and the participating unit of which he is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period in the armed services of the United States up to the date he was first eligible to be separated or released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time he entered military service, and either of the following conditions is met:

(1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he is first eligible to be separated or released from such military service under other than dishonorable conditions.

(2) He is in service, with the employer by whom he was employed when he entered military service, for a period of not less than 10 years after he is separated or released from such armed services under other than dishonorable conditions.

(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, 1971, one month of credit for each 20 days or portion thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for service retirement, disability retirement, early retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

(g) 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. 128-30(b)(4). 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. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19.)

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 the second and third paragraphs of subsection (a).

The 1969 amendment, effective July 1, 1969, added at the end of subsection (e) the provisions as to sick leave.

The 1971 amendment, effective July 1, 1971, rewrote the first, second and third paragraphs and added the fourth paragraph of subsection (a), rewrote the portion of the first paragraph of subsection (e) relating to credit for sick leave and added the second paragraph of subsection (e). The amendment also added subsection (g).

As the rest of the section was not changed by the amendment, only subsections (a), (e) and (g) are set out.

§ **128-27. Benefits.**—(a) Service Retirement Benefits.—

(1) Any member in service may retire upon written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years, or if a uniformed policeman or fireman he shall have attained the age of 55 years, and notwithstanding that, during such period of notification, he may have separated from service.

(2) Any member in service shall be retired as of the July 1 coincident with or next following his 65th birthday: provided that, upon the approval of his employer, any member may be continued in service on a year-to-year basis.

(3): Repealed by Session Laws 1971, c. 325, s. 12.

(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 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 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 percent (6.25%) of his compensation if such certificate is a Class A certificate, or

b. Five percent (5%) of his compensation if such certificate is a Class B certificate, or

c. Four percent (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 birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4800.00), plus one and one-half percent (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 percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5600.00) plus one and one-half percent (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.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth 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 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 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 percent (1¼%) 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 percent (1½%) 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 (⅓ 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 percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600.00) plus one and one-half percent (1½%) 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 (¼ 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 60 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 (¼ 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 60 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 five 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 30 and not more than 90 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 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 percent (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

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, 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 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 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, but prior to July 1, 1971.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 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 65 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).

(d3) Allowance on Disability Retirement of Persons Retiring on or After July 1, 1971.—Upon retirement for disability, in accordance with subsection (c) above on or after July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 65 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 128-27(d2).

(e) Reexamination of Beneficiaries Retired on Account of Disability.—Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

(1) Should the medical board report and certify to the Board of Trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the Board of Trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the Retirement System.

(2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last

restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(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 in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, the sum of his contributions and the accumulated regular interest thereon, provided that he has not in the meantime returned to service. 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, unless the beneficiary elects to receive the alternate benefit undr the provisions of (m) below. 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 90 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 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:

(1) To receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, 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

(2) To receive a reduced retirement allowance during his life with provisions for some other benefit to be paid after his death in accordance with a plan submitted to and 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 (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

Increase in Index	*Increase in Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31st of each year after 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1st of the year of determination shall be entitled to have his allowance increased to the extent indicated in the foregoing table effective on July 1st of the year following the year 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.

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 G.S. 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.

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 12 consecutive months. For all other purposes in this subsection, "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
(2) Last day of actual service shall be:
    a. When employment has been terminated, 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) 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. 128-26(g).

(m) Survivor's Alternate Benefit.—Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions

shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

(1) The member had attained age 55 regardless of length of service, or had completed 30 years of service regardless of age.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

(n) Increases in Benefits Paid in Respect to Members Retired Prior to July 1, 1967.—From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1965, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1965 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971 have been increased to the extent provided for in subsection (k) above. (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; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7.)

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).

The first 1971 amendment, effective Jan. 1, 1971, rewrote subdivision (2) of subsection (a), deleted former subdivision (3) of subsection (a), relating to compulsory retirement at the age of seventy, rewrote the first sentence of subdivision (2) and added subdivision (3) of subsection (e), added "unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below" to the third sentence of subdivision (f), rewrote Option five of subsection (g), deleted a proviso at the end of the last sentence of the second paragraph of subsection (l), deleted "(except by retirement)" following "terminated" in subdivision (2) a of the last paragraph of subsection (l), deleted former subdivisions (3) and (4) and added present subdivision (3) in that paragraph and rewrote subsection (m).

The second 1971 amendment, effective July 1, 1971, substituted "five" for "ten" near the beginning of subsection (c), added "but prior to July 1, 1971" in the catchline and in the introductory paragraph of subsection (d2), added subsection (d3), inserted "in the Raleigh offices of the Board of Trustees" and "on a form provided by the Retirement System" in the first sen-

tence of subsection (f) and deleted at the end of that sentence a proviso relating to separation from service of a member entitled to a retirement allowance, rewrote the second paragraph and added the third paragraph of subsection (k) and added subsection (n).

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, Inter-American Development Bank and Asian 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; 1971, c. 386, s. 3.)

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 Reconstruction and Development, and Inter-American Development Bank" at the end of subdivision (2) of subsection (a).

The 1971 amendment added "and Asian Development Bank" at the end of subsection (a)(2).

As the rest of the section was not changed by the amendments, 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 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. 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. 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 De-

cember 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.

(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) 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.

(4) 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.

(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 contributions 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) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the Board of Trustees, 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 participating employers will be required for each member on leave of absence who makes monthly contributions in accordance with (b)(4) 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 for any employer whose participation commenced prior to July 1, 1951, the normal contribution shall be three percent (3%) for general employees and five percent (5%) for firemen and policemen, and the accrued liability contribution shall be three percent (3%) for general employees and six percent (6%) for firemen and policemen. Until the first valuation for any employer whose participation commenced on or after July 1, 1951, the normal contribution shall be four percent (4%) for general employees and six and two-thirds percent (6⅔%) for firemen and policemen, and the accrued liability contribution shall be four percent (4%) for general employees and eight percent (8%) for firemen and policemen.

(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 article 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 actual 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 and for the pro rata share of the cost of administration of the Retirement System. 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) The "accrued liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately 30 years, provided that the length of the period of payment for each employer after contributions begin shall be the same for all employers and shall be determined by the Board of Trustees as the result of actuarial valuations.

(4) At the end of the first year following the date of participation for each employer, the accrued liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "accrued liability contribution" rate for such employer shall be the per centum of the total annual compensation of all members employed by such employer which is equivalent to four per centum (4%) of the amount of such accrued liability. The expense of making such actuarial valuation to determine the accrued liability contribution for each employer shall be paid by such employer. The accrued

liability contribution rate shall be increased on the basis of subsequent valuation if benefits are increased over those included in the valuations on the basis of which the original accrued liability contribution rate was determined.

(5) 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 earned compensation of all members during the preceding year: Provided, however, that 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.

(6) 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 that time members.

(7) 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 employers, shall be paid from the pension accumulation fund.

(8) 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.

(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; 1971, c. 325, ss. 17-19.)

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).

The 1971 amendment, effective July 1, 1971, deleted the former fourth sentence in the first paragraph of subdivision (1) of subsection (b), deleted, at the end of the last sentence of the second paragraph of subdivision (1) of subsection (b), a proviso relating to rate of deduction with respect to policemen or firemen not covered under the Social Security Act, deleted, in subdivision (3) of subsection (b), the former first and second sentences, relating to deposit of certain additional amounts in the annuity savings funds, added subdivision (4) of subsection (b) and added the second sentence of subdivision (1) of subsection (d).

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

§ 128-34. Transfer of members.—(a) Any member of the North Carolina Governmental Employees' Retirement System who leaves the service of his employer and enters the service of another employer participating in the North Carolina Governmental Employees' Retirement System shall maintain his status as a member of the Retirement System and shall be credited with all of the amounts previously credited to his account in any of the funds under this Article, but the new employer shall be responsible for any accrued liability contribution payable on account of any prior service credit which such employee may have at the time of the transfer, and such employee shall be given such status and be credited with such service with the new employer as allowed with the former employer.

(b) Any person who, on or after July 1, 1971, becomes a member of the Local Governmental Employees' Retirement System shall be entitled to transfer to this Retirement System his credits for membership and prior service in the Teachers' and State Employees' Retirement System: Provided, the actual transfer of employment is made while he has an active account in the State System and such person shall request the State System to transfer his accumulated contributions, interest, and service credits to this Retirement System; provided further, the State System agrees to transfer to this Retirement System the amount of reserve held in the State System as the result of previous contributions of the employer on behalf of the transferring employee.

(c) Any member whose services are terminated for any reason other than retirement or death who becomes employed by an employer participating in the Teachers' and State Employees' Retirement System shall be entitled to transfer to the State System his credits for membership and prior service in this Retirement System in accordance with G.S. 135-18.1: Provided, the actual transfer of employment is made while he has an active account in this Retirement System and such persons shall request this Retirement System to transfer his accumulated contributions, interest, and service credits to the State System. When such request is made by a member who is entitled to make it and who becomes a member of the State System after July 1, 1969, this Retirement System will also transfer to the State System the amount of reserve held by this System as a result of previous

contributions of the employer on behalf of the transferring employee. (1939, c. 390, s. 14; 1971, c. 325, s. 20.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, designated the former provisions of this section as subsection (a) and added subsections (b) and (c).

§ 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 1.

General Services Division.

§§ **129-1 to 129-3**: Repealed by Session Laws 1971, c. 1097, s. 5.

Cross Reference.—See Editor's note to § 143-336.

§ **129-4**: Transferred to § 143-340 by Session Laws 1971, c. 1097, s. 2.

§ **129-5**: Transferred to § 143-341 by Session Laws 1971, c. 1097, s. 3.

§ **129-6**: Transferred to § 143-343 by Session Laws 1971, c. 1097, s. 4.

§ **129-7**: Transferred to § 143-344 by Session Laws 1971, c. 1097, s. 4.

§ **129-8**: Transferred to § 143-345 by Session Laws 1971, c. 1097, s. 4.

§ **129-9**: Transferred to § 143-345.1 by Session Laws 1971, c. 1097, s. 4.

§§ **129-10, 129-11**: Repealed by Session Laws 1971, c. 1097, s. 5.

Article 2.

Building Program.

§ **129-12**: Transferred to § 143-345.2 by Session Laws 1971, c. 1097, s. 4.

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 3.1.

Legislative Building Governing Commission.

§ 129-17.1. Creation; composition.—There is hereby created a Legislative Building Governing Commission, which shall consist of the President of the North Carolina Senate, two persons appointed by the President of the Senate and who are members of the Senate at the time of their appointment or who have served as members of the Senate subsequent to the year 1961, the Speaker of the North Carolina House of Representatives, and two persons appointed by the Speaker of the House and who are members of the House of Representatives at the time of their appointment or who have served as members of the House of Representatives subsequent to the year 1961. (1963, c. 1, s. 2; 1971, c. 1222, s. 1.)

Editor's Note. — The 1971 amendment inserted "or who have served as members of the Senate subsequent to the year 1961" near the middle of the section, and added "or who have served as members of the House of Representatives subsequent to the year 1961" at the end of the section.

§ 129-17.3. Powers and duties generally; delegation of maintenance work; posting and filing rules and regulations; violations.—The Legislative Building Governing Commission shall (i) determine policy governing the use of the State Legislative Building, (ii) make allocations of space within the State Legislative Building, (iii) be responsible for the maintenance and care of the State Legislative Building and (iv) promulgate rules and regulations governing the use of the State Legislative Building and its facilities. In discharging the responsibilities of maintenance and care of the building, the Legislative Building Governing Commission may delegate to the Department of Administration the duty of performing the actual work of maintenance and care of the building, and the Department of Administration shall provide proper maintenance and care, subject to the general direction of the Legislative Building Governing Commission.

The rules and regulations promulgated by the Legislative Building Governing Commission, as authorized by this Article, shall be posted in conspicuous places in the State Legislative Building and a copy of the same certified by the Legislative Building Governing Commission shall be filed in the office of the Secretary of State and in the office of the clerk of the Superior Court of Wake County, and when so posted and filed shall constitute notice to all persons of the existence of said regulations. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who shall knowingly violate any of the rules or regulations promul-

gated under the authority of this Article shall be guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court or by both such fine and imprisonment. Any person, firm, corporation, partnership or association who shall combine, confederate, conspire, aid, abet, solicit, urge, instigate, counsel, advise, encourage or procure another or others to knowingly violate any of the rules and regulations promulgated under the authority of this Article shall be guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court or by both such fine and imprisonment.

The Legislative Building Governing Commission may delegate to the Legislative Services Commission, or with the approval of that Commission, to the Legislative Services Officer, the duty of assigning committee room space for the use of study commissions and other commissions appointed pursuant to legislative act, upon the request of the chairman of any such commission for its temporary use, during such times as the General Assembly is not in session, subject, however, to the rules and regulations promulgated by the Legislative Building Governing Commission and in effect at such time. (1963, c. 1, s. 3; c. 716; 1971, c. 1222, s. 2.)

Editor's Note.—
The 1971 amendment added the third paragraph.

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.

State Government Reorganization.—The North Carolina Capital Planning Commission was transferred to the Department of Administration by § 143A-87, enacted by Session Laws 1971, c. 864.

§ 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.

(6) To name any new State government building or any building hereafter acquired by the State of North Carolina in the City of Raleigh and its environs, unless said building is excluded from the provisions of this Article by G.S. 129-35. (1965, c. 1002, s. 3; 1971, c. 150.)

Editor's Note. — The 1971 amendment added subdivision (6).

W.L. Turner, Director of Administration, 7/28/69.

Opinions of Attorney General. — Mr.

§ **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.

State Government Reorganization.—The North Carolina Capital Building Authority was transferred to the Department of Administration by § 143A-86, enacted by Session Laws 1971, c. 864.

§ 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,

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 Gravely 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.)

All State Agencies except Listed Exceptions in Raleigh Area Governed by Capital Building Authority.—See opinion of Attorney General to Mr. Carroll L. Mann, Jr., State Property Control, 41 N.C.A.G. 421 (1971).

§ 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.)

State Government Reorganization.—The State Construction Finance Authority was transferred to the Department of Administration by § 143A-92, enacted by Session Laws 1971, c. 864.

§ 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 authorized 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 depositary 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 depositary 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 here-

under 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 3.

Local Health Departments.

Article 7.

Vital Statistics.

Article 9.

Immunization of Children against Certain Communicable Diseases.

Article 9A.

Poliomyelitis (Infantile Paralysis).

Article 12.

Sanitary Districts.

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.

Editor's Note.—

The first 1967 amendment added present subsection (a) and redesignated former subsections (a) through (h) as (b) through (i).

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.

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 Appropriations Act specifically provides otherwise" near the beginning of the second paragraph.

State Government Reorganization.—The State Board of Health was transferred to the Department of Human Resources by § 143A-132, enacted by Session Laws 1971, c. 864.

§ 130-9. Powers and duties of the State Board of Health.

(f) The State Board of Health shall have the power and duty to inspect and license home health agencies as provided by law. (1957, c. 1357, s. 1; 1961, c. 51, s. 3; 1963, c. 859; 1971, c. 539, s. 2.)

Editor's Note.—

The 1971 amendment added subsection (f).

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

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.

Notwithstanding any other provisions of this section, each chairman of a board of county commissioners and each mayor of a city or town who is a member of a county board of health may designate some person to act as a member of the county board of health in his stead. In the case of a chairman of a board of county commissioners, his designee must be a member of his board of county commissioners and, in the case of a mayor, his designee must be a member of his city or town governing body. When such designation is made, the designee may serve on the county board of health in lieu of the official who designated him whenever that official is unable to attend a board meeting or otherwise serve.

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; 1971, c. 175, 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.

The 1971 amendment added the second paragraph.

§ 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 least 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.

Notwithstanding any other provision of this section, each chariman of a board of county commissioners and each mayor of a city or town who is a member of a district board of health may designate some person to act as a member of the district board of health in his stead. In the case of a chairman of a board of county commissioners, his designee must be a member of his board of county commissioners and, in the case of a mayor, his designee must be a member of his city or town governing body. When such designation is made, the designee may serve on the district board of health in lieu of the official who designated him whenever that official is unable to attend a board meeting or otherwise serve.

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; 1971, c. 175, 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.

The 1971 amendment added the third paragraph.

§ 130-14.1. Dissolution of a district health department.—Whenever the boards of county commissioners, each by a majority vote, of all counties constituting a district health department, as that term is defined in G.S. 130-14, determine that such district health department is not operating in the best health interests of the residents of the respective counties, they may direct that all of the counties comprising the district be withdrawn from the district in order that they may operate as county health departments, as that term is defined in G.S. 130-13. In addition, whenever a board of county commissioners of any county which is a member of a district health department determines, by a majority vote, that such district health department is not operating in the best health interests of that county, it may withdraw from the district health department and operate as a county health department. Dissolution of any district health department or withdrawal from such district health department by any county shall take place only at the end of the fiscal year in which the action of dissolution or withdrawal transpired.

Any budgetary surplus available to a district health department at the time of complete dissolution of the district health department shall be distributed to those counties comprising the district on the same pro rata basis that such counties appropriated and contributed funds to the district health department budget. Distribution to the counties shall be determined on the basis of an audit of the district health department financial records by an independent public-accounting firm as selected by the district board of health. The same method of distribution of funds described above shall apply when one or more counties of a district health department withdraws from a district.

All ordinances and regulations adopted by a district board of health shall become void upon dissolution except that if two or more counties of the original district continue to operate as a district health department, those ordinances and regulations adopted by the original district board of health shall continue in effect. Also, any county or counties withdrawing from a district health department may retain any ordinances adopted by the original district board of health, such retention of ordinances or regulations being contingent upon the adoption of the same ordinances and regulations by the new county board of health. (1971, c. 858.)

§ 130-16. Compensation of board members.—The members of a local board of health may receive a per diem in such amount as shall be established by the county board of commissioners but no more than twenty dollars ($20.00) per diem for members and twenty-five dollars ($25.00) per diem for the chairmen of the boards, and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners. (1957, c. 1357, s. 1; 1971, c. 940, s. 1.)

Local Modification.—Edgecombe: 1969, c. 422.

Editor's Note. — The 1971 amendment rewrote this section.

Session Laws 1971, c. 940, s. 2, provides: "The per diem provided by G.S. 130-16 prior to amendment or any local act shall remain effective until superseded by action of the county commissioners."

§ 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 [G.S. 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. The State Registrar of Vital Statistics shall conduct studies and

research for the improvement of registration practices, and the collection, processing, analysis and dissemination of vital statistics. (1913, c. 109, s. 1; C. S., s. 7086; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1971, c. 444, s. 3.)

Editor's Note. — The 1971 amendment added the last sentence.

§ **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 certificate 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 shall take place until the medical examiner has made inquiry into the cause of and the manner of death and has certified in writing that the inquiry has been made and in his opinion no further examination is necessary. This provision does not apply to deaths occurring less than 24 hours after birth unless the death falls within the circumstances noted in G.S. 130-198. (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; 1971, c. 444, s. 4.)

Editor's Note.—The 1971 amendment, in subsection (b), deleted "in case of death without medical attendance" following "dead body" in the first sentence, inserted "the" preceding "manner of death" in that sentence, and added the second sentence.

§ 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 pur-

suant 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 originial 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 on forms prescribed by him 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; 1971, c. 444, s. 5.)

Editor's Note.—The 1971 amendment inserted "on forms prescribed by him" in the first sentence of subsection (a).

§ 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 furnish to each register of deeds upon request a copy of each certificate regarding a resident of such register's county which was filed in a county other than the county of residence; provided that such copies shall not be furnished in the case of a child born out of wedlock. Such copies shall be forwarded within 90 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; 1971, c. 444, s. 8.)

Editor's Note.—The 1971 amendment rewrote the first sentence in subsection (b).

§ 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 catchline 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. 130-60, 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; 1971, c. 444, s. 6.)

Editor's Note. — The 1971 amendment substituted "G.S. 130-60" for "G.S. 130-59" in subsection (b)(3).

§ **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 subregistrars. 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 of Children against Certain Communicable Diseases.

§ 130-87. Immunization required. — Every child in North Carolina shall be immunized against certain communicable diseases by being administered vaccines as follows:

Diphtheria, tetanus, whooping cough, poliomyelitis vaccines—before attaining the age of one year;

Measles (rubeola) vaccine—before attaining the age of two years;

Smallpox vaccine—before attaining the age of six years.

Vaccines shall be administered in adequately immunizing doses as determined by the State Board of Health. Vaccine preparations shall meet the standards of the United States Public Health Service and shall be approved for use by the State Board of Health. (1957, c. 1357, s. 1; 1971, c. 191.)

Revision of Articles.—Former Article 9, consisting of §§ 130-87 to 130-93 and deriving from Session Laws 1957, c. 1357, and former Article 9A, consisting of § 130-

93.1 and deriving from Session Laws 1959, c. 177 and Session Laws 1965, c. 652, were rewritten by Session Laws 1971, c. 191, to appear as present Article 9. The historical citations to sections in former Articles 9 and 9A have been added to similar sections in this Article.

§ **130-88. Presenting child for immunization.** — The parent, parents, guardian or person in loco parentis of any child who has not previously received the required immunizations shall present the child to a physician licensed to practice medicine in North Carolina and request him to administer such immunizations. If the parent, parents, guardian or person in loco parentis of such child are unable to pay for the services of a private physician, they shall present the child to the local health director serving the county in which the child resides who shall then administer, or designate an appropriate person to administer, the required vaccine without charge. The vaccines necessary for immunizations by the local health director shall be furnished by the State Board of Health. The Board is authorized to make charges for such vaccines to cover the cost of maintaining and distributing them. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191.)

§ **130-89. Certificate of immunization.**—The physician who administers the required vaccines to a child shall give a certificate of such immunizations to the person who presented the child for immunization. Such certificate shall be presented upon request to the local health director or his authorized representative. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191.)

§ **130-90. School admittance.**—No parent, parents, guardian or person in loco parentis shall present a child for admittance to any public, private or parochial school in North Carolina, and no principal or teacher shall admit a child to such school, unless the person presenting the child for admittance shows a certificate of immunization or some other acceptable medical evidence that the child has received the required immunizations. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191.)

§ **130-91. Exemption for child's health.**—If any physician licensed to practice medicine in North Carolina certifies that a particular immunization required by this Article is or may be detrimental to the child's health, the requirements of this Article for that particular immunization shall be inapplicable for that child until it is found no longer to be detrimental to the child's health. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191.)

§ **130-92. Exemption for religion.**—If any parent, parents, guardian, or person in loco parentis to a child are bona fide members of a religious organization whose teachings are contrary to the practices herein required, they shall be exempt from presenting the child from [for] immunization. Upon showing the principal or teacher satisfactory evidence of such exemption, no certificate or other evidence of immunization shall be required for such child to attend school. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191.)

§ **130-93. Penalty.**—Any person violating this Article or any part thereof shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifty dollars ($50.00) or by imprisonment for not more than 30 days. (1959, c. 177; 1965, c. 652; 1971, c. 191.)

Article 9A.

Poliomyelitis (Infantile Paralysis).

§ **130-93.1**: Repealed by Session Laws 1971, c. 191.

Editor's Note.— This Article was consolidated with the provisions of Article 9 by Chapter 191 of the 1971 Session Laws. See note under § 130-87.

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 pro-

posed 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.—When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this Article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following 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.

(13) To establish a fire department for the protection of life and property within the district, or to contract with cities, counties or other governmental units to furnish fire-fighting apparatus and personnel for use in the district.

(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, except 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:

a. 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).

Subdivision (13) is set out to correct a typographical error in the replacement volume.

As the rest of the section was not changed by the amendments, only subdivisions (3), (4), (13), (16), (17), (19), (20) and (21) are set out.

See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

For an article on local legislation in the General Assembly discussing this section, see 45 N.C.L. Rev. 340 (1967).

Amendment Effective July 1, 1973.—Session Laws 1971, c. 780, s. 29, effective July 1, 1973, repeals subdivisions (2), (3), (16) and (21) and amends subdivision (4) to read as follows:

"(4) To levy taxes on property having a situs in the district to carry out the powers and duties conferred and imposed on the district by law, and to pay the principal of and interest on bonds and notes of the district."

§ **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.

Editor's Note.—The 1967 amendment increased the per diem from $8.00 to $12.00 a day.

§ **130-134. Bonds and notes authorized.**—A sanitary district shall have power from time to time to issue bonds and notes under the Local Government Finance Act. (1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; c. 846, s. 1; 1957, c. 1357, s. 1; 1963, c. 1247, s. 1; 1971, c. 780, s. 27.)

Editor's Note.—

The 1971 amendment, effective July 1, 1973, rewrote this section.

See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ **130-135 to 130-137**: Repealed by Session Laws 1971, c. 780, s. 28, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 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, the place or places of payment of principal and interest which may be within or without the State of North Carolina, and the rate or rates of interest which may be made payable semiannually or otherwise. The bonds shall not be sold at less than par and accrued interest. 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), 40 years; clause (2), 20 years; clause (3), 10 years; clause (4), 30 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 Article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and mar-

keting 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 G.S. 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 G.S. 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 G.S. 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; 1971, c. 849, ss. 1, 2.)

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note.—

The 1965 amendment added the third and fourth paragraphs.

The 1967 amendment added the last paragraph.

The 1971 amendment deleted "and" following "denominations," and added "and the rate or rates of interest which may be made payable semiannually or otherwise" in the first sentence of the first paragraph. The amendment also deleted "nor bear interest at a rate or rates in excess of six per centum (6%) per annum" at the end of the second sentence of the first paragraph.

Repeal of Section.—This section is repealed by Session Laws 1971, c. 780, s. 28, effective July 1, 1973.

§§ **130-139, 130-140**: Repealed by Session Laws 1971, c. 780, s. 28, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 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.)

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

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.

Amendment Effective July 1, 1972.—Section 29, c. 780, Session Laws 1971, effective July 1, 1972, rewrites this section to read as follows:

"**§ 130-141. Annual budget; tax levy.**— (a) Each sanitary district shall operate under an annual balanced budget adopted in accordance with the Local Government Budget and Fiscal Control Act.

(b) Each sanitary district has the option of either collecting its own taxes or having its taxes collected by the county or counties in which it is located. Unless a district takes affirmative action to collect its own taxes, its taxes shall be collected by the county. Subsection (c) of this section applies to districts whose taxes are collected by the county; subsection (d) applies to districts that collect their own taxes.

(c) Before May 1 of each year, the tax supervisor of each county in which the district is located shall certify to the district board the total assessed value of property in the county subject to taxation by the district, and the county's assessment ratio. Upon adopting its annual budget ordinance, but not later than July 1, the district board shall certify to the board of county commissioners of each county the rate of ad valorem tax levied by the district on property in that county. If the assessment ratios are not identical in all counties in which the district is located, the district budget ordinance shall levy separate rates of ad valorem taxes for each county. These rates shall be adjusted so that the effective rate is the same for all property located in the district. The "effective rate" is that rate of tax which will produce the same tax liability on property of equal appraised value. Upon receiving the district's certification of its tax levy, the county commissioners shall cause the district tax to

be computed for each taxpayer and shall include the district tax, separately stated, on the county tax receipts for the fiscal year. The county shall collect the district tax in the same manner that county taxes are collected, and shall remit these collections to the district at least monthly. Partial payments shall be proportionately divided between the county and the district. The district budget ordinance may include an appropriation to the county for the cost to the county of computing, billing, and collecting the district tax. The amount of the appropriation shall be agreed upon by the county and the district, but may not exceed five percent (5%) of the district levy. Any such agreement shall stand from year to year until modified by mutual agreement. The amount due the county for collecting the district tax may be deducted by the county from its monthly remittances to the district, or may be paid to the county by the district.

(d) Sanitary districts electing to collect their own taxes shall be deemed cities for the purposes of the Machinery Act. If such a district is located in more than one county, the district governing board may adopt the assessments placed upon property located in the district by the counties in which the district is located if, in the opinion of the governing board, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. If the governing board determines that adoption of the assessments fixed by the counties will not result in uniform appraisals and assessments throughout the district, the governing board may, by horizontal adjustments, equalize the appraisal values fixed by the counties and then, in accordance with the procedure prescribed in the Machinery Act, select and adopt an assessment ratio to be applied to the appraised values of property subject to district taxation as equalized by the governing board. Taxes levied by the district shall be levied uniformly on the assessments so determined. (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; 1971, c. 780, s. 29.)"

§ 130-142: Repealed by Session Laws 1971, c. 780, s. 28, effective July 1, 1973.

§ 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 Heath 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 Stat-

utes 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 operated 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.

§ 130-156.3. Incorporation of municipality and simultaneous dissolution of sanitary district, with transfer of assets and liabilities from the district to the municipality.—(a) The General Assembly may incorporate a municipality, subject to a favorable vote by the residents of the proposed municipality, which includes within its boundaries or is coterminous with a sanitary district and provide for the simultaneous dissolution of the sanitary district and the transfer of the district's assets and liabilities to the municipality, in the following manner:

(1) The act incorporating the municipality shall define the boundaries of the proposed municipality; shall set the date for and provide for the conduct of a referendum on the incorporation of the proposed municipality and dissolution of the sanitary district; shall provide for a new registration of voters in the area of the proposed municipality; shall set the effective date for the incorporation of the municipality and the dissolution of the sanitary district, subject to a favorable vote in the referendum; shall establish the form of government of the proposed municipality and the composition of its governing board, and provide for transitional arrangements from the sanitary district to the municipality; and may include any other matter appropriate to a municipal charter.

(2) The referendum on whether to incorporate the proposed municipality and dissolve the sanitary district shall be conducted by the board of elections of the county in which the proposed municipality is located. If the proposed municipality is located in more than one county, the board of elections of the county in which reside the greatest number of residents of the proposed municipality shall conduct the election. The appropriate board of elections shall conduct the election in accord with this section and the provisions of the act incorporating the municipality.

(3) The form of the ballot for a referendum under this section shall be substantially as follows:

"FOR incorporation of the Town [City] of ..... and the simultaneous dissolution of the ..... Sanitary District, with transfer of the District's assets and liabilities to the Town [City], and assumption of the District's indebtedness by the Town [City].

AGAINST incorporation of the Town [City] of ..... and the simultaneous dissolution of the ..... Sanitary District, with transfer of the District's assets and liabilities, to the Town [City], and assumption of the District's indebtedness by the Town [City]."

(4) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the board of elections shall so notify the North Carolina State Board of Health and the North Carolina Local Government Commission, giving the date on which the municipality will be incorporated and the sanitary district dissolved and stating that all assets and liabilities of the sanitary district will be transferred to the municipality, and that the municipality will assume the district's indebtedness.

(5) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the municipality shall be incorporated and the sanitary district shall be simultaneously dissolved at 12 o'clock noon on the date set for incorporation in the act incorporating the municipality. At that time

a. The sanitary district shall cease to exist as a body politic and corporate;

b. All property, real and personal and mixed, belonging to the sanitary district vests in, belongs to and is the property of the municipality;

c. All judgments, liens, rights of liens and courses of action of any nature in favor of the sanitary district vest in and remain and inure to the benefit of the municipality;

d. All rentals, taxes, assessments and any other funds, charges or fees owing to the sanitary district are owed to and may be collected by the municipality;

e. Any action, suit, or proceeding pending against, or having been instituted by, the sanitary district shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The municipality shall be a party to all these actions, suits and proceedings in the place and stead of the sanitary district and shall pay or cause to be paid any judgment rendered against the sanitary district in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings;

f. All obligations of the sanitary district, including outstanding indebtedness, is assumed by the municipality, and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the municipality. The full faith and credit of the municipality is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of the sanitary district, and all the taxable property within the municipality shall be and remain subject to taxation for these payments;

g. All rules, regulations and policies of the sanitary district shall continue in full force and effect until repealed or amended by the governing body of the municipality.

(6) The transition between the sanitary district and the municipality shall otherwise be provided for in the act incorporating the municipality.

(b) This section shall not be construed to require the dissolution of any sanitary district included within or contiguous with any municipality in existence on July 2, 1971 or thereafter. (1971, c. 737.)

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.

§ 130-161.1. Public water supply systems; requirements.—(a) The Legislative Research Commission was directed by Senate Resolution 875 of the 1969 General Assembly to study and report to the 1971 General Assembly on the need for legislation "concerning local and regional water supplies (including sources of water, and organization and administration of water systems)." Pursuant to said resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning local and regional water supplies. In this report the Legislative Research Commission made the following findings concerning problems arising from the rapid growth in the number of small public water supply systems, of which the General Assembly hereby takes cognizance:

(1) In recent years small privately owned public water supplies have been increasing rapidly, at a rate in excess of 20 new supplies per month. As of June 1, 1970, there were 1782 public water supplies of record in North Carolina, of which over eighty percent (80%) served less than 1,000 persons each. The rapid increase in small water supplies is making it exceedingly difficult for State regulating agencies to maintain proper surveillance over service, and over the quality and safety of the water provided.

(2) Small public supply systems are generally inferior to systems serving larger communities as regards adequacy of source, facilities and quality. Few provide treatment, and some can be considered as potentially hazardous. Most are installed primarily for domestic use without thought of adequate fire protection or further extension into surrounding areas. Small systems cannot be easily expanded to meet the demands of population growth, nor can they be interconnected with expanding municipal, county, or regional systems. Lack of ample source and storage facilities make small supplies particularly vulnerable to drought. Ownership of many small systems is in the hands of real estate developers, whose interest terminates with the sale of lots served by the system. Thus, no assured responsibility exists for continued operation, service, and maintenance.

(3) The proliferation of small public water supplies poses a growing threat of inadequate, unreliable, and potentially hazardous water service to areas not served by large municipal or county systems. Better coordination and management of water supply systems in North Carolina is essential to protect the public health and in the public interest.

(b) In order to enable the State Board of Health to coordinate and strengthen public water supply systems in the public interest, and to insure that all public water supplies are adequate and safe for drinking and domestic purposes, the State Board of Health is hereby authorized:

(1) To adopt standards and criteria for the design and construction of public water supply systems constructed or modified on or after January 1, 1972, including but not limited to, waterworks facilities, appurtenances and pipe size of distribution lines; provided, however, this provision shall not limit the authority of the Utilities Commission under Chapter 62 of the General Statutes, or of the State Board of Health under Chapter 130 of the General Statutes, to require, when found necessary, improvements to public water supply systems in order to provide adequate and safe service.

(2) To require disinfection by a method approved by the State Board of Health of all public water supplies introduced on or after January 1, 1972, and of all existing public water supplies whenever the number of water samples from a public water supply system examined by the State Board of Health is found to exceed the limits for coliform bacteria established in the drinking water standards of the U.S. Public Health Service, or when conditions are found to exist which make the continued use of the water potentially hazardous to health.

(3) To require that all proposed public water supply systems be designed in such manner as will permit the provision of an adequate, reliable and safe supply of water to all service areas anticipated or projected by the owner, owners or developer of the system, and as will further permit interconnection of the system, at an appropriate time, with an expanding municipal, county or regional system.

(4) To require that detailed plans and specifications for all public water supply systems be prepared by an engineer licensed to practice in the State of North Carolina, and approved by the State Board of Health

prior to construction of any part of the proposed system, or prior to the award of a contract (if any) for construction of any part of the proposed system, whichever may be sooner.

(5) To require developers or owners of proposed privately owned public water supplies to submit with their plans such evidence as may be required by the State Board of Health concerning arrangements made for continued operation, service and maintenance of the proposed water supply system.

(c) All public water supply systems for which plans must be approved by the State Board of Health, and all plans for such systems to be hereafter introduced or altered, shall comply with applicable requirements and standards adopted pursuant to this section.

(d) This section shall be construed as providing supplemental authority in addition to the powers of the State Board of Health under G.S. 130-161 and any other provisions of this Chapter, and in addition to the powers of the North Carolina Utilities Commission under General Statutes Chapter 62 concerning water supply systems, and in addition to the powers of the North Carolina Board of Water and Air Resources under General Statutes Chapters 87 and 143.

(e) As used in this section, the terms "public water supply system" and "public water supply" mean a "public water supply system" as defined in G.S. 130-31. (1971, c. 343, s. 1.)

Editor's Note.—Session Laws 1971, c. 343, s. 4, makes the act effective Jan. 1, 1972.

Session Laws 1971, c. 343, s. 2, is a severability clause.

Session Laws 1971, c. 343, s. 3, provides: "Subject to the provisions of G.S. 130-161.-1(d) as added by this act, all laws and clauses of laws in conflict with this act are hereby repealed, provided, however, that all provisions of law affecting in any manner the regulation in the public interest of the rates or services of any public water or sewer utility as defined in Chapter 62 of the North Carolina General Statutes which is subject to the jurisdiction of the Utilities Commission shall remain in full force and effect."

§ 130-162. Condemnation of lands for water supply.

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).

§ 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 15A.

Home Health Agencies.

§ **130-170.1. Definitions; licensing; regulations of Board; appeals.** —(a) Definitions.—For the purposes of this section, a home health agency is a private organization, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

"Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for subdivision (5) of this subsection, in a place of temporary or permanent residence used as the individual's home as follows:

(1) Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
(2) Physical, occupational or speech therapy;
(3) Medical social services, home health aid services, and other therapeutic services;
(4) Medical supplies, other than drugs and biologicals, and the use of medical appliances;
(5) Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including trans-

portation of the individual in connection with any such item or service.

(b) Licensing of Home Health Agencies. — The State Board of Health shall develop and adopt rules and regulations containing standards for the care, treatment, health, safety, welfare, and comfort of patients in home health agencies and for the maintenance and operation of home health agencies which will promote safe and adequate care and treatment of the patients. The Board is authorized and directed to make inspections of such agencies and issue, deny or revoke annual licenses in accordance with its rules and regulations adopted under this section. The rules and regulations shall include, when appropriate, but shall not be limited to, provisions requiring the agency to have policies established by a professional group, including at least one licensed physician and one registered nurse, provisions governing the services the agency provides, provisions for the supervision of services by a licensed physician or registered nurse as appropriate, and maintenance of clinical records on all patients, including a plan of treatment prescribed by a licensed physician.

(c) Decisions as to Licensing; Hearings; Appeals. — The Board may adopt regulations providing for decisions as to granting, denying or revoking licenses by an administrative employee of the Board. The Board shall adopt regulations for providing a hearing before the Board or its designee whenever a hearing is requested by one who has been denied a license or has had his licnse revoked. The final decision after any appeal may be made by the Board or by the Board's designee as provided by the rules of the Board. Appeals from the hearing decisions shall be to the Superior Court of Wake County and trial shall be before the judge without a jury. (1971, c. 539, s. 1.)

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 manufacture 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 or to be sold 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 listed in the order of their predominance;
(2) A registration number designated by the State Health Director;
(3) 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; 1971, c. 371, ss. 1, 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).

The 1971 amendment, effective Jan. 1, 1972, inserted "or to be sold in this State" in the first sentence of the third paragraph, and added "listed in the order of their predominance" at the end of subdivision (1), deleted former subdivision (2) and redesignated former subdivisions (3) and (4) as (2) and (3) in the fifth paragraph.

§ 130-176. Registration numbers licenses.—All persons manufacturing or sanitizing bedding in North Carolina, or manufacturing bedding to be sold in North Carolina, shall make an application, in such form as the State Health Director shall prescribe, for a registration number. Upon receipt of such application, the State Board of Health shall issue to the applicant a certificate of registration showing such person's name and address, registration number, and such other pertinent information as the State Board of Health may require.

For the purpose of defraying expenses incurred in the enforcement of the provisions of this Article, the following license fees are to be paid to the State Board of Health, deposited in the "bedding law fund," and expended in accordance with the provisions of G.S. 130-177. No person shall sanitize any bedding, as required by this Article, unless he is exempted by other provisions of this Article, until he has secured a "sanitizer's license" from the State Board of Health upon the payment of twenty-five dollars ($25.00) for each calendar year. No person shall manufacture any bedding in this State or manufacture bedding to be sold in this State unless he is exempted by other provisions of this Article, until he has secured a "manufacturer's license" from the State Board of Health upon the payment of twenty-five dollars ($25.00) for each calendar year.

The regular license period shall be from January 1 to December 31 of each year. However, any license bought after July 1 of any year shall be valid for the remaining part of that calendar year and shall be furnished at half the regular license fee. If any establishment owned by the holder of any such license or licenses should be sold, the license or licenses may be transferred with the business, such transfer to be accomplished under rules prescribed by the State Board of Health.

All licenses required by this Article shall, at all times, be kept conspicuously posted in the place of business of the licensee.

The State Health Director may revoke and void any of the aforesaid licenses of any person convicted twice within a 12 months' period for violating this Article; provided, that the State Board of Health shall have authority, after 30 days from the date of revocation, to reinstate any revoked license upon the payment of the required fees. (1937, c. 298, s. 7; 1951, c. 929, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1971, c. 371, s. 3.)

Editor's Note.—

The 1971 amendment, effective Jan. 1, 1972, inserted "or manufacture bedding to be sold in this State" in the third sentence of the second paragraph.

§ 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 500 such stamps to any person paying in advance eighteen dollars ($18.00) per 500 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, but the North Carolina stamp exemption number must appear on the law label. The cost of a stamp exemption permit is to be determined annually by the total number of bedding units manufactured or sold in North Carolina by the applicant during the calendar year immediately preceding the issuance of the permit, at the rate of

eighteen dollars ($18.00) for each 500 bedding units or fraction thereof. A maximum charge of seven hundred fifty dollars ($750.00) shall be made for units of bedding manufactured in North Carolina but not sold in North Carolina.

For the purpose of computing the cost of stamp exemption permits only, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; five comforters are defined as one bedding unit; five pillows are defined as one bedding unit.

Other items defined as bedding in G.S. 130-171 are each defined as one bedding unit.

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 units 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 units 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; 1971, c. 371, ss. 4-7.)

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.

The 1971 amendment, effective Jan. 1, 1972, substituted "eighteen dollars ($18.00)" for "twelve dollars ($12.00)" in the second

sentence of the first paragraph, added "but the North Carolina stamp exemption number must appear on the law label" at the end of the second sentence of the second paragraph, substituted "units" for "items" and "eighteen dollars ($18.00)" for "twelve dollars ($12.00)" in the third sentence of the second paragraph and "seven hundred fifty dollars ($750.00)" for "five hundred dollars ($500.00)" and "units" for "pieces" in the fourth sentence of the second paragraph, added the third and fourth paragraphs and substituted "units" for "items" in the sixth and seventh paragraphs.

§ 130-178. Enforcement by State Board of Health.—The State Board of Health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this Article. Any person who shall hinder any representative of the State Board of Health in the performance of his duty under the provisions of this Article shall be guilty of a violation of this Article.

Every place within the State where bedding is made, remade, renovated, or sold, or where material which is to be used in the manufacture of bedding is mixed, worked, or stored, shall be inspected by duly authorized representatives of the State Board of Health.

Any representative of the State Board of Health may order off sale, and so tag, any bedding which is not made, sanitized, tagged, or stamped as required by this Article, or which is tagged with a tag containing a statement false or misleading, and such bedding shall not be sold or otherwise removed except with the consent of a representative of the State Board of Health, until such defect is remedied and a representative of the State Board of Health has reinspected same and removed the "off-sale" tag.

Any person supplying material to a bedding manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The bedding manufacturer shall keep such invoice on file for one year subject to inspection by any representative of the State Board of Health.

When an authorized representative of the State Board of Health has reason to believe that bedding is not tagged or filled as required by this Article, he shall have authority to open a seam of such bedding to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such bedding, and he shall have power to seize and hold for evidence any such records and any bedding or bedding material which in his opinion is made, possessed or offered for sale contrary to this Article, and shall have power to take a sample of any bedding or bedding material for the purpose of examination or for evidence. (1937, c. 298, s. 6; 1957, c. 1357, s. 1; 1971, c. 371, s. 8.)

Editor's Note. — The 1971 amendment, effective Jan. 1, 1972, inserted "within the State" near the beginning of the second paragraph.

§ 130-179. Exemptions for blind persons and State institutions.—In the cases where bedding is manufactured, sanitized, or renovated in a plant or place of business owned or operated by blind persons in which place of business not more than one sewing assistant who is not blind is employed in the manufacture or renovation of bedding, the bedding shall be inspected pursuant to this Article, but it shall not be required that stamps be affixed or that a license tax be paid, and bedding made by such blind persons may be sold by any dealer without the stamps being affixed.

State institutions engaged in the manufacture, renovation, or sanitation of bedding for their own use or that of another State institution are exempted from all provisions of this Article. (1937, c. 298, s. 11; 1957, c. 1357, s. 1; 1971, c. 371, s. 9.)

Editor's Note. — The 1971 amendment, effective Jan. 1, 1972, substituted "bedding" for "mattresses" following "manufacture or renovation of" near the middle of the first paragraph.

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.)

State Government Reorganization.—The Cancer Study Commission was transferred to the Department of Human Resources by § 143A-155, enacted by Session Laws 1971, c. 864.

§ 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 19.

Loan Fund for Dental Students.

§ 130-190. Administration and custody of loan fund; selection of recipients; loans to minors.—Administration of the loan fund and selection of recipients are to be directed by a loan committee to be composed of the State Health Director, the dental member of the State Board of Health and the Director of the Division of Oral Hygiene. The budget officer of the State Board of Health is to be the custodian of the loan fund and will issue checks and receive payments

of loans. The loan committee herein established shall have the power and authority to formulate and negotiate all contracts involved in making loans under this Article. It shall have the power and authority to impose such reasonable contractual conditions as may be necessary to safeguard the fund herein established and shall fix all conditions as to amounts, length of time loans shall run, conditions of repayment and any and all things necessary to carry out the intent and purpose of this Article. The fact that a junior or a senior dental student is under 18 years of age shall not invalidate any obligation signed by such junior or senior dental student under the provisions of this Article and all such contracts, notes, agreements and other papers and documents signed by any junior or senior dental student under 18 years of age shall be legal, valid, binding and enforceable to the same extent as if said junior or senior dental student had already attained the age of 18 years or more. (1953, c. 916, s. 3; 1957, c. 1357, s. 1; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one" in the last sentence.

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.

State Government Reorganization.—The office of Chief Medical Examiner was transferred to the Department of Human Resources by § 143A-134, enacted by Session Laws 1971, c. 864.

§ 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 the manner of death and is of the opinion that no further examination concerning the same is necessary. This provision does not apply to deaths occurring less than 24 hours after birth unless the death falls within the circumstances described in G.S. 130-198. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1971, c. 444, s. 7.)

Editor's Note. — The 1971 amendment added the last sentence in subsection (c).

§ 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.

Chapter 152A, referred to in this section, was repealed by Session Laws 1967, c. 1154, s. 8.

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).

§ 130-204. Right of entry.

Authority of State Board of Health Personnel to Enter Industrial Plants. — See opinion of Attorney General to Dr. Jacob Koomen, N.C. State Health Director, 3/23/70.

§ 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.

Chapter 315, Session Laws 1971, amended c. 238, Session Laws 1961, by adding New Hanover County.

§ 130-215. Bond issues. — A mosquito control district shall have power from time to time to issue bonds and notes under the Local Government Bond Act. (1957, c. 1247, s. 6; 1971, c. 780, s. 25.)

Editor's Note.—The 1971 amendment, effective July 1, 1973, rewrote this section.

See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ 130-216 to 130-219: Repealed by Session Laws 1971, c. 780, s. 26, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

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 130-235] 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.)

ARTICLE 27.

Chronic Renal Disease Control Program.

§ 130-236. State Board of Health to establish program.—The State Board of Health, hereafter referred to as the Board, shall establish a program for the care and treatment of persons suffering from chronic renal diseases. This program shall assist persons suffering from chronic renal diseases who require lifesaving care and treatment for such renal diseases, but who are unable to pay for such services on a continuing basis. (1971, c. 1027, s. 1.)

Editor's Note. — Session Laws 1971, c. 1027, s. 3, makes the act effective July 1, 1971.

§ 130-237. Renal Disease Advisory Committee; organization.—The State Health Director, hereafter referred to as the Director, shall appoint a Renal Disease Advisory Committee, hereafter referred to as the Committee, to consult with the Board in the administration of this Article. The committee shall be composed of 11 persons representing hospitals and medical schools which establish dialysis centers, voluntary agencies interested in kidney diseases, local public health agencies, physicians licensed to practice medicine, and the general public. Each member shall hold office for a term of four years commencing on September 1, 1971, and quadrennially thereafter, and until his successor is appointed and qualified, except that the term of the members first taking office shall expire, as designated at the time of appointment, two at the end of the first year, three at the end of the second year, three at the end of the third year, and three at the end of the fourth year. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Committee shall meet as frequently as the Director deems necessary, but not less than once each year. The committee members shall receive no compensation but shall be reimbursed for actual expenses incurred in carrying out their duties as members of this Committee. (1971, c. 1027, s. 1.)

§ 130-238. Powers and duties of the Board.—The Board shall:

(1) With the advice of the Committee, develop standards for determining eligibility for care and treatment under this program;

(2) Assist in the development and expansion of programs for the care and treatment of persons suffering from chronic renal diseases, including dialysis, renal transplantation and other medical procedures and techniques which will have a lifesaving effect in the care and treatment of persons suffering from these diseases;

(3) Assist in the development of programs for the prevention of chronic renal diseases;

(4) Extend financial assistance on the basis of need to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary in caring for such diseases, including the renting of home dialysis equipment;

(5) Assist in equipping dialysis and transplantation centers; and

(6) Institute and carry on an education program among physicians, hospitals, public health departments, and the public concerning chronic renal diseases, including the dissemination of information and the conducting of educational programs concerning the prevention of chronic renal diseases and the methods for the care and treatment of persons suffering from these diseases. (1971, c. 1027, s. 1.)

§ **130-239. Renal Disease Fund.** — There is hereby created a Renal Disease Fund. Contributions to the Fund may be accepted in its behalf by the Director from any source including, but not limited to, insurance proceeds, the medical profession and the Veterans Administration. (1971, c. 1027, s. 1.)

Article 28.

Mass Gatherings.

§ **130-240. Legislative intent and purpose.**—The intent and purpose of this Article is to provide for the protection of the public health, public welfare, and public safety of those persons in attendance at mass gatherings and of those persons who reside near or are located in proximity to the sites of mass gatherings or are directly affected thereby. (1971, c. 712, s. 1.)

Editor's Note. — Session Laws 1971, c. 712, s. 2, contains a severability clause.

§ **130-241. Definitions.**—The following definitions shall apply in the enforcement and interpretation of this Article:

(1) "Mass gathering" means the congregation or assembly in which admission is charged in reasonable contemplation of profit of more than 5,000 people in an open space or open air for a continuous period of at least 24 hours; it shall include mass gatherings organized or held for any purpose but shall not include assemblies in permanent buildings or permanent structures designed or intended for use by large numbers of people.

(2) "Person" means any person, firm, corporation or legal entity which holds, sponsors, organizes, conducts or promotes a mass gathering.

(3) "State Health Director" means the State Health Director or a representative designated by him. (1971, c. 712, s. 1.)

§ **130-242. Permit required; revocation of permit.**—(a) No person shall organize, sponsor or hold any mass gathering unless a permit has been issued to such person by the State Health Director under the provisions of this Article. A permit shall be required for each mass gathering and is not transferable to other persons.

(b) A permit may be revoked by the State Health Director at any time if he finds that the mass gathering is being or has been maintained or operated in violation of this Article, or that prior to the mass gathering, the planning or preparation for the mass gathering is not in compliance with this Article. A permit may be revoked upon the request of the permittee or upon abandonment of the operation. A permit will otherwise expire upon satisfactory completion of the post-gathering clean-up following the close of the mass gathering. (1971, c. 712, s. 1.)

§ **130-243. Application for permit.**—(a) Application for a permit for a mass gathering shall be made to the State Health Director, on a form and in a manner prescribed by him, by the person who will organize, sponsor or hold the mass gathering. The application shall be filed with the State Health Director at least 30 days prior to the commencement of the mass gathering. A fee as prescribed by the State Health Director not to exceed one hundred dollars ($100.00) shall accompany the application.

(b) The application shall contain the following information: identification of

the applicant, identification of any other person(s) responsible for organizing, sponsoring or holding the mass gathering, the location of the proposed mass gathering, the estimated maximum number of persons reasonably expected to be in attendance at any one time, the date or dates and the hours during which the mass gathering is to be conducted, and a statement as to the total time period involved.

(c) The application shall be accompanied by an outline map of the area to be used, to approximate scale, showing the location of all proposed and existing privies or toilets; lavatory and bathing facilities; all water supply sources including lakes, ponds, streams, wells, storage tanks, etc.; all areas of assemblage; all camping areas; all food service areas; all garbage and refuse storage and disposal areas; all entrances and exits to public highways; and emergency ingress and egress roads.

(d) The application shall be accompanied by such additional plans, reports, and information required by the State Health Director as he shall deem necessary to carry out the provisions of this Article. (1971, c. 712, s. 1.)

§ 130-244. Provisional permit; performance bond; liability insurance.—(a) Within 10 days after the receipt of the application, the State Health Director shall review the application and inspect the proposed site for the mass gathering. If it reasonably appears that the requirements of this Article can be met by the applicant, a provisional permit shall be issued.

(b) If the State Health Director shall deem it necessary to protect the health, welfare and safety of those persons in attendance at mass gatherings and of other persons who may be affected by mass gatherings and to carry out the provisions of this Article, he may require the permittee within five days after issuance of the provisional permit to file with the State Health Director a performance bond or other surety to be executed to the State in the amount of $5,000 for up to 10,000 persons and $1,000 additional for each additional 5,000 persons or fraction thereof, reasonably estimated to attend the mass gathering. The bond, if required, shall be conditioned on full compliance with this Article and shall be forfeitable upon noncompliance and a showing by the State Health Director of any injury, damage or other loss to the State or local governmental agencies caused by the noncompliance. The permittee shall in addition file satisfactory evidence of public liability and property damage insurance in an amount determined by the State Health Director to be reasonable (but not to exceed $1,000,000 in amount) in relation to the risks and hazards involved in the proposed mass gathering. (1971, c. 712, s 1.)

§ 130-245. Issuance of permit; revocation; forfeiture of bond; cancellation.—(a) If, upon inspection by the State Health Director 15 days prior to the starting date of the mass gathering, or earlier upon request of the permittee, the required facilities are found to be in place and satisfactory arrangements are found to have been made for required services, and other applicable provisions of this Article are found to have been met, the State Health Director shall issue a permit for the mass gathering. If, upon such inspection, the facilities, arrangements, or other provisions are not satisfactory, the provisional permit shall be revoked and no permit issued.

(b) Upon revocation of either the provisional permit or the permit, the permittee shall immediately announce cancellation of the mass gathering in as effective a manner as is reasonably possible, including but not limited to the use of whatever methods were used for advertising or promoting the mass gathering.

(c) If the provisional permit or the permit is revoked prior to or during the mass gathering, the State Health Director may order the permittee to install such facilities and make such arrangements as may be necessary to accommodate those persons who may nevertheless attend or be present at the mass gathering despite its cancellation and to restore the site to a safe and sanitary condition. In the event the permittee fails to comply with the order of the State Health Director, the State Health Director may immediately proceed to install such facilities and make such other arrangements and provisions for clean-up as may be minimally required in

the interest of public health and safety, utilizing such State and local funds and resources as may be available to him. Prior to or within 60 days after such action, the State Health Director may apply to a court of competent jurisdiction to order forfeiture of the permittee's performance bond or surety for violation of this Article. The court may order that the proceeds shall be applied to the extent necessary to reimburse the State and local governmental agencies for expenditures made pursuant to the action taken by the State Health Director upon the permittee's failure to comply with his order. Any excess proceeds shall be returned to the insurer of the bond or to the surety after deducting court costs. (1971, c. 712, s. 1.)

§ **130-246. Rules and regulations of the State Board of Health.**—The State Board of Health is authorized and directed to develop and adopt rules and regulations to carry out the provisions of this Article and to establish standards and requirements so that facilities and services shall be provided as necessary to protect the health, welfare, and safety of those attending the mass gathering and of other persons who may be affected by mass gatherings. These rules and regulations shall upon adoption have the force and effect as if they were part of this Article. They shall include, but not be limited to, the establishment of standards as follows:

(1) General requirements relating to minimum size of activity area, distance of activity area from dwellings, distance from public water supplies and watersheds, camping areas, and an adequate command post for use by personnel of health, law enforcement and other governmental agencies.
(2) Adequate ingress and egress roads, parking facilities and entrances and exits to public highways.
(3) Plan for limiting attendance and crowd control, dust control, and rapid emergency evacuation.
(4) Medical care, including facilities, services and personnel.
(5) Sanitary water supply, source and distribution; toilet facilities; sewage disposal; solid waste collection and disposal; food dispensing; insect and rodent control; and post-gathering clean-up.
(6) Noise level at perimeter; lighting, and signs. (1971, c. 712, s. 1.)

§ **130-247. Penalty.**—Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1971, c. 712, s. 1.)

§ **130-248. County ordinance authority not abrogated.**—Nothing in this Article shall be construed to limit the authority of counties to adopt ordinances under G.S. 153-9(55) regulating mass gatherings of less than 5,000 persons. (1971, c. 712, s. 1.)

Chapter 131.

Public Hospitals.

Article 1.

Orthopedic Hospital.

§ 131-1. Board of trustees; term of office; organization and powers.

State Government Reorganization.—The North Carolina Orthopedic Hospital was transferred to the Department of Human Resources by § 143A-150, enacted by Session Laws 1971, c. 864.

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.

§ 131-14: Repealed by Session Laws 1971, c. 780, s. 24, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 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. 587 (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 3.

County Tuberculosis Hospitals.

§ **131-30**: Repealed by Session Laws 1971, c. 780, s. 24, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 4.

Joint County Tuberculosis Hospitals.

§ **131-35**: Repealed by Session Laws 1971, c. 780, s. 24, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 5.

County Tuberculosis Hospitals; Additional Method of Establishment.

§ **131-42**: Repealed by Session Laws 1971, c. 780, s. 24, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 7.

State Sanatorium for Tuberculosis.

§ 131-52. Directors of State sanatorium for tuberculosis.

State Government Reorganization.—The administration of all state-supported sanatoriums for the treatment of tuberculosis was transferred to the Department of Human Resources by § 143A-152, enacted by Session Laws 1971, c. 864.

§ 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.

§ 131-61. Tubercular sanatorium established in western North Carolina.

State Government Reorganization.—The administration of all state-supported sanatoriums for the treatment of tuberculosis was transferred to the Department of Human Resources by § 143A-152, enacted by Session Laws 1971, c. 864.

§ 131-62. Control of both tubercular sanatoriums vested in one board.

State Government Reorganization.—The administration of all state-supported sanatoriums for the treatment of tuberculosis was transferred to the Department of Human Resources by § 143A-152, enacted by Session Laws 1971, c. 864.

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.

State Government Reorganization.—The administration of all state-supported sanatoriums for the treatment of tuberculosis was transferred to the Department of Human Resources by § 143A-152, enacted by Session Laws 1971, c. 864.

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.

§ 131-84. Establishment of sanatorium; power and authority of directors.

State Government Reorganization.—The administration of all state-supported sanatoriums for the treatment of tuberculosis was transferred to the Department of Human Resources by § 143A-152, enacted by Session Laws 1971, c. 864.

§ 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.—The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department."

ARTICLE 12.

Hospital Authorities Law.

§ 131-90. Short title.—This Article may be referred to as the "Hospital Authorities Law." (1943, c. 780, s. 1; 1971, c. 799.)

Revision of Article.—Session Laws 1971, c. 799, revised and rewrote this Article. The principal change effected by the revision was to make the Article applicable to every county, city and town in the State, rather than only to cities and towns having a population of more than 75,000.

§ 131-91. Finding and declaration of necessity.—It is hereby declared that conditions resulting from the concentration of population in various cities, towns and counties of the State require the construction, maintenance and operation of adequate hospital facilities for the care of the public health and for the control and treatment of epidemics, for the care of the indigent and for the public welfare; that in various cities, towns and counties of the State there is a lack of adequate hospital facilities available to the inhabitants thereof and that consequently many persons including persons of low income are forced to do without adequate medical and hospital care and accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the State and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities, towns and counties; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the providing of adequate hospital and medical care are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the health and public welfare; and the necessity in the public interest for the provision hereinafter enacted is hereby declared as a matter of legislative determination. (1943, c. 780, s. 2; 1971, c. 799.)

§ 131-92. Definitions.—The following terms, wherever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "hospital authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "Board of county commissioners" shall mean the legislative body charged with governing the county.

(3) "Bonds" shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this Article.

(4) "City" shall mean any city or town which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(5) "City clerk" and "mayor" shall mean the clerk and mayor, respectively,

of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(6) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this Article.

(7) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(8) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city, town or county.

(9) "County" shall mean the county which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(10) "County clerk" and "chairman of the board of county commissioners" shall mean the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.

(11) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(12) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(13) "Hospital facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals, chronic diseases, maternity, mental, tuberculosis and other specialized hospitals; nursing or convalescent facilities; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and out-patient facilities; clinical, pathological and other laboratories; hospital research facilities, laundries; residences and training facilities for nurses, interns, physicians and other staff members, food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer and other electronic facilities, firefighting facilities, pharmaceutical and recreational facilities; storage space, X-ray, laser, radiotherapy and other apparatus and equipment; dispensaries, utilities, vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(14) "Municipality" shall mean any county, city, town or incorporated village, other than the city as defined above, which is located within or partially within the territorial boundaries of an authority.

(15) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a hospital facility or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(16) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and

every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "State" shall mean the State of North Carolina.

(18) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof. (1943, c. 780, s. 3; 1971, c. 799.)

Amendment Effective July 1, 1973. — Session Laws 1971, c. 780, s. 22, effective July 1, 1973, will amend this section by repealing subdivisions (15) and (18) and by rewriting subdivision (3) to read as follows:

"(3) 'Bonds' shall mean any bonds or notes issued by the authority pursuant to this Article and the Local Government Finance Act."

§ 131-93. Creation of authority.—If the council of any city, town or county or the board of county commissioners of any county in the State shall, upon such investigation as it deems necessary, determine:

(1) That there is a lack of adequate hospital facilities and medical accommodations from the operations of private enterprises in the city, town or county and said surrounding area; and/or

(2) That the public health and welfare, including the health and welfare of persons of low income in the city, town or county and said surrounding area, require the construction, maintenance or operation of public hospital facilities for the inhabitants thereof;

the council or board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor or the chairman of the board of county commissioners, who shall thereupon appoint, as hereinafter provided, not less than six and not more than 30 commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That the council has made the aforesaid determination after such investigation, and that the mayor or the chairman of the board of county commissioners has appointed them as commissioners;

(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the hospital authority to become a public body and a body corporate and politic under this Article;

(3) The term of office of each of the commissioners;

(4) The name which is proposed for the corporation; and

(5) The location and the principal office of the proposed corporation.

The application shall be subscribed and swore to by each of the said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue

to the said commissioners a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall include said city, town or county and the area within 10 miles from the territorial boundaries of any city, town or county but in no event shall it include the whole or a part of any area included within the boundaries of another authority. In case an area lies within 10 miles of the boundaries of more than one city, town or county such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the Secretary of State. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city, town or county shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1943, c. 780, s. 4; 1971, c. 799.)

§ **131-93.1. Change of name by authority.**—An authority created and existing pursuant to this Article, may at any time, by resolution adopted by a majority of the commissioners, change its name. A copy of such resolution, duly verified by the chairman and secretary of the board of commissioners before an officer authorized by the laws of this State to take and certify oaths, shall be delivered to the Secretary of State, together with a conformed copy thereof. If the Secretary of State shall find that the proposed name is not identical with that of a person or of any other corporation of this State, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it, and shall record it in an appropriate book of record in his office, and thereupon return to the authority the conformed copy, together with a certificate stating that attached thereto is a true copy of the document filed in his office and showing the date of such filing. (1961, c. 988, s. 1; 1971, c. 799.)

§ **131-94. Appointment, qualifications, and tenure of commissioners.** —An authority shall consist of not less than six and not more than 30 commissioners appointed by the mayor, or the chairman of the board of county commissioners and he shall designate the first chairman.

One third of the commissioners who are first appointed shall be designated by the mayor, or the chairman of the board of county commissioners to serve for terms of one year, one third to serve for terms of two years, and one third to serve for terms of three years respectively from the date of their appointment. Thereafter, the term of office shall be three years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. In the event of an increase in the number of commissioners, or in the event of a vacancy or vacancies in the membership of the board by expiration of term of office or otherwise, the remaining members of the board shall submit to the mayor, or the chairman of the board of county commissioners nominations for appointments. The mayor, or the chairman of the board of county commissioners may successively require any number of additional nominations, and shall have power to appoint any person so nominated. All such vacancies shall be filled from such nominations. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk, or the chairman of the board of county commissioners shall file with the county clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A com-

missioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1943, c. 780, s. 5; 1971, c. 799.)

§ 131-95. Duty of the authority and commissioners of the authority.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this Article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1943, c. 780, s. 4; 1971, c. 799.)

§ 131-96. Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest direct or indirect in any hospital facility or in any property included or planned to be included in any facility, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any hospital facility, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1943, c. 780, s. 7; 1971, c. 799.)

§ 131-97. Removal of commissioners.—The mayor or chairman of the board of county commissioners may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor or chairman of the board of county commissioners) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor or chairman of the board of county commissioners written charges that the authority is violating willfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor or the chairman of the board of county commissioners shall give each of the commissioners a copy of such charges at least 10 days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within 15 days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such willful violation.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon said commissioner if mailed to him at his last known address as same appears upon the records of the authority.

A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk, or the chairman of the board of county commissioners shall

file with the county clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1943, c. 780, s. 8; 1971, c. 799.)

§ **131-98. Power of authority.**—(a) Powers Generally; Enumeration.—An authority shall constitute a public body and a body corporate and politic exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

(1) To investigate into hospital, medical and health conditions and into the means and methods of improving such conditions;
(2) To determine where inadequate hospital and medical facilities exist;
(3) To study and make recommendations concerning the plan of any city, town or county located within its boundaries in relation to the problem of providing adequate hospital, medical and nursing facilities, and the providing of adequate hospital, medical and nursing facilities for the inhabitants of such city, town or county and area, including persons of low income in such city, town or county and area;
(4) To prepare, carry out and operate hospital facilities;
(5) To provide and operate out-patient departments, maternity clinics and any other clinics customarily operated in hospitals in metropolitan centers;
(6) To provide teaching and instruction programs and schools for medical students, interns, physicians and nurses;
(7) To provide and maintain continuous resident physician and intern medical services;
(8) To appoint an administrator, a superintendent or matron, and necessary assistants, and any and all other employees deemed necessary or advisable and fix their compensation, and to remove such appointees;
(9) To adopt bylaws for the conduct of its business;
(10) To adopt necessary rules and regulations for the government of the authority and its employees;
(11) To enter into contracts for necessary supplies, equipment or services incident to the operation of its business;
(12) To appoint such committees or subcommittees as it shall deem advisable, and fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of its business, including but not limited to the hospital and all departments thereof;
(13) To accept donations of money, personal property or real estate for the benefit of the authority and take title thereto from any person, firm, corporation or society desiring to make such donations;
(14) To determine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians, and to promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital;
(15) To establish and maintain a training school for nurses;
(16) To make rules and regulations governing the admission of patients to, and the care, conduct, and treatment of patients in, the hospital;
(17) To determine whether patients presented to the hospital for treatment are subjects for charity and to fix the compensation to be paid by patients other than those unable to assist themselves;
(18) To maintain and operate isolation wards for the care and treatment of mental, contagious or other similar diseases;
(19) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital facility or any part thereof;

(20) To take over by purchase, lease or otherwise any hospital facility located within its boundaries undertaken by any government, or by any city, town or county located in whole or in part within its boundaries;

(21) To acquire by purchase, gift, devise, lease, condemnation or otherwise any existing hospital facilities provided, that no property belonging to any city, town or county or to any government or to any religious or charitable corporation or to any existing hospital or clinic may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation;

(22) To enter into contracts or other arrangements with any 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;

(23) To lease any hospital facilities to or from any municipality or other public agency of this or any other state or of the United States or to any individual, corporation or association on such terms and subject to such conditions as will carry out the purposes of this Article. The authority may provide in any lease made hereunder for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers in connection therewith, in the same manner as the authority itself might do;

(24) To act as agent for the federal, State or local government in connection with the acquisition, construction, operation and/or management of a hospital facility, or any part thereof;

(25) To arrange with any city, town or county located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities, or for the acquisition by such city, town or county or a government of property, options or property rights or for the furnishing of property or services in connection with a facility;

(26) To arrange with the State, its subdivisions and agencies, and any county, city or town of the State, to the extent that it is within the scope of each of their respective functions,

a. To cause the services customarily provided by each of them to be rendered for the benefit of such hospital authority and

b. To provide and maintain parks and sewage, water and other facilities adjacent to or in connection with hospital facilities and to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital facility and to establish and revise the rents or charges therefor;

(27) To purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, town or county, or government;

(28) To acquire by eminent domain any real property, including improvements and fixtures thereon provided, that no property belonging to any city, town or county or to any government or to any religious or charitable corporation or to any existing hospital or clinic may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation;

(29) To sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, city, town or county or government;
(30) To own, hold, clear and improve property;
(31) To insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;
(32) To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues in the manner and to the extent hereinafter provided;
(33) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article;
(34) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds subject to their control;
(35) To sue and be sued;
(36) To have a seal and to alter the same at pleasure;
(37) To have perpetual succession;
(38) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;
(39) To make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority.

(b) Exercise the Powers through Agents; Corporate Agents.—An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific hospital facility or facilities, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State.

(c) Implied Powers.—In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this Article.

(d) Certain Provisions Not Applicable to Authority.—No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state. (1943, c. 780, s. 9; 1971, c. 799.)

§ **131-99. Eminent domain.**—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this Article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(1) G.S. 40-11 to G.S. 40-29;
(2) Any other applicable statutory provision now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city, town, or county or to any government or to any religious or charitable corporation or to any existing hospital or clinic may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1943, c. 780, s. 10; 1971, c. 799.)

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).

§ 131-100. Zoning and building laws.—All hospital facilities shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the hospital facility is situated. (1943, c. 780, s. 11; 1971, c. 799.)

§ 131-101. Types of bonds.—The authority shall have power and is hereby authorized from time to time in its discretion to issue for the purpose only of constructing, furnishing and equipping new buildings or additions to existing buildings:

Bonds on which the principal and interest are payable exclusively from the income and revenues of the facility constructed, furnished and equipped with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing, furnishing or equipment thereof, provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated hospital facility or facilities, and if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues from such designated hospital facility or facilities.

Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city, town or county located within its boundaries or of the State and neither the State nor any such city, town or county shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the State. Bonds may be issued under this Article notwithstanding any debt or other limitation prescribed in any statute. (1943, c. 780, s. 12; 1971, c. 799.)

Amendment Effective July 1, 1973.—Session Laws 1971, c. 780, s. 21, effective July 1, 1973, will amend this section by rewriting the section to read as follows:

"**§ 131-101. Authority to issue revenue bonds.**—A hospital authority shall have power from time to time to issue revenue bonds under the Local Government Revenue Bond Act for the purpose of constructing, furnishing, and equipping new buildings or additions to existing buildings."

See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 131-102. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding 60 years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable), 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 of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds shall be sold at public sale held after notice published once at least 10 days prior to such sale in a newspaper having a general circulation in the city, town or county and in a financial newspaper published in the city of New York, New York, or in the city of Chicago, Illinois, and; provided that if no bid is received upon such notice which is a legal bid and legally acceptable under such notice, then and in that event the bonds may be sold at private sale at any time within 30 days after the date for receiving bids given in such notice, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated facility or facilities shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this Article shall be fully negotiable. (1943, c. 780, s. 13; 1971, c. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ 131-103. Provisions of bonds, trust indentures, and mortgages. — In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations herein imposed), or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant, with respect to limitations on its right to sell, lease or otherwise dispose of any hospital facility or any part thereof, or with respect to limitations on its right to undertake additional hospital facilities.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant as to the use of any or all of its property, real or personal.

(11) To create or to authorize the creation of special funds in which there shall be segregated

a. The proceeds of any loan and/or grant;
b. All of the rents, fees and revenues of any hospital facility or facilities or parts thereof;
c. Any moneys held for the payment of the costs of operation and maintenance of any such hospital facilities or as a reserve for the meeting of contingencies in the operation and maintenance thereof;
d. Any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and
e. Any moneys held for any other reserve or contingencies;

and to covenant as to the use and disposal of the moneys held in such funds.

(12) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(13) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(14) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(15) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(16) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(17) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(18) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(19) To covenant to surrender possession of all or any part of any hospital facility or facilities the revenue from which has been pledged or mortgaged for the purpose of constructing, furnishing, and equipping new buildings or additions to existing buildings as provided for in this Article upon the happening of any event of default (as defined in the contract) and to vest in an obligee the right without judicial proceeding to take possession and to use, operate, manage and control such hospital facilities or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

(20) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or, in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(21) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(22) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government of any purchaser of the bonds of the authority may reasonably require.

(23) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the Constitution of the State and no consent or approval of any judge or court shall be required thereof; and provided that the authority may not pledge or mortgage the revenue from any facility excepting one newly constructed, furnished and equipped in whole or in part with funds derived or to be derived from the sale of bonds secured by such pledge or mortgage. (1943, c. 780, s. 14; 1971, c. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ **131-104. Remedies of an obligee of authority.**—An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this Article.

(2) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority. (1943, c. 780, s. 15; 1971, c. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ **131-105. Additional remedies conferrable by mortgage or trust indenture.**—Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(1) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any hospital facility of the authority or any part or parts thereof, constructed, equipped and furnished in whole or in part from funds derived or to be derived in whole or in part from the sale of bonds secured by the pledge or mortgage of the revenues from such property. If such receiver be appointed, he may enter and take possession of such hospital facility or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep

such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(2) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1943, c. 780, s. 16; 1971, c. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ 131-106. Remedies cumulative.—All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1943, c. 780, s. 17; 1971, c. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ 131-107. Limitations on remedies of obligee.—No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. (1943, c. 780, s. 18; 1971, c. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ 131-108. Contracts with federal government.—In addition to the powers conferred upon the authority by other provisions of this Article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any hospital facility which such authority is authorized by this Article to undertake, to take over any land acquired by the federal government for the construction of a hospital facility, to take over or lease or manage any hospital facility constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such hospital facility. It is the purpose and intent of this Article to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any hospital facility which the authority is empowered by this Article to undertake. (1943, c. 780, s. 19; 1971, c. 799.)

§ 131-109. Security for funds deposited by authority.—The authority may by resolution provide that all moneys deposited by it shall be secured

(1) By obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or

(2) By any securities in which trustees, guardians, executors, administrators and others acting in a fiduciary capacity may legally invest funds within their control or

(3) By an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust

companies are authorized to give any such security for such deposits. (1943, c. 780, s. 20; 1971, c. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ 131-110. Tax exemptions.—The authority shall be exempt from the payment of any taxes or fees to the State or any subdivisions thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes. (1943, c. 780, s. 21; 1971, c. 799.)

§ 131-111. Reports.—The authority shall at least once a year file with the mayor of the city or town or the chairman of the board of county commissioners an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this Article. (1943, c. 780, s. 22; 1971, c. 799.)

§ 131-112. Certificate of public convenience and necessity prerequisite to exercise of power of eminent domain; powers of Utilities Commission.—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this Article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such facility has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall as near as may be follow the proceedings now provided by law for obtaining such a certificate under the Motor Vehicle Carrier Act, and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all facilities set up or attempted to be set up under the provisions of this Article and determine the question of the public convenience and necessity for said facility. (1943, c. 780, s. 23; 1971, c. 799.)

§ 131-113. Exemption from the Local Government Act, and from the County Fiscal Control Act.—The authority shall be exempt from the operation and provisions of Chapter 60 of the Public Laws of 1931 (codified as G.S. 159-1 et seq., and G.S. 160-409 to G.S. 160-412), known as the "Local Government Act," and the amendments thereto and from G.S. 153-114 to G.S. 153-141, known as the "County Fiscal Control Act," and the amendments thereto. (1943, c. 780, s. 24; 1971, s. 799.)

Repeal of Section.—Session Laws 1971, c. 780, s. 22, repeals this section effective July 1, 1973.

§ 131-114. Appropriations by city, town or county.—The governing body of any city, town or county in which the authority is located may appropriate each year, not exceeding five percent (5%) of its general fund for the improvement, maintenance or operation of any public hospital or hospital facility constructed, maintained, or operated by or to be constructed, maintained or operated by an authority, and moneys so appropriated and paid to a hospital au-

thority by a city, town or county shall be deemed a necessary expense of such city, town or county. (1943, c. 780, s. 25; 1971, c. 799.)

Amendment Effective July 1, 1973.—Session Laws 1971, c. 780, s. 23, effective July 1, 1973, will amend this section by changing the period at the end to a comma and adding the following clause: "but no such appropriations shall be deemed a revenue of the authority for the purpose of bonds of the authority issued under the Local Government Revenue Bond Act."

§ 131-115. Conveyance, lease or transfers of property by a city, town or county to an authority; right to name commissioners of authority.—Any city, town or county in order to provide for the construction, reconstruction, improvement, repair or management of any hospital or hospital facility or in order to accomplish any of the purposes of this Article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority, within the territorial boundaries of which such city, town or county is wholly or partly located, any real, personal or mixed property including, but not limited to, any existing hospital or hospital facility as a going concern or otherwise, and including the assignment and transfer of any part of or all money, choses in action and other assets used or held for the use of such hospital or hospital facility and in connection with any such transaction the authority involved may accept such lease, transfer, assignment and conveyance and bind itself to the performance and observation of any agreements and conditions attached thereto.

In the event any city, town or county shall sell, convey or otherwise irrevocably transfer to an authority property pursuant to this section having a market value in excess of one hundred thousand dollars ($100,000) and in the event the authority accepts the conveyance, the mayor of the governing body of such city or town or the chairman of the board of county commissioners shall thereafter have the right to name to the authority, to serve as commissioners, for three-year terms such number of persons as, when compared with the existing membership of the authority, will, in the sole opinion of the governing body of such city, town or county and the authority, fairly represent the approximate relationship of the total value of the property being transferred to the total value of the property already held by the authority, but in no event shall fewer than two persons nor more than nine persons be added to the authority. The size of the authority shall be increased by the number thus added. The times of commencement and of expiration of the initial terms of those being added shall be determined by agreement between the authority and the governing body, and copies of the agreement setting out the number of persons being added and the terms shall be filed with the clerk of such city or town or the clerk of the board of county commissioners and thereafter copies of reports referred to in G.S. 131-111 shall be filed with the clerk of such city or town or the clerk of the board of county commissioners. (1943, c. 780, s. 26; 1961, c. 988, s. 2; 1971, c. 799.)

§ 131-116. Article controlling.—Insofar as the provisions of this Article are inconsistent with the provisions of any other law, the provisions of this Article shall be controlling, provided that nothing in this Article shall prevent any city, town or county from establishing, equipping and operating a hospital or hospitals or improving or extending existing hospitals and hospital facilities under the provisions of its charter or any general law other than this Article; nor, shall the provisions of this Article impair, limit or affect the rights and powers of duly organized and existing hospital authorities created or established prior to the ratification of this Article. (1943, c. 780, s. 28; 1971, c. 799.)

Editor's Note.—Session Laws 1971, c. 799, rewriting this article, was ratified July 8, 1971.

§ 131-116.1. Article applicable to city of High Point.—All the provisions of this Article shall apply to the city of High Point, Guilford County, North Carolina, as fully as if the population of such city exceeded 75,000 inhabitants. (1947, c. 349; 1971, c. 799.)

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.

State Government Reorganization.—The Medical Care Commission was transferred to the Department of Human Resources by § 143A-160, enacted by Session Laws 1971, c. 864.

The Medical Care Commission 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).

§ 131-120. Construction and enlargement of local hospitals.—(a) The North Carolina Medical Care Commission is hereby authorized and empowered to continue surveys of each county in the State to determine:

(1) The hospital needs of each county or area;

(2) The economic ability of each county or area to support adequate hospital service;

(3) What assistance by the State, if any, is necessary to supplement all other available funds, to finance the construction of new hospitals and health centers, additions to existing hospitals and health centers, and necessary equipment to provide adequate hospital service for the citizens of each county or area;

and to periodically report this information, together with its recommendations, to

the Governor, who shall transmit the reports to the General Assembly for such legislative action as it may deem necessary to effectuate an adequate statewide hospital program.

(b) The North Carolina Medical Care Commission is hereby authorized and empowered to act as the agency of the State of North Carolina for the purpose of setting up and administering any statewide plan for the construction and maintenance of hospitals, public health centers and related facilities, and to receive and administer any funds which may be provided by the General Assembly of North Carolina and/or by the Congress of the United States for such purpose. The Commission, as such agency of the State of North Carolina with the advice of the State Advisory Council hereinafter provided, shall have the right to promulgate such statewide plans for the construction and maintenance of hospitals, medical centers and related facilities, or such other plans as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto. The Commission shall be authorized to receive and administer any funds which may be appropriated by any act of Congress or of the General Assembly of North Carolina for the construction of hospitals, medical centers and related activities or facilities, which may at any time in the future become available for such purposes. The Commission shall be further authorized to receive and administer any other federal funds or State funds which may be available in the furtherance of any activity in which the Commission is authorized and empowered to engage under the provisions of this Article establishing said Commission, and in connection therewith the Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of this Article; to adopt such reasonable and necessary standards with reference thereto as may be proper to fully cooperate with the Surgeon General or other agency or department of the United States with the approval of the federal advisory council in the use of funds provided by the federal government, and at all times make such reports and give such information to the Surgeon General or other agency or department of the United States as may be required.

(c) The Governor is hereby authorized and empowered to set up and establish a State Advisory Council to the North Carolina Medical Care Commission, to consist of seven members, who shall each serve for a term of four years, with the right on the part of the Governor to fill vacancies for unexpired terms, said Council to include representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services, and representatives particularly concerned with education or training of health professions personnel; and an equal number of representatives of consumers familiar with the need for the services provided by such facilities, to consult with the State agency in carrying out the plan, and provide, if such Council does not include any representatives of nongovernmental organizations or groups, or State agencies, concerned with rehabilitation, for consultation with organizations, groups, and State agencies so concerned, which Advisory Council, when set up by the Governor, shall advise with the North Carolina Medical Care Commission with respect to carrying out the purposes and provisions of this Article. The Governor shall consider the requirements of federal laws and regulations with regard to representation on the Council. The members of the State Advisory Council to the North Carolina Medical Care Commission shall receive a per diem of seven dollars ($7.00) and necessary travel expenses except that this shall not apply to members of the State Advisory Council to the North Carolina Medical Care Commission who are representatives of a State agency or department and who receive a regular salary paid by appropriations to their agency or department; but such representatives of such State agencies or departments shall be entitled to necessary subsistence and travel expenses.

(d) The North Carolina Medical Care Commission and the said State Advisory Council set up by the Governor as herein authorized, shall be fully authorized and

empowered to do all such acts and things as may be necessary, to authorize the State of North Carolina to receive the full benefits of any federal laws which are or may be enacted for the construction and maintenance of hospitals, health centers or allied facilities.

(e) Out of the funds appropriated and made available by the State, the North Carolina Medical Care Commission shall make grants-in-aid to counties, cities, towns and subdivisions of government to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities or subdivisions of government for use as community hospitals. The appropriations and funds made available by the State shall be allocated, apportioned and granted for the purposes above set forth and for such other related objects or purposes as shall be determined in each case by the North Carolina Medical Care Commission in accordance with the standards, rules and regulations as determined, adopted and promulgated by the North Carolina Medical Care Commission. The North Carolina Medical Care Commission may furnish financial and other types of aid and assistance to any nonprofit hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, upon the same terms and conditions as such aid and financial assistance is granted to municipalities and subdivisions of government: Provided, that hospitals now in the course of construction and approved by the North Carolina Medical Care Commission and the appropriate federal authority shall be entitled to receive financial assistance on the same basis as any hospital of the same classification and type that may be hereafter constructed and approved by the North Carolina Medical Care Commission and the appropriate federal authority.

(f) The North Carolina Medical Care Commission may make available to any eligible hospital, sanatorium, clinic, or other medical facilities for the treatment of disease operated by the State of North Carolina or under its direction and control, or under the direction and control of any of its agencies or institutions, any unallocated federal sums or balances remaining after all grants-in-aid for local approvable projects made by the said Commission have been completed, disbursed or encumbered for all objects for which such grants-in-aid are available and for which said unallocated balances remain. (1945, c. 1096; 1947, c. 933, ss. 3, 5; 1949, c. 592; 1951, c. 1183, s. 1; 1971, c. 134.)

Editor's Note.—

The 1971 amendment divided this section into subsections, substituted "continue" for "begin immediate" in the opening clause of subsection (a), inserted "periodically" and substituted "the reports to the General Assembly" for "this report to the next session of the General Assembly" in the portion of subsection (a) that follows subdivision (3), made certain changes in form, wording and punctuation in subsection (b), increased the number of members of the State Advisory Council provided for in the first sentence of subsection (c) from five to seven members and otherwise rewrote that sentence, added the second sentence of subsection (c) and deleted a former second paragraph of subsection (e), authorizing the North Carolina Medical Care Commission to make a supplemental appropriation out of certain funds for the building and equipping of a new unit for the diagnosis and treatment of tuberculosis and other respiratory and related diseases.

State Government Reorganization.—The State Advisory Council to the Medical Care Commission was transferred to the Department of Human Resources by § 143A-143, enacted by Session Laws 1971, c. 864.

§ 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 phy-

sicians, 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.)

§ 131-124. Medical training for negroes.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

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).

§ 131-126.2. Purpose.

Authority of Medical Care Commission to Classify Hospital Emergency Services. —See opinion of Attorney General to Mr. William F. Henderson, Executive Secretary, The North Carolina Medical Care Commission, 7/24/70.

§ 131-126.3. Licensure.

Authority of Medical Care Commission to Classify Hospital Emergency Services. —See opinion of Attorney General to Mr. William F. Henderson, Executive Secretary, The North Carolina Medical Care Commission, 7/24/70.

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 furnishing 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.

Editor's Note.—

Prior to the 1965 amendment the third sentence concluded "to finance hospital facilities owned by the municipality."

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 pre-

scribed 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.

§ 131-126.38. Tax levy for operation, equipment and maintenance.

County Levy of Tax; Construction of Ballot Provisions.—See opinion of Attorney General to Mr. Rom B. Parker, 41 N.C.A.G. 402 (1971).

Article 14.

Cerebral Palsy Hospital.

§ 131-127. Creation of hospital; powers.

State Government Reorganization.—The Cerebral Palsy Hospital was transferred to the Department of Human Resources by § 143A-151, enacted by Session Laws 1971, c. 864.

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.)

Article 16.

Medical Care Commission Hospital Facilities Finance Act.

§ 131-138. Short title.—This Article shall be known, and may be cited, as the "North Carolina Medical Care Commission Hospital Facilities Finance Act." (1971, c. 597, s. 1.)

Editor's Note. — Session Laws 1971, c. 597, s. 2, contains a severability clause.

§ 131-139. Legislative findings.—It is hereby declared to be the policy of the State of North Carolina to promote the public health and welfare by providing means for the financing, acquiring, constructing, equipping and providing of hospital facilities to serve the people of the State and to make accessible to them modern and efficient hospital facilities.

The General Assembly hereby finds and declares that:

(1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing hospital facilities and to provide additional, modern and efficient hospital facilities in the State; and

(2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and

(3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary for the State to assist in the providing of adequate, modern and efficient hospital facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable.

The General Assembly hereby further finds and declares that the financing, acquiring, constructing, equipping and providing of hospital facilities and such other facilities as may be incidental or appurtenant thereto are public uses and public purposes for which public money may be expended and that enactment of this Article is necessary and proper for effectuating the purposes hereof. (1971, c. 597, s. 1.)

§ 131-140. Definitions.—As used or referred to in this Article, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Bonds" or "notes" means the revenue bonds or bond-anticipation notes, respectively, authorized to be issued by the Commission under this Article;

(2) "Commission" means The North Carolina Medical Care Commission, created by Article 13 of Chapter 131 of the General Statutes, or, should said Commission be abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Article to the Commission;

(3) "Costs" as applied to any hospital facilities means the cost of construction or acquisition; the cost of acquisition of 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 land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved or relocated; the cost of all machinery, fixed and movable equipment and furnishings; financing charges, interest prior to and during construction and, if deemed advisable by the Commission, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications; the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or acquiring such hospital facilities; the cost of administrative and other expenses necessary or incident to the construction or acquisition of such hospital facilities, and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service; and the cost of reimbursing any governmental agency or any lessee of any hospital facilities any amounts expended for items that would have been proper costs of such hospital facilities within the meaning of this definition had such expenditure been made directly by the Commission;

(4) "Hospital facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals, chronic diseases, maternity, mental, tuberculosis and other specialized hospitals; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; hospital research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer and other electronic facilities, fire-fighting facilities, pharmaceutical and recreational facilities; storage space, X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such

other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities;

(5) "Nonprofit agency" means any nonprofit corporation existing or hereafter created and empowered to acquire, by lease or otherwise, operate and maintain hospital facilities;

(6) "Public agency" means any county, city, town, hospital district or other political subdivision of the State existing or hereafter created pursuant to the laws of the State authorized to acquire, by lease or otherwise, operate and maintain hospital facilities; and

(7) "State" means the State of North Carolina. (1971, c. 597, s. 1.)

§ **131-141. Additional powers.** — The Commission 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 power:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Article, including agreements of lease, with public and nonprofit agencies, persons, firms, corporations, governmental agencies and others;

(2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any hospital facilities, upon such terms and at such cost as shall be agreed upon by the owner and the Commission;

(3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any hospital facilities;

(4) To sell, lease as lessor, 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;

(5) To pledge or assign any money, rents, charges, fees or other revenues and any proceeds derived by the Commission from sales of property, insurance, condemnation awards or other sources;

(6) To pledge or assign the revenues and receipts from any hospital facilities and any agreement of lease or the rent and income received thereunder;

(7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any hospital facilities and to issue revenue refunding bonds;

(8) To finance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any hospital facilities and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the Commission for such purpose;

(9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected rents, fees and charges for the use of, or services rendered by, any hospital facilities;

(10) To employ fiscal consultants, consulting engineers, architects, attorneys, hospital consultants, appraisers and such other consultants and employees as may be required in the judgment of the Commission and to fix and pay their compensation from funds available to the Commission therefor;

(11) To conduct studies and surveys respecting the need for hospital facilities and their location, financing and construction;
(12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to hospital facilities from federal and State agencies or instrumentalities and to accept, receive and agree to and comply with the terms and conditions governing payments under any health insurance programs; and
(13) To sue and be sued in its own name, plead and be impleaded. (1971, c. 597, s. 1.)

§ **131-142. Criteria and requirements.**—In undertaking any hospital facilities pursuant to this Article, the Commission shall be guided by and shall observe the following criteria and requirements; provided that the determination of the Commission as to its compliance with such criteria and requirements shall be final and conclusive:

(1) There is a need for the hospital facilities in the area in which the hospital facilities are to be located;
(2) No hospital facilities shall be leased to any public or nonprofit agency which is not financially responsible and capable of fulfilling its obligations under the agreement of lease, including the obligations to pay rent, to operate, repair and maintain at its own expense the hospital facilities leased and to discharge such other responsibilities as may be imposed under the lease;
(3) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the hospital facilities at the expense of the lessee; and
(4) The public facilities, including utilities, and public services necessary for the hospital facilities will be made available. (1971, c. 597, s. 1.)

§ **131-143. Additional powers of public agencies.**—For the purposes of this Article, public agencies are authorized and empowered to enter into contracts and agreements, including agreements of lease, with the Commission to facilitate the financing, acquiring, constructing, equipping, providing, operating and maintaining of hospital facilities and pursuant to any such agreement of lease to operate, repair and maintain any hospital facilities and subject to the provisions of G.S. 131-145 of this Article to pay the cost thereof and the rent therefor from any funds available for such purposes. (1971, c. 597, s. 1.)

§ **131-144. Procedural requirements.**—In addition to hospital facilities initiated by the Commission, any public or nonprofit agency may submit to the Commission, and the Commission may consider a proposal using such forms and following such instructions as may be prescribed by the Commission for financing hospital facilities. Such proposal shall set forth the type and location of the hospital facilities and may include other information and data available to the public or nonprofit agency respecting the hospital facilities and the extent to which such hospital facilities conform to the criteria and requirements set forth in this Article. The Commission may request the proposed lessee to provide additional information and data respecting the hospital facilities. The Commission is authorized to make or cause to be made such investigations, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the hospital facilities, the extent to which the hospital facilities will contribute to the health and welfare of the area in which they will be located, the powers, experience, background, financial condition, record of service and capability of the management of the proposed lessee, the extent to which the hospital facilities otherwise conform to the criteria and requirements of

this Article, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Article. (1971, c. 597, s. 1.)

§ 131-145. Operation of hospital facilities; agreements of lease; conveyance of hospital facilities to lessee.—All hospital facilities shall be operated to serve and benefit the general public and there shall be no discrimination against any person based on race, creed, color or national origin.

The Commission may lease any hospital facilities to a public or nonprofit agency for operation and maintenance in such manner as shall effectuate the purposes of this Article, under an agreement of lease in form and substance not inconsistent herewith. Any such agreement of lease may include provisions that:

(1) The lessee shall, at its own expense, operate, repair and maintain the hospital facilities 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 any redemption premium on the bonds or notes issued by the Commission to pay the cost of the hospital facilities leased thereunder;

(3) The lessee shall pay all other costs incurred by the Commission in connection with the providing of the hospital facilities leased, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;

(4) The lease shall terminate not earlier than on the date on which all such bonds and all other obligations incurred by the Commission in connection with the hospital facilities leased thereunder shall be paid in full 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 the bonds have been paid or sufficient funds have been made available for such payment.

All obligations payable by a public agency under an agreement of lease, including the obligation to pay rent and to pay the costs of operating, repairing and maintaining hospital facilities, shall be payable solely from the revenues of the hospital facilities being leased or other hospital facilities of the public agency related thereto and shall not be payable from or charged upon any funds of the public agency other than the revenues pledged to such payment; provided, however, that nothing herein shall restrict the power of any county, city, town or other political subdivision of the State or any hospital district created pursuant to Article 13C of Chapter 131 of the General Statutes to submit to its qualified voters a hospital facility maintenance tax under Article 13B of said Chapter 131 for the purposes of financing the cost of operation, equipment and maintenance of any hospital facility financed under this Article, and all hospital facilities authorized to be financed under this Article and leased to public agencies are hereby declared to be included within the definition "hospital facility" as used in said Article 13B.

Where the site for the hospital facilities has been conveyed by a public or nonprofit agency lessee to the Commission without the payment of any consideration therefor to such lessee or where the cost of acquiring the site has been paid from bond or note proceeds and when all bonds or notes issued and obligations incurred by the Commission in connection with such hospital facilities shall have been paid or sufficient funds made available for such payment, whether during or at the expiration of the term of the lease, the title to such hospital facilities shall promptly be conveyed by the Commission to such lessee. (1971, c. 597, s. 1.)

§ 131-146. Construction contracts.—Contracts for the construction of any hospital facilities on behalf of a public agency shall be awarded by the Com-

mission in accordance with Article 8 of Chapter 143 of the General Statutes. If the Commission shall determine that the purposes of this Article will be more effectively served, the Commission in its discretion may award or cause to be awarded contracts for the construction of any hospital facilities on behalf of a nonprofit agency upon a negotiated basis as determined by the Commission. The Commission 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 Commission may by written contract engage the services of the lessee or prospective lessee of any hospital facilities in the construction of such hospital facilities and may provide in such contract that the lessee or prospective lessee, subject to such conditions and requirements consistent with the provisions of this Article as shall be prescribed in such contract, may act as an agent of, or an independent contractor for, the Commission for the performance of the functions described therein, including the acquisition of the site and other real property for such hospital facilities, 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 hospital facilities 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 Commission. Any such contract may provide that the Commission may, out of proceeds of bonds or notes, 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 Commission and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Article and such contract. (1971, c. 597, s. 1.)

§ **131-147. Credit of State not pledged.**—Bonds or notes issued under the provisions of this Article 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 or note issued under this Article shall contain on the face thereof a statement to the effect that the Commission shall not be obligated to pay the same nor the interest thereon except from the revenues 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 bond or note.

Expenses incurred by the Commission in carrying out the provisions of this Article may be made payable from funds provided pursuant to, or made available for use under, this Article and no liability shall be incurred by the Commission hereunder beyond the extent to which moneys shall have been so provided. (1971, c. 597, s. 1.)

§ **131-148. Bonds and notes.**—The Commission is hereby authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the Commission to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this Article 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 other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Commission at such price or prices and upon such terms and conditions as may be determined by the Commission. Any such bonds or notes shall bear interest at such rate or rates as may be de-

termined by the Local Government Commission of North Carolina with the approval of the Commission. 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 Commission. The Commission 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 Commission 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 Commission 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. No bonds or notes may be issued by the Commission under this Article unless the issuance thereof is approved by the Local Government Commission of North Carolina.

The Commission shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of such bonds or notes which shall contain such information and have attached to it such documents concerning the proposed financing and prospective lessee as the Secretary may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements mentioned in G.S. 131-142 of this Article, the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will effectuate the purposes of this Article.

Upon the filing with the Local Government Commission of a resolution of the Commission 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 the Local Government Commission shall determine to be for the best interests of the Commission and effectuate best the purposes of this Article, provided that such sale shall be approved by the Commission.

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 Commission may provide in the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes.

Prior to the preparation of definitive bonds, the Commission 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 Commission 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 Article without obtaining, except as otherwise expressly provided in this Article, 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 Article and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes. (1971, c. 597, s. 1.)

§ 131-149. Trust agreement or resolution.—In the discretion of the Commission any bonds or notes issued under the provisions of this Article may be secured by a trust agreement by and between the Commission 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 authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the Commission received pursuant to this Article, including, without limitation, fees, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any hospital facilities, but shall not mortgage any hospital facilities. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the Commission, the duties of the Commission with respect to the acquisition, construction, maintenance, repair and operation of any hospital facilities, the fees, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, 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 bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Any such trust agreement or resolution may set forth the rights and remedies of the holders of any bonds or notes 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 Commission may deem reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any hospital facilities or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the Commission. (1971, c. 597, s. 1.)

§ 131-150. Revenues; pledges of revenues.—(a) The Commission is hereby authorized to fix and to collect fees, rents and charges for the use of any hospital facilities, and any part or section thereof, and to contract with any public or nonprofit agency for the use thereof. The Commission may require that the lessee or users of any hospital facilities or any part thereof shall operate, repair and maintain such facilities and shall bear the cost thereof and other costs of the Commission in connection therewith, subject to the provisions of G.S. 131-145 of this Article with respect to public agency lessees, as may be provided in the agreement of lease or other contract with the Commission, in addition to other obligations imposed under such agreement or contract.

(b) The fees, rents and charges shall be fixed so as to provide a fund sufficient, with such other funds as may be made available therefor, (i) to pay the costs of operating, repairing and maintaining the hospital facilities, to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all the bonds as the same shall become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, such bonds; provided, however, that nothing herein shall prohibit the application of fees, rents and charges to the payment of debt service on the bonds

prior to the payment of the costs of operating, repairing and maintaining the hospital facilities.

(c) All pledges of fees, rents, charges and other revenues under the provisions of this Article shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the Commission 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 Commission, irrespective of whether such parties have notice thereof. The resolution or any trust agreement by which a pledge is created or any lease need not be filed or recorded except in the records of the Commission. (1971, c. 597, s. 1.)

§ **131-151. Trust funds.**—Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Article, including, without limitation, fees, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any hospital facilities, shall be deemed to be trust funds to be held and applied solely as provided in this Article. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes 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 of this Article, subject to such regulations as this Article and such resolution or trust agreement may provide. Any such moneys may be invested as provided in G.S. 159-28.1, as it may be amended from time to time. (1971, c. 597, s. 1.)

§ **131-152. Remedies.**—Any holder of bonds or notes issued under the provisions of this Article or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, 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 Commission pursuant to this Article, 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 Commission or by any officer thereof. (1971, c. 597, s. 1.)

§ **131-153. Negotiable instruments.**—Notwithstanding any of the foregoing provisions of this Article or any recitals in any bonds or notes issued under the provisions of this Article, all such bonds or notes 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. (1971, c. 597, s. 1.)

§ **131-154. Bonds or notes eligible for investment.**—Bonds or notes issued 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 or notes 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. (1971, c. 597, s. 1.)

§ 131-155. Refunding bonds or notes.—The Commission is hereby authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which shall have been issued under the provisions of 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 or notes and, if deemed advisable by the Commission, for any corporate purpose of the Commission, including, without limitation,

(1) Constructing improvements, additions, extensions or enlargements of the hospital facilities in connection with which the bonds or notes to be refunded shall have been issued, and

(2) Paying all or any part of the cost of any additional hospital facilities.

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

Refunding bonds or notes may be sold or exchanged for outstanding bonds or notes issued under this Article 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 or notes. Pending the application of the proceeds of any such refunding bonds or notes, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in the resolution authorizing the issuance of, or in the trust agreement securing, such bonds or notes, to the payment of any interest on such refunding bonds or notes 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. (1971, c. 597, s. 1.)

§ 131-156. Annual report.—The Commission shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Article for the preceding year to the Governor, the State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The Commission shall cause an audit of its books and accounts relating to its activities under this Article 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 Commission. (1971, c. 597, s. 1.)

§ 131-157. Officers not liable.—No member or officer of the Commission shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof. (1971, c. 597, s. 1.)

§ 131-158. Tax exemption.—The exercise of the powers granted by this Article will be in all respects for the benefit of the people of the State and will promote their health and welfare, and the Commission shall not be required to pay any tax or assessment on any property owned by the Commission under the provisions of this Article or upon the income therefrom.

Any bonds or notes issued by the Commission under the provisions of this Article, 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. (1971, c. 597, s. 1.)

§ **131-159. Conflict of interest.**—If any member, officer or employee of the Commission 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 Commission, such interest shall be disclosed to the Commission and shall be set forth in the minutes of the Commission, and the member, officer or employee having such interest therein shall not participate on behalf of the Commission in the authorization of any such contract. (1971, c. 597, s. 1.)

§ **131-160. 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. (1971, c. 597, s. 1.)

§ **131-161. Liberal construction.**—This Article, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof. (1971, c. 597, s. 1.)

§ **131-162. 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. (1971, c. 597, s. 1.)

Chapter 132.

Public Records.

§ 132-1. Public records defined.

Police Arrest and Disposition Records Subject to Public Examination.—See opinion of Attorney General to Mr. Samuel M. Moore, 41 N.C.A.G. 407 (1971).

Textbook Lists of State Universities Are Public Records.—See opinion of Attorney General to Mr. J.D. Wright, North Carolina State University at Raleigh, 41 N.C.A.G. 199 (1971).

Chapter 133.

Public Works.

ARTICLE 1.

General Provisions.

Editor's Note. — Session Laws 1971, c. 1107, s. 1, effective Jan. 1, 1972, designated §§ 133-1 through 133-4 as Article 1.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Rest Area Structures Are Public Buildings within the Meaning of This Section.— See opinion of Attorney General to Mr. John Davis, Chief Engineer, State Highway Commission, 3/4/70.

ARTICLE 2.

Relocation Assistance.

§ 133-5. Short title.—This Article shall be cited as "The Uniform Relocation Assistance and Real Property Acquisition Policies Act." (1971, c. 1107, s. 1.)

Editor's Note. — Session Laws 1971, c. 1107, s. 3, makes the act effective Jan. 1, 1972.

§ 133-6. Declaration of purpose.—The purpose of this Article is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of public works programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to insure continuing eligibility for federal aid funds to the State and its agencies and subdivisions. (1971, c. 1107, s. 1.)

§ 133-7. Definitions.—As used in this Article:

(1) "Agency" means the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, or any board or governing body of a political subdivision of the State, or an agency, commission, or authority of a political subdivision of the State.

(2) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

a. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

b. For the sale of services to the public;
c. By a nonprofit organization; or
d. Solely for the purposes of G.S. 133-8(a), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(3) "Displaced person" means any person who, on or after January 1, 1972, moves from real property or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property for a program or project undertaken by an agency; and solely for the purposes of G.S. 133-8(a) and (b) and G.S. 133-11, as a result of the acquisition of or as a result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(4) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(5) "Person" means any individual, partnership, corporation or association.

(6) "Program or project" for the purpose of this Article shall mean any construction project undertaken by an agency, as herein defined or the utilization of real property by an agency for any other public purposes, and to which program or project the agency makes this Article applicable.

(7) "Relocation officer" means the head of the department delegated the authority to carry out relocation policies by the agency. (1971, c. 1107, s. 1.)

§ **133-8. Moving and related expenses.**—(a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person, such agency may make a payment to any displaced person, upon application as approved by the head of the agency for:

(1) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the relocation officer; and

(3) Actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense or allowance, determined according to a schedule established by the head of the agency, not to exceed three hundred dollars ($300.00); and a dislocation allowance of two hundred dollars ($200.00).

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm

operation, except that such payment shall be not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000). In the case of a business no payment shall be made under this subsection unless the head of the agency is satisfied that the business (i) cannot be relocated without a substantial loss of its existing patronage, and (ii) is not a part of a commercial enterprise having at least one other establishment not being acquired by the agency 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, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. To be eligible for the payment authorized by this section, the business or farm operation must make its State income tax returns available, as well as its financial statements and accounting records for confidential use to determine the payment authorized by this section. (1971, c. 1107, s. 1.)

§ 133-9. Replacement housing for homeowners.—(a) In addition to payments otherwise authorized by this Article the agency may make an additional payment not in excess of fifteen thousand dollars ($15,000) to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this section shall be made in accordance with standards established by the agency making the additional payment.

(2) The amount, if any, shall be the amount which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on the date on which he receives from the agency final payment of all costs

of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(c) The agency may, in cooperation with any federal agency upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage. (1971, c. 1107, s. 1.)

§ 133-10. Replacement housing for tenants and certain others.—In addition to amounts otherwise authorized by this Article, the agency may make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under G.S. 133-9 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either:

(1) The amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed four thousand dollars ($4,000), or

(2) The amount necessary to enable such person to make a down payment (including incidental expenses described in G.S. 133-9(a)(3), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars ($4,000), except that if such amount exceeds two thousand dollars ($2,000), such person must equally match any such amount in excess of two thousand dollars ($2,000), in making the down payment. (1971, c. 1107, s. 1.)

§ 133-11. Relocation assistance advisory services. — (a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person the agency may provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If the relocation officer determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) All agencies administering programs which may be of assistance to displaced persons covered by this Article shall cooperate to the maximum extent feasible with the agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program authorized by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(1) Determine the need, if any, of displaced persons, for relocation assistance;

(2) Provide current and continuing information on the availability, prices and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) Assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals dis-

placed, decent, safe, and sanitary dwellings, as defined by such agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the agency head may prescribe by regulation situations when such assurances may be waived;

(4) Assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) Supply information concerning federal and State housing programs, disaster loan programs, and other federal or State programs offering assistance to displaced persons; and

(6) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The agencies shall coordinate relocation activities with project work and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs. (1971, c. 1107, s. 1.)

§ 133-12. Expenses incidental to transfer of property.—(a) In addition to amounts otherwise authorized by this Article, the agency is authorized to reimburse or to pay on behalf of the owners of real property acquired for a program or project for reasonable and necessary expenses incurred for:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such property;

(2) Penalty costs for prepayment of any preexisting mortgage recorded and entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the agency, or the effective date of possession of such real property by the agency, whichever is earlier.

(b) Local taxing authorities shall accept prepayment of the agency's estimate of the amount of any taxes not levied but constituting a lien against real estate acquired by the agency, or the agency's estimate of its pro rata portion of such taxes, and such prepayment shall be applied to such taxes upon levy being made. (1971, c. 1107, s. 1.)

§ 133-13. Administration.—(a) The agency may enter into contracts with any individual, firm, association or corporation for services in connection with relocation assistance programs.

(b) The agency shall in carrying out relocation assistance activities utilize, whenever practicable, the services of other State or local agencies having experience in the administration or conduct in similar housing assistance activities.

(c) In acquisition of right-of-way for any State highway project, a municipality making the acquisition shall be vested with the same authority to render such services and to make such payments as is given the State Highway Commission in this Article. Such municipalities furnishing right-of-way are authorized to enter into contracts with any other municipal corporation, or State or federal agency, rendering such services. (1971, c. 1107, s. 1.)

§ 133-14. Regulations and procedures.—The agency is authorized to adopt such rules and regulations as it deems necessary and appropriate to carry out the provisions of this Article. The agency 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 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 and allowances as provided for in G.S. 136-8 [G.S. 133-8];

(4) Standards for decent, safe and sanitary dwelling;

(5) Eligibility of displaced persons for relocation assistance payments, the 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 agency head or its administrative officer;

(7) Projects or classes of projects on which payments as herein provided will be made. (1971, c. 1107, s. 1.)

§ 133-15. Payments not to be considered as income.—No payment received under this Article shall be considered as income for the 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 under the provisions of Chapter 108 of the General Statutes. (1971, c. 1107, s. 1.)

§ 133-16. Real property furnished to the federal government.—Whenever real property is acquired by an agency and furnished as a required contribution to a federal project, the agency has the authority to make all payments and to provide all assistance in the same manner and to the same extent as in cases of acquisition by the agency of real property for a federal aid project. (1971, c. 1107, s. 1.)

§ 133-17. Administrative payments.—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 agency under the procedure provided for in G.S. 133-14 shall be conclusive and not subject to judicial review. (1971, c. 1107, s. 1.)

Chapter 134.

Youth Development.

Revision of Chapter. — Session Laws 1971, c. 1169, effective Nov. 1, 1971, revised and rewrote this Chapter, substituting present §§ 134-1 through 134-29 for former §§ 134-1 through 134-114. No attempt has been made to point out the changes made by the revision, but, where appropriate, the historical citations to the former sections have been added to corresponding sections of the revised Chapter.

Article 1.

State Department of Youth Development.

§ 134-1. State Department of Youth Development created. — The State Department of Youth Development created by act of the 1947 General Assembly shall be governed by a board of nine members appointed by the Governor. The Commissioner of Social Service shall be an ex officio member without voting power. The original membership of the Board consists of three classes, the first class to serve for a period of two years from date of appointment, the second class to serve for a period of four years from date of appointment, and the third class to serve for a period of six years from date of appointment. At the expiration of the original respective terms of office, all subsequent appointments are for a term

of six years, except such as are made to fill unexpired terms. Five members of the Board shall constitute a quorum.

Members of the Board serve for terms as prescribed in this section, and until their successors are appointed and qualified. The Governor has the power to remove any member of the Board whenever, in his opinion, such removal is in the best public interest, and the Governor is not required to assign any reason for any such removal. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

State Government Reorganization.—The Department of Youth Development was transferred to the Department of Social Rehabilitation and Control by § 143A-166, enacted by Session Laws 1971, c. 864.

§ 134-2. Powers and duties of State Department of Youth Development.—The Stonewall Jackson Manual Training and Industrial School located at Concord, North Carolina, which was created by act of the General Assembly of 1907 and thereafter operated by a Board of Trustees, shall be hereafter known and designated as "Stonewall Jackson School"; the State Home and Industrial School for Girls located at Eagle Springs, North Carolina, which was created by act of the General Assembly of 1917 and thereafter operated under a Board of Managers, shall be hereafter known and designated as "Samarkand Manor School"; the Industrial Farm colony for Women, sometimes known as Dobb's Farm, located at Kinston, North Carolina, which was created by act of the General Assembly of 1927 and thereafter operated under a Board of Directors, shall be hereafter known as "Dobb's School for Girls"; the Eastern Carolina Industrial Training School for Boys located at Rocky Mount, North Carolina, which was created by act of the General Assembly of 1923 and thereafter operated by a Board of Trustees, shall be hereafter known as "Richard T. Fountain School"; the Morrison Training School at Hoffman, North Carolina, created by act of the 1921 General Assembly and thereafter operated by a Board of Directors, shall hereafter be known as "Cameron Morrison School"; and the said five schools together with the Samuel Leonard School, located at McCain, North Carolina, the Juvenile Evaluation Center located at Swannanoa, N.C., and the C.A. Dillon School located at Butner, N.C., shall hereafter be and remain under the management and administrative control of the State Department of Youth Development, and the said State Department of Youth Development shall succeed to, exercise, and perform all the powers and duties heretofore granted by legislative act, assumed, or otherwise exercised by the respective boards of directors, trustees and managers of the aforesaid schools and institutions and each of the said powers and duties shall hereafter be exercised and performed at each of the said schools and institutions by the State Department of Youth Development. The Department shall be responsible for the management of the said schools and institutions and the distribution of appropriations for the maintenance, permanent enlargement and repair thereof, subject to the provisions of the Executive Budget Act, and said Department shall make reports to the Governor annually and oftener if called for by him, of the condition of each of the said schools and institutions and shall make biennial reports to the Governor to be transmitted by him to the General Assembly of all moneys received and disbursed in the operation of each of said schools. The State Department of Youth Development shall administer said schools and institutions in such a manner as to best promote the interest of the delinquent boys and girls committed to its care and the said Board may transfer individual students from one school to another but may not authorize the consolidation or abandonment of any of the said schools. The said Department shall retain possession and administrative control over the physical assets of the said schools and institutions together with all lands, buildings, improvements and properties appertaining thereto and it is authorized and empowered to do all things reasonably necessary in connection therewith for the care, supervision and training of the boys and girls of all races committed to its care. (1947, c. 226; 1963, c. 914, s. 4; 1969, c. 837, s. 4; cc. 901, 1279; 1971, c. 1169.)

§ **134-3. Organization of the Board.**—The State Board of Youth Development is hereby authorized and given full power to meet and organize, and from their number select a chairman and vice-chairman. The Commissioner of Youth Development hereinafter provided for in this Article shall be executive secretary to the Board. All officers of the Board shall serve for a two-year period, which period shall be the same as the State's fiscal biennium. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ **134-4. Meetings of the Board.**—The State Board of Youth Development shall convene at least four times a year and at places designated by the Board. Insofar as practicable, the place of meetings shall rotate among the several schools and institutions. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ **134-5. Executive committee.**—The State Board of Youth Development shall select from its number an executive committee of three members. The powers and duties of the executive committee shall be prescribed by the Board and all actions of this committee shall be reported to the full Board at the next succeeding meeting.

In addition to the executive committee the Board may set up such other committees as may be deemed necessary for the carrying out of the activities of the Board. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ **134-6. Bylaws, rules and regulations.**—The State Board of Youth Development shall make all necessary bylaws, rules and regulations for its own use and for the governing and administering of the schools, institutions and agencies under its control. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ **134-7. Compensation for members of the Board.**—The members of the State Board of Youth Development shall be paid the sum of seven dollars ($7.00) per day and actual expenses while engaged in the discharge of their official duties. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

ARTICLE 2.

Commissioner of Youth Development; Directors; Bonds.

§ **134-8. Commissioner of Youth Development.**—The State Board of Youth Development is hereby authorized and empowered to employ a Commissioner of Youth Development who shall serve all schools, institutions and agencies covered by this Article. The Board shall prescribe the duties and salary of the Commissioner of Youth Development, subject to the approval of the Director of the Budget. The Department may employ secretarial help and such other assistants as in its judgment are necessary to give effect to this Article, subject, however, to the approval of the Director of the Budget. The administrative and executive powers and duties vested in the State Department of Youth Development, including the authority to appoint, promote, demote, and discharge other personnel employed by the Department, shall be delegated to the Commissioner of Youth Development to be administered by him in accordance with controlling law under rules and regulations proposed by him and approved by the State Board of Youth Development.

The Commissioner of Youth Development shall be a person of demonstrated executive ability and shall have such special education, training, experience and natural ability in welfare, educational and correctional work as are calculated to qualify him for the discharge of his duties, such training shall include special study in the social sciences and adequate institutional and practical experiences; and he must be a person of good character. He shall devote his full time to the duties of his employment and shall hold no other office, except that he shall serve as secretary to the State Board of Youth Development.

The salary of the Commissioner of Youth Development and his assistants and the expenses incident to maintaining his office, his travel expenses, and the expenses of the Board members shall be paid out of special appropriations set up for the State Department of Youth Development. The State Department of Administration shall provide suitable office space in the City of Raleigh for the Commissioner and his staff. (1947, c. 226; 1963, c. 914, ss. 4, 5; 1971, c. 1169.)

§ 134-9. Directors.—The State Board of Youth Development shall select a director for each of the schools, institutions and agencies covered by this Chapter. Each director shall be equipped by professional social work training and experience to understand the needs and problems of adolescent boys and girls, to administer an institutional program and to direct professional staff members and other employees. The director of the several institutions, schools and agencies shall be responsible, with the assistance of the Commissioner of Youth Development, for the employment of all personnel. The director of the several schools and institutions shall likewise have the power to dismiss any employee for incompetence or failure to carry out the work assigned to him.

The director shall make monthly reports to the Commissioner of Youth Development on the conduct and activities of the schools, institutions or agencies and on the boys and girls under their care, and such reports on the financial and business management of the schools, institutions or agencies as may be required by the Board of Youth Development. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ 134-10. Bonds for directors and budget officers.—All directors 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; 1971, c. 1169.)

ARTICLE 3.

Commitment, Care and Release.

§ 134-11. Who may be committed.—The schools, institutions and agencies enumerated, and others that now exist or may be hereafter established, shall accept and train all delinquent children of all races and creeds under the age of 18 as may be committed to the State Department of Youth Development by the judges of the General Court of Justice to which assigned or by judges of other courts having jurisdiction provided such persons are not mentally or physically incapable of being substantially benefited by the program of the institution, school or agency. (1947, c. 226; 1971, c. 1169.)

§ 134-12. Removal request by Board.—If any boy or girl under the care of a school, institution or agency shall offer violence to a member of the staff or another boy or girl or do or attempt to do injury to the buildings, equipment, or property of the school, or shall by gross or habitual misconduct exert a dangerous or pernicious influence over other boys and girls, the Department of Youth Development may request the court committing said boy or girl or any court of proper jurisdiction to relieve the Board of the custody of the boy or girl. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ 134-13. Transfer by order of Governor.—The Governor of the State may by order transfer any person under the age of 18 years from any jail or prison in this State to one of the institutions, schools or agencies of correction. (1947, c. 226; 1971, c. 1169.)

§ 134-14. Department to be in position to care for offender before commitment.—Before committing any person to the State Department of Youth

Development, the court shall ascertain whether the State Department of Youth Development is in a position to care for such person and no person shall be sent to the Department until the committing agency has received notice from the Commissioner that such person can be received. It shall be at all times within the discretion of the State Department of Youth Development as to whether the Department will receive any qualified person into any specific school, institution or agency. No commitment shall be made for any definite term but any person so committed may be released or discharged at any time after commitment, as hereinafter provided in this Article. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ **134-15. Delivery to institution.**—It shall be the duty of the authorities from which the person is sent to the State Department of Youth Development by any court to see that such person is safely and duly delivered to the school, institution or agency to which assigned by the Department and to pay all expenses incident to his or her conveyance and delivery to the said school, institution or agency. If the offender be a girl, she must be accompanied by a woman approved by the committing court. (1947, c. 226; 1961, c. 186; 1971, c. 1169.)

§ **134-16. Return of boys and girls improperly committed.**—Whenever it shall appear to the satisfaction of the director of a State school, institution or agency and the State Department of Youth Development that any boy or girl committed to such school, institution or agency is not of a proper age to be so committed, or is not properly committed, or is mentally or physically incapable of being materially benefited by the service of such school, institution or agency, the director, with the approval of the Commissioner of Youth Development, may return such boy or girl to the committing court to be dealt with in all respects as though he or she had not been so committed. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ **134-17. Conditional release; Department may grant conditional release; revocation of release.**—The Department of Youth Development shall have power to grant conditional release to any person in any school, institution or agency under its jurisdiction and may delegate this power to the directors of the various schools, institutions and agencies, under rules and regulations adopted by the Board. Conditional release may be terminated at any time by written revocation by the director, under the rules and regulations adopted by the Board, which written revocation shall be sufficient authority for any officer of the school, institution or agency, or any peace officer to apprehend any person named in such written revocation in any county of the State and to return such person to the institution. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ **134-18. Final discharge.**—Final discharge may be granted by the Commissioner of Youth Development under the rules adopted by the State Board of Youth Development at any time after admission to the school; provided, however, that final discharge must be granted any person upon reaching his 18th birthday, except as provided in G.S. 7A-286. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

Article 4.

Care of Persons under Federal Jurisdiction.

§ **134-19. Care of persons under federal jurisdiction.**—The State Department of Youth Development is hereby empowered to make and enter into contractual relations with the proper officials of the United States for admission to the State schools, institutions and agencies of such federal juvenile delinquents committed to the custody of the Attorney General of the United States as provided in the Federal Juvenile Delinquency Act as would profit from the program and services of the said schools, institutions or agencies. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ 134-20. Term of contract.—Any contract made under the authority and provision of this Article shall be for a period of not more than two years and shall be renewable from time to time for a period of not to exceed two years. (1947, c. 226; 1971, c. 1169.)

§ 134-21. Approval by State Budget Bureau.—Any contract entered into under the provisions of this Article with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or necessary federal agency by any of the contracting institutions for the care of any persons coming within the provisions of this Article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract, before the execution of said contract, shall have the approval of the State Budget Bureau. (1947, c. 226; 1971, c. 1169.)

ARTICLE 5.

General Provisions.

§ 134-22. Care of children born to students.—The Department of Youth Development shall provide counseling services and assistance to students in the schools who give birth to children and shall make appropriate and proper arrangements for the care of such children in cooperation with the committing courts and agencies providing aftercare for students released from the schools. (1971, c. 1169.)

§ 134-23. Return of runaways.—If a boy or girl runs away from a State school, institution or agency, the director thereby may cause him or her to be apprehended and returned to such school, institution or agency. Any employee of the school, institution or agency, or any person designated by the director, or any official of the Department of Social Services, or any peace officer may apprehend and return to the school, institution or agency, without a warrant, a runaway boy or girl in any county of the State, and shall forthwith carry such runaway to the school, institution or agency. (1947, c. 226; 1971, c. 1169.)

§ 134-24. Aiding escapees; misdemeanor.—It shall be unlawful for any person to aid, harbor, conceal, or assist in any way any boy or girl who is attempting to escape or who has escaped from any school, institution or agency of correction and any person rendering such assistance shall be guilty of a misdemeanor. (1947, c. 226; 1971, c. 1169.)

§ 134-25. State Board of Health to supervise sanitary and health conditions.—The State Board of Health shall have general supervision over the sanitary and health conditions of the several schools, institutions and agencies and shall make periodic examinations of the same and report to the State Department of Youth Development the conditions found with respect to the sanitary and hygienic care of the students. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169.)

§ 134-26. Providing necessary medical and surgical treatment for students.—The State Department of Youth Development 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 Department of Youth Development, 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; 1971, c. 1169.)

§ 134-27. General program, education and training.—The Department of Youth Development shall establish and conduct at its schools, institutions and

agencies, such clinical and medical services, such evaluation and diagnostic programs, such courses of academic, social and vocational education, and such programs of recreation, readjustment and rehabilitation as it deems suitable and proper to accomplish the objectives of developing and implementing an individualized program to meet the specific needs of each boy and girl committed to its care and the precepts of religion, morals, good citizenship and industry shall be taught to each such child. (1971, c. 1169.)

§ 134-28. Visits; community activities; post release assistance.— The Department of Youth Development shall encourage visits by parents and responsible relatives to boys and girls in its care; shall sponsor and arrange visits by said boys and girls into respectable homes of neighboring citizens who volunteer their counseling services, and, under proper supervision into neighborhood churches which welcome such attendance; and, upon conditional or final release of any boy or girl shall provide continuing counseling, guidance, assistance and encouragement before and after such release as necessary to achieve for said child adequate motivation and proper social readjustment. (1971, c. 1169.)

§ 134-28.1. Compensation to juveniles.—Persons who are under commitment to the Department of Juvenile Correction may be compensated in accordance with the rules and regulations of the State Board of Juvenile Correction, at rates set by the Board not exceeding ten cents (10¢) per hour, for work performed or attendance at training programs, such work or training programs to take place on the premises of the school where the committed person resides. For the purposes of this section, the Board may accept grants or gifts from any person, private organization, or any governmental entity having authority to make such gifts or grants and may make allocations of funds available for the purposes of this section to the various schools operated by the Board. (1971, c. 933.)

§ 134-29. Legal effect of commitment.—An adjudication that a child less than 16 years of age is delinquent as defined by G.S. 7A-278(2) or commitment of such child to the State Department of Youth Development shall not disqualify the child for public office nor be considered as conviction of any criminal offense nor imprisonment for crime nor cause the child to forfeit any citizenship rights. In the case of any child who was transferred to any institution operated by the State Department of Youth Development as provided by G.S. 134-13, or whose case was transferred from the District Court Division to the Superior Court Division of the General Court of Justice for trial as in the case of adults as provided by G.S. 7A-280 and who was convicted of a felony and committed to said Department, or who was otherwise committed to said Department by the Superior Court Division, all citizenship rights forfeited as a result of such conviction shall be automatically restored to such child upon the child's final discharge under the rules of the State Department of Youth Development, and the Commissioner of Youth Development is authorized to issue a certificate to this effect. (1971, c. 1169.)

§§ 134-30 to 134-114: Repealed by Session Laws 1971, c. 1169, effective November 1, 1971.

Revision of Chapter. — See same catchline in note at the beginning of this Chapter.

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.—The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(5) "Average final compensation" shall mean the average annual compensation of a member during the five consecutive calendar years of membership service producing the highest such average.

(7a) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work.

(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, any member or officer of the General Assembly, 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.

(11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(20) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this Chapter. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(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, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1. 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; 1971, c. 117, ss. 1-5; c. 338, s. 1.)

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).

The first 1971 amendment, effective July 1, 1971, substituted "of membership service" for "within the last ten calendar years of his creditable service" in subdivision (5), added subdivision (7a), inserted "any member or officer of the General Assembly" in the proviso to the first sentence of subdivision (10), added subdivision (11a) and added the second sentence of subdivision (20).

The second 1971 amendment, effective July 1, 1971, added "and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1" at the end of the first sentence in subdivision (25).

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."

Session Laws 1971, c. 837, contains provisions as to the transfer of wildlife protectors from the Teachers' and State Em-

ployees' Retirement System to the Law-Enforcement Officers' Benefit Retirement Fund.

Only the opening paragraph of the section and the subdivisions 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.

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, § 32. 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.

State Government Reorganization.—The Teachers' and State Employees' Retirement System was transferred to the Department of State Treasurer by § 143A-34, enacted by Session Laws 1971, c. 864.

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.—The membership of this Retirement System shall be composed as follows:

(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 90 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 15 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; 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, Cooperative 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: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

(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 apply 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 G.S. 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 G.S. 135-5(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 G.S. 135-5(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 G.S. 135-5(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 G.S. 135-5(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 the allowance described in 1 below reduced by the amount in 2 below.

1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
2. The actuarial equivalent of the retirement benefits he previously received.

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 (beginning January 1

and ending December 31) will not exceed the member's average final compensation. 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 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(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 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; 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; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the afore-stated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 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 Retire-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 60 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, 1971, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 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 upon attaining the age of 50 years or at any time thereafter; 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. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	*Percentage Reduction*
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

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; 1971, c. 117, ss. 6-8; c. 118, ss. 1, 2.)

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).

The first 1971 amendment, effective July 1, 1971, rewrote the second sentence and added subparagraphs 1 and 2 of paragraph d of subdivision (7), inserted "(beginning January 1 and ending December 31)" and substituted "average final compensation" for "annual rate of compensation when he retired" in the first sentence of paragraph e of subdivision (7), changed the date near the beginning of paragraph b of subdivision (8) from July 1, 1963 to July 1, 1971, deleted "and after attaining the age of fifty years" following "creditable service" in that paragraph and added immediately preceding the proviso in that paragraph "upon attaining the age of 50 years or at any time thereafter."

The second 1971 amendment, effective July 1, 1971, added the last proviso to subdivision (3), added the last proviso to the first sentence of paragraph a of subdivision (8) and rewrote the last sentence and added the table in paragraph b 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 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."

Session Laws 1971, c. 118, s. 8, 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 1971 or any future session of the General Assembly to provide the above referred to new or increased benefits."

Only the opening paragraph of the section and the subdivisions changed by the amendments are set out.

Opinions of Attorney General. — Mr. J.E. Miller, Director, Teachers' & State Employees' Retirement System, 8/1/69.

Membership Compulsory; No Exemption for Member of Religious Order. — See opinion of Attorney General to Mr. J.E. Miller, Director, Teachers' & State Employees' Retirement System, 5/12/70.

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 member retiring on a service retirement allowance prior to July 1, 1965, with credit for not less than ten years of membership service who at the time of his retirement did not qualify for credit for his service as a teacher or State employee prior to July 1, 1941, may request on and after July 1, 1971, that his original benefit be recalculated, in accordance with the formula prevailing at the time of his retirement, to include credit for such service with the new benefit to become effective on the first of the month following certification of the claim; 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, 1971, one month of credit for each 20 days or portion thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for service retirement, disability retirement, early retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently returns to service for a period of five years, may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

(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 10 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 G.S. 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; 1971, c. 117, ss. 9, 10; c. 993.)

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 the first paragraph of subsection (e) the provision as to credit for sick leave.

The 1969 amendment, effective July 1, 1969, rewrote subsection (f) and added subsection (h).

The first 1971 amendment, effective July 1, 1971, substituted "July 1, 1971" for "July 1, 1967" in the first paragraph of subsection (e), substituted "purpose of determining eligibility for service retirement, disability retirement, early retirement or for a vested deferred allowance" for "purposes of G.S. 135-3(8)a" at the end of that paragraph and added the second paragraph of subsection (e).

The second 1971 amendment, effective July 1, 1971, inserted the language beginning "provided, that any member retiring on a service retirement allowance" and ending "following certification of the claim" in the first sentence in 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 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.

Sick Leave Included in Creditable Service.—See opinion of Attorney General to Mr. J.E. Miller, Director, Teachers' & State Employees' Retirement System, 7/23/70.

§ **135-5. Benefits.**—(a) Service Retirement Benefits.—

(1) Any member in service may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years, and notwithstanding that, during such period of notification, he may have separated from service.

(2) Effective July 1, 1960, any member in service shall automatically be retired as of July 1, 1960, if he has then attained the age of 65 years, otherwise as of the subsequent July first coincident with or next following his sixty-fifth birthday: Provided that, upon the approval of his employer, any member may be continued in service on a year to year basis.

(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 percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4800.00) plus one and one-half percent (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 percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5600.00) plus one and one-half percent (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 percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5600.00) plus one and one-half percent (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.

(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 (⅓ 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 percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) 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 (¼ 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 (¼ 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 five 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 30 and not more than 90 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 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 60 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, but prior to July 1, 1971.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 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 65 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).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 65 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2).

(e) Reexamination of Beneficiaries Retired for Disability.—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who

has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

(1) Should the medical board report and certify to the Board of Trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the Board of Trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the Retirement System.

(2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement 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. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 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.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a below reduced by the amount in b below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(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 in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, the sum of his contributions and the accumulated regular interest thereon, provided that he has not in the meantime returned to service. 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, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. 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 90 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 2 or Option 3 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 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 acknoweldged 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:

(1) To receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, 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

(2) To receive a reduced retirement allowance during his life with provision for some other benefit to be paid after his death in accordance with a plan submitted to and 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.

(l) 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 G.S. 135-5. For the purposes of this subsection (l), a mem-

ber 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.

The death benefit provided in this subsection (l) 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 12 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 12 months beginning January 1 and ending December 31.
(2) Last day of actual service shall be:
    a. When employment has been terminated, 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) 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) Survivor's Alternate Benefit.—Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

(1) The member had attained age 55 regardless of length of service, or had completed 30 years of service regardless of age.
(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.
(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

(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 (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31st of each year after 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1st of the year of determination shall be entitled to have his allowance increased to the extent indicated in the foregoing table effective on July 1st of the year following the year of determination; provided that any such increase in allowance 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.

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.

(p) Increases in Benefits Paid in Respect to Members Retired Prior to July 1, 1967.—From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o). (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; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7.)

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).

The first 1971 amendment, effective July 1, 1971, rewrote the proviso to subdivision (2) of subsection (a), added the proviso to the first sentence of subdivision (2) and added subdivision (3) of subsection (e), and rewrote Option 5 in subsection (g). In subsection (l) the amendment deleted a proviso at the end of the first paragraph, deleted "(except by retirement)" following "terminated" in subdivision (2)a, eliminated former subdivisions (3) and (4) and redesignated former subdivision (5) as (3). The amendment also rewrote subsection (m) and added "unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below" at the end of the present third sentence of subsection (f).

The second 1971 amendment, effective July 1, 1971, substituted "five" for "ten" near the beginning of subsection (c), added "but prior to July 1, 1971" in the catchline and in the opening paragraph of subsection (d2), added subsection (d3) and rewrote the former first and second sentences of subsection (f) as the present first sentence of the subsection. The amendment also rewrote the former second paragraph of subsection (o) as the present second and third paragraphs of that subsection and added subsection (p).

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."

Session Laws 1971, c. 118, s. 8, 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 1971 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).

§ 135-5.1. Optional retirement program for State institutions of higher education.—(a) An optional retirement program provided for in this section shall be adopted within one year following July 1, 1971, by the following boards, or their successors with respect to the institution or institutions governed by that board:

(1) Board of Trustees of the University of North Carolina.
(2) Board of Trustees of each of the regional universities, and
(3) Board of Trustees of the North Carolina School of the Arts, established under Article 4 of Chapter 116 of the General Statutes.

The optional retirement program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, for administrators and faculty of the particular institution or institu-

tions with the rank of instructor or above who (i) have been members of the Retirement System less than five years as of July 1, 1971, or (ii) were appointed to eligible positions on or after July 1, 1971, hereinafter called "eligible employees." Under such optional retirement program, the State and the participants shall contribute, to the extent authorized or required, toward the purchase of such contracts which shall be issued to such participants.

(b) Elections to participate in the optional retirement program shall be made as follows:

(1) An election to participate in the optional retirement program shall be irrevocable. An eligible employee failing to elect to participate in the optional retirement program within the period prescribed in this section shall automatically remain a member of the Retirement System.

(2) Eligible employees initially appointed on or after the effective date of the adoption of the optional retirement program, shall at the time of entering upon his employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the optional retirement program established pursuant to this section. Such election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into service.

(3) Each eligible employee initially appointed prior to the effective date of the adoption of the optional retirement program, may, within one year from the date of adoption, elect to participate in the optional retirement program. Such election shall be in writing and filed with the Retirement System and with the employing institution and shall become effective on the first day of the second month next following the date of such election and shall constitute a notice of termination of membership in said Retirement System and a request for withdrawal of his accumulated contributions, with regular interest, from the annuity savings fund, thereby waiving all rights and benefits provided by said Retirement System. No matching State funds shall be transferred from the Retirement System.

(4) No election by an eligible employee of the optional retirement program shall be effective unless it shall be accompanied by an appropriate application for the issuance of a contract or contracts under the program.

(5) If any participant, having less than five years' coverage under the optional retirement program, leaves the employ of the participating institution and either retires or commences employment with an employer not having a retirement program with the same company, his contract shall, on his request, be repurchased and the participating institution's contribution shall be refunded to the participating institution and forthwith paid by it to the Retirement System and credited to the pension accumulation fund.

(c) Each Board of Trustees shall contribute on behalf of each participant in such optional retirement program the amount which it or the State of North Carolina would be required to allocate and contribute to the Retirement System for current service for each participant as a member of said Retirement System. Each participant shall contribute the amount which he would be required to contribute if he were a member of said Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant may be made by payroll deduction or salary reduction according to rules and regulations established by each participating board. Additional personal contributions may also be made by a participant in a like manner. Payment of contributions shall be made by the employing institution to the designated company or companies for the benefit of each participant and such employer contributions shall not be subject to any State tax.

(d) A board adopting the optional retirement program shall designate the company or companies from which contracts are to be purchased under the optional retirement program, and shall approve the form and contents of such contracts. In making such designation and giving such approval, the board shall give due consideration to

(1) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;

(2) The relation of such rights and benefits to the amount of contributions to be made;

(3) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in recruiting and retaining faculty in a national market; and

(4) The ability of the designated company or companies to provide such suitable rights and benefits under such contracts for these purposes.

(e) A board adopting the optional retirement program is hereby authorized to provide for the administration of such program and to perform or authorize the performance of all such functions as may be necessary for such purposes.

(f) Any eligible employee electing to participate in the optional retirement program shall be ineligible for membership in the Retirement System so long as he or she shall remain employed in any eligible position by the employing institution or by any other institution governed by the Board of Trustees of the University of North Carolina or the Board of Trustees of any regional university or the Board of Trustees of the NCSA, and, in any such event, he or she shall continue to participate in the optional retirement program.

(g) No retirement benefit, death benefit or other benefit under the optional retirement program shall be paid by the State of North Carolina, or the Board of Trustees of the employing institution, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the optional retirement program or with respect to any beneficiary of any such employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts. (1971, c. 338, s. 2; c. 916.)

Editor's Note. — Session Laws 1971, c. 338, s. 3, makes the act effective July 1, 1971.

The 1971 amendment, effective July 1, 1971, inserted "administrators and" in the second sentence of subsection (a), inserted "or companies" and "employer" in the last sentence of subsection (c), inserted "or companies" near the beginning of subsection (d), and inserted "or companies" in subsection (d)(4).

§ 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 quadrenially 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 increasing 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, Inter-American Development Bank, and Asian 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; 1971, c. 386, s. 4.)

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).

The 1971 amendment added "and Asian Development Bank" at the end of subsection (a)(2).

Only the subsections affected 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 subsection (c).

Investment by Teachers' and State Employees' Retirement System in Government National Mortgage Association Mortgages.—See opinion of Attorney General to Mr. R. Moore, Assistant Treasurer, State of North Carolina, 2/2/70.

§ 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 fif-

teen 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, except as provided for in G.S. 135-4(e).

(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 percent (2.57%) for teachers, and one and fifty-seven one-hundredths percent (1.57%) for State employees, and the accrued liability contribution shall be two and

ninety-four one-hundredths percent (2.94%) for teachers and one and fifty-nine one-hundredths percent (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 percent (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 percent (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 (G.S. 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 percent (5.51%) of the payroll of all teachers and three and sixteen one-hundredths percent (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; 1971, c. 117, s. 10.)

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).

Subsection (b), s. 10, c. 117, Session Laws 1971, added, at the end of subdivision (4) of subsection (b), "except as provided for in G.S. 135-4(e)." Section 19, c. 117, Session Laws 1971, provides that the amendment to subdivision (4) of subsection (b) is effective July 1, 1971.

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.

Amendment Effective July 1, 1972.—Session Laws 1971, c. 117, s. 2, effective July 1, 1972, amends subdivision (3) of subsection (b) of this section to read as follows:

"(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 compensation 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 boards of education to make such payment, the tax levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. 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."

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.

§ 135-16.1. Blind or visually handicapped employees.—On July 1, 1971, all blind or visually handicapped employees employed by the State Commission for the Blind, Bureau of Employment for the Blind Division, shall be enrolled as members of the Teachers' and State Employees' Retirement System. All such employees shall be given full credit for all service theretofore as employees of the State Commission for the Blind, Bureau of Employment for the Blind Division. All retired employees drawing or receiving benefits from and under the private retirement plan purportedly created on December 6, 1966, by the Bureau of Employment for the Blind Division pursuant to a trust agreement purportedly entered into with a private banking institution as trustee shall continue to be paid by the Teachers' and State Employees' Retirement System benefits in the same amount which they purportedly were entitled to under the private retirement plan and trust agreement, except that such retired persons shall be eligible for such annual cost-of-living increases as may be provided for retirement members of the Teachers' and State Employees' Retirement System under the provisions of this Article.

Upon the enrollment of the employees in the Teachers' and State Employees' Retirement System, the purported private retirement plan and trust agreement hereinabove referred to shall be dissolved and terminated. (1971, c. 1025, s. 3.)

Editor's Note.—Session Laws 1971, c. 1025, s. 6, makes the act effective July 1, 1971.

Session Laws 1971, c. 1025, s. 4, provides: "Upon the enrollment of the employees described in sec. 3 [§ 135-16.1] of this act in the Teachers' and State Employees' Retirement System, and the termination of the purported private retirement plan and trust agreement, as provided in Sec. 3 of this act, the board of trustees of the Teachers' and State Employees' Retirement System shall become entitled to all the assets of the purported trust and the trustee of the trust shall transfer all the assets to the board, and thereupon, all obligations and responsibilities of the trustees with respect to the trust funds and the trust agreement shall terminate. Nothing contained in this section shall be construed to relieve the trustee of the private retirement plan from liability for any negligent or wrongful act or omission occurring prior to the transfer of assets provided for herein."

§ 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 on or after July 1, 1971, 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 while his account in the local system is active 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.

(d) The Board of Trustees of the Retirement System shall effect such rules as it may deem necessary to prevent any duplication of service, interest or other credits which might otherwise occur. (1951, c. 797; 1961, c. 516, s. 7; 1965, c. 780, s. 1; 1969, c. 1223, s. 15; 1971, c. 117, ss. 16, 17.)

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).

The 1971 amendment, effective July 1, 1971, changed the date near the beginning of the second sentence of subsection (a) from July 1, 1951, to July 1, 1971, and substituted "while his account in the local system is active" for "within five years from date of separation from employment covered by the local system" in the first proviso to that sentence. The amendment also deleted former subsection (d) and designated former subsection (e) as (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."

Only the subsections changed by the amendments are 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.

State Government Reorganization.—The Public Employees' Social Security Agency was transferred to the Department of State Treasurer by § 143A-36, enacted by Session Laws 1971, c. 864.

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, while his account remains active, 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 while his account is active, 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.

(c) Any member who, on or after July 1, 1971, becomes employed by an employer of the North Carolina Local Governmental Employees' Retirement System as provided in (a) above shall be entitled to waive the provisions of (b) above and to transfer to the local system his credits for membership and prior service in this System provided such member shall request this System to transfer his accumulated contributions, interest and service credits to the local system. If such request is made, in addition to the member's accumulated contributions, interest and service credits, there shall be transferred to the local system the amount of reserve held in this System as a result of previous employer contributions on behalf of the transferring employee. (1953, c. 1050, s. 2; 1961, c. 516, s. 6; 1965, c. 780, s. 1; 1971, c. 117, ss. 16, 18.)

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).

The 1971 amendment, effective July 1, 1971, substituted "while his account remains active" for "within five years from date of such termination" and "while his account is active" for "within five years after such teacher or State employee has ceased to be a teacher or State employee" in the first sentence of subsection (a) and added subsection (c).

"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.

Article 3.

Other Teacher, Employee Benefits.

§ **135-32. Health benefits division.**—The board of trustees of the Teachers' and State Employees' Retirement System is hereby directed to establish a division of health benefits for providing the services authorized by this Article. (1971, c. 1009, s. 1.)

Editor's Note. — Session Laws 1971, c. 1009, s. 5, makes the act effective July 1, 1971.

§ **135-33. Hospital and medical insurance.**—The board of trustees of the Retirement System shall formulate, establish and administer for teachers and State employees a program of hospital and medical care benefits to the extent that funds for such benefits are specifically appropriated by the General Assembly to the board. Such a program may be provided by the board either directly or through the purchase of contracts therefor, or any combination thereof, as in its discretion it may deem wise and expedient. In awarding any contracts pursuant to this section, the board shall give consideration to the total or overall cost of complete family coverage by teachers and State employees. (1971, c. 1009, s. 1.)

§ **135-34. Disability salary continuation.**—The board of trustees of the Retirement System shall formulate, establish and administer for teachers and State employees with one or more years of service a program of disability salary continuation benefits to the extent that funds for such benefits are specifically appropriated by the General Assembly to the board. Such a program may be provided by the board either directly or through the purchase of contracts therefor, or any combination thereof, as in its discretion it may deem wise and expedient. (1971, c. 1009, s. 1.)

§ **135-35. Advisory committee.**—The board of trustees is authorized to appoint such advisory committees as it may deem advisable to assist the board and the health benefits division in formulating and administering the programs authorized by this Article. Members of such committees shall be paid the same per diem and travel allowance as is authorized generally for State boards and commissions. (1971, c. 1009, s. 1.)

§ 135-36. Membership in Retirement System not necessary. — The fact that a teacher or State employee is not a member of the Teachers' and State Employees' Retirement System does not affect his right to benefits provided under this Article, with the exception of school bus drivers in the public school system and temporary and part-time employees, who are specifically excluded. (1971, c. 1009, s. 1.)

Chapter 136.

Roads and Highways.

Article 1.

Organization of State Highway Commission.

Article 2.

Powers and Duties of Commission.

Article 3.

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Article 3A.

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ARTICLE 1.

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.

State Government Reorganization.—The State Highway Commission was transferred to the Department of Transportation and Highway Safety by § 143A-99, enacted by Session Laws 1971, c. 864.

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 SE.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 Com-

mission, 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 appointed 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. Malfeasance 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.— The 1965 amendment, effective July 1, 1965, rewrote this section, which formerly 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 con-

nection 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.—The said State Highway Commission shall be vested with the following powers:

(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).

(17) The State Highway Commission is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Commission is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The State Highway Commission is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(21) The State Highway Commission is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the State Highway Commission shall take reasonable steps to notify the owner thereof by mail or other means.

(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.

(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.

(24) The State Highway Commission is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The State Highway Commission is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Highway Commission shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly. (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; 1971, cc. 289, 291, 292, 977.)

Cross References.—

As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160-61.2. As to Commission's power of eminent domain, see § 136-19 and note thereto.

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1966, added subdivision (22).

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).

The first 1971 amendment added the last sentence in subdivision (21).

The second 1971 amendment, in subdivision (17), deleted "And" preceding "Said" at the beginning of the second sentence, inserted "construct, pave, and" in that sentence, substituted "school bus driveways and" for "and repair" therein, and added the last sentence.

The third 1971 amendment added subdivision (24).

The fourth 1971 amendment added subdivision (25).

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."

Only the opening paragraph of the section and the subdivisions added or changed by the amendments are 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.

The word "highway" includes the word "ferry," a public ferry being merely a part of a highway. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

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 Highway 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 statewide 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).

Applied in North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969); North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

Quoted in North Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 136-19. Acquirement of land and deposits of materials; condemnation proceedings; federal parkways.—The State Highway Commission is vested with the power to acquire either in the nature of an appropriate easement or in fee simple such rights-of-way and title to such land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, either by purchase, donation, or condemnation, in the manner hereinafter set out. If any parcel is acquired in fee simple as authorized by this section and the Commission later determines that the parcel is not needed for highway purposes, first consideration shall be given to any offer to repurchase made by the owner from whom said parcel was acquired or the heirs or assigns of such owner. The Commission is also vested with the power to acquire such additional land alongside of the rights-of-way or roads as in its opinion may be necessary and proper for the protection of the roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes. The Commission may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for right-of-way purposes.

Whenever the Commission and the owner or owners of the lands, materials, and timber required by the Commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the Commission is hereby vested with the power to condemn the lands, materials, and timber and in so doing the ways, means, methods, and procedure of Article 9 of this Chapter shall be used by it exclusively.

The State Highway Commission shall have the same authority, under the same provisions of law provided for construction of State highways, for acquirement of all rights-of-way and easements necessary to comply wtih the rules and regulations of the United States government for the construction of federal parkways and entrance roads to federal parks in the State of North Carolina. The acquirement of a total of one hundred twenty-five acres per mile of said parkways, including roadway and recreational and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right-of-way acquired or appropriated may, at the option of the Commission, be a fee simple title. The said Commission is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the State Highway Commission, payable out of the construction fund of said Commission. Any conveyance to the United States Department of Interior of land acquired as provided by this section shall contain a provision whereby the State of North Carolina shall retain concurrent jurisdiction over the areas conveyed. The governor is further authorized to grant concurrent jurisdiction to lands already conveyed to the United States Department of Interior for parkways and entrances to parkways.

The action of the State Highway Commission heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Commission in furtherance of the public interest.

When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or

remove any timber from said areas pending the filing of said maps after receiving notice from the State Highway Commission that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the State Highway Commission for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights-of-way on other property by the State Highway Commission. (1921, c. 2, s. 22; 1923, c. 160, s. 6; C. S., s. 3846(bb); 1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; 1949, c. 1115; 1953, c. 217; 1957, c. 65, s. 11; 1959, c. 1025, s. 1; cc. 1127, 1128; 1963, c. 638; 1971, c. 1105.)

Editor's Note.—

The 1971 amendment, in the third paragraph, deleted "hereinbefore" following "law" in the first sentence, deleted the language following "be a fee simple title," in the third sentence, and added the sixth and seventh sentences.

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). For article on recent developments in North Carolina law of eminent domain, see 48 N.C.L. Rev. 767 (1970).

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).

As a State agency, the Highway Commission possesses the power of eminent domain for the purpose of acquiring property and property rights necessary to carry out its designated functions. North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969).

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 SE.2d 658 (1965); Givens v. Sellars, 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 Highway Commission has the responsibility of repairing, whenever possible, damage caused by a highway project, and it is not precluded by the law or Constitution from making reasonable use of land acquired for the project in doing so. North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969).

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).

It is elementary law that the Highway Commission can condemn property only for a public purpose. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

What constitutes a public use is a judicial question to be decided by the court as a matter of law. North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969).

Any highway condemnation proceeding may incite controversy as to whether the proposed road will serve a public or private purpose. This question, when the facts are determined, is one of law for the courts. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

Commission Cannot Take Land Solely to Construct Road for Private Use. — The Highway Commission cannot take the land of one property owner for the sole purpose of constructing a road for the private use of another. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

But It May Provide for Access to Property Otherwise Landlocked by Highway. —Condemnation of land by the State Highway Commission to provide access to private property which otherwise would have been landlocked by the Highway Commission's construction of a controlled access interstate highway was for a public purpose and was authorized by this section, and §§ 136-89.49 and 136-89.52. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

Condemnation of property by the Highway Commission for the sole purpose of providing a private driveway into adjoining property which had been landlocked as the result of the construction of a controlled access freeway is a taking for a public purpose, where the driveway is constructed in connection with the freeway project and not as a separate and distinct project completely unrelated to any public undertaking, and since the landlocking of the property was a damage to the owners thereof, which if not repaired, would have entitled them to compensation. North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969).

Procuring an easement and creating a right-of-way for the benefit of parcels of land incidentally deprived of all or of some means of access to an existing way by reason of the construction of a turnpike, throughway, freeway or other limited access highway has been held to be for a public use. North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969).

A service road alleviating a landlocked condition caused by the construction of a freeway constituted a public use whether such road served one property owner or many. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

Attack on Commission's Authority to Condemn Property Precluded by Withdrawal of Sum Paid into Court as Compensation.—Defendant's withdrawal of the amount paid into court by the Highway Commission as its estimate of just compensation precluded an attack on the Commission's authority to condemn the property in question. North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969).

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 cre-

ated 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 Personalty from Leasehold Estate.—When a leasehold estate is taken under the power of eminent domain, the ownership of personalty 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 Not 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 Highway 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 asserted. 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 acceses 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, § 25, 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 Applies Only to Specific Factual Situations. — Although this section and § 62-237 may indicate a legislative trend in the field of allocating costs of grade crossing improvements, these statutes fall short of establishing a State policy applicable to factual situations other than those to which they relate in express and specific terms. Southern Ry. v. City of Winston-Salem, 275 N.C. 465, 168 S.E.2d 396 (1969).

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).

This section does not apply where the streets involved, at the location of the crossings, are not links in or parts of the State highway system. Southern Ry. v. City of Winston-Salem, 275 N.C. 465, 168 S.E.2d 396 (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).

Quoted in City of Raleigh v. Norfolk S. Ry., 275 N.C. 454, 168 S.E.2d 396 (1969).

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 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).

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: Repealed by Session Laws 1971, c. 972, s. 6, effective January 1, 1972.

Editor's Note. — Session Laws 1971, c. 972, s. 6, provides: "G.S. 136-28 is hereby repealed, provided however, the repeal of G.S. 136-28 shall have no application to those contracts and bonds to which section 3 [G.S. 136-28.3] of this act does not apply, and as to those contracts the law that was in effect prior to the passage of this act shall apply."

The 1969 amendment substituted "twelve (12)" for "six (6)" in the second sentence of the second paragraph in the replacement volume.

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).

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).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.—(a) All contracts over ten thousand dollars ($10,000) that the Commission may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the State Highway Commission. The right to reject any and all bids shall be reversed to the Commission.

(b) In those cases in which the amount of the work to be let to contract for highway construction or repair is ten thousand dollars ($10,000) or less, at least three informal bids shall be solicited. Upon a written determination of the State Highway Purchasing Officer that the soliciting of three bids is not feasible and is not in the public interest, the requirement may be waived.

(c) The construction and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the State Highway Commission shall be deemed highway construction or repair for the purpose of G.S. 136-28.1 and G.S. 136-28.3 and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the State Highway Purchasing Officer that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived. The bond requirements of G.S. 136-28.3 shall not apply to ferry repair or construction.

(d) The construction and repair of the highway rest area buildings and facilities, weight stations and the Commission's participation in the construction of welcome center buildings shall be deemed highway construction or repair for the purpose of G.S. 136-28.1 and G.S. 136-28.3 and Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."

(e) The Commission may enter into contracts for construction or repair without complying with the bidding requirements of this section upon a determination of the chairman of the State Highway Commission or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the State Highway Commission to comply with the bidding requirements.

(f) Contracts for professional engineering services may be let without taking and considering bids or proposals. However, the Commission is encouraged to solicit proposals when it is in the public interest to do so.

(g) The Commission may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Commission may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Commission is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so. (1971, c. 972, s. 1.)

Editor's Note. — Session Laws 1971, c. 972, s. 5, makes the act effective Jan. 1, 1972.

§ 136-28.2. Relocated highways; contracts let by others.—The State Highway Commission is authorized to permit power companies and governmental agencies, including agencies of the federal government, when it is necessary to relocate a public highway by reason of the construction of a dam, to let contracts for the construction of the relocated highway. The construction shall be in accordance with the State Highway Commission standards and specifications. The Commission is further authorized to reimburse the power company or governmental agency for betterments arising out of the construction of the relocated highway, provided the bidding and the award is in accordance with the Commission's

regulations and the Commission approves the award of the contract. (1971, c. 972, s. 2.)

Editor's Note.—Session Laws 1971, c. 972, s. 5, makes the act effective Jan. 1, 1972.

§ 136-28.3. Performance bonds; enforcement.—(a) The State Highway Commission shall require a performance bond and a payment bond of any contractor awarded a highway construction or repair contract which exceeds the sum of ten thousand dollars ($10,000). The performance bond and the payment bond shall be acceptable to the Commission and each shall be in the amount of the contract awarded, provided that the amount of the bonds may be rounded to the nearest five dollars ($5.00). Each of such bonds shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina.

(b) The performance bond shall be conditioned upon the faithful performance of the contract in accordance with the plans and specifications and conditions of the contract. Such bond shall be for the protection of the State Highway Commission.

(c) The payment bond shall be conditioned upon the prompt payment of all such material furnished or labor performed in the prosecution of the work called for in contract. The payment bond shall be solely for the protection of persons or firms furnishing materials or performing labor in or about the construction of the highway project for which the contractor or subcontractor is liable. "Labor or materials" shall include, but without limitation, water, gas, power, light, heat, oil, gasoline, telephone services, and rental of equipment or the reasonable value of the use of equipment directly applicable to the contract. The payment bond shall cover materials furnished or labor performed in the prosecution of the work called for in the contract regardless of whether or not it enters into and becomes a component part of the public improvement.

(d) Subject to the provisions of subsection (e) hereof, any claimant who has performed labor or furnished material in the prosecution of the work provided for in any contract for which a payment bond has been given pursuant to the provisions of this section, and who has not been paid in full therefor before the expiration of 90 days after the date on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond in his own name, to recover any amount due him for such labor or material and may prosecute such action to final judgment and have execution on the judgment.

(e) Any claimant who has a direct contractual relationship with any subcontractor of the prime contractor who gave such payment bond but has no contractual relationship, express or implied, with such prime contractor, may bring an action on the payment bond only if he has given written notice to such contractor within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person or persons for whom the work was performed or to whom the material was furnished. The failure to file such a notice as required by this subsection shall be a complete bar against any recovery on the bond of the contractor and the surety thereon.

(f) The notice required by subsection (e) may be served on the contractor by registered mail, postage prepaid in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or served in any manner in which legal process may be served in the manner now or hereafter provided by law for the service of a summons.

(g) Every action on a payment bond as provided for in this section shall be brought in the appropriate court where the contract or any part thereof for which

the bond was given was to be performed. No surety shall be liable under the payment bond for more than the amount of the payment bond.

(h) Any person entitled to bring an action shall have the right to require the Commission to furnish a certified copy of the payment bond. It shall be the duty of the Commission to give any such person a certified copy thereof upon proper notice and request. The Commission may require a reasonable payment for the cost of furnishing the certified copy.

(i) No suit or action shall be commenced on a payment bond given pursuant to this section after the expiration of six months following the date on which the contractor receives the final estimate and payment therefor.

(j) Every bond given by any contractor to the State Highway Commission for the construction or repair of highways as required by this section shall be conclusively presumed to have been given in accordance therewith, whether such bond be so drawn as to conform to the statute or not, and this statute shall be conclusively presumed to have been written into every such bond so given. (1971, c. 972, s. 3.)

Editor's Note. — Session Laws 1971, c. 972, s. 5, makes the act effective Jan. 1, 1972.

Session Laws 1971, c. 972, s. 4, provides that this section shall "apply only to those contracts for which invitation for bids were issued after the effective date of this act."

Session Laws 1971, c. 972, s. 6, provides: "G.S. 136-28 is hereby repealed, provided however, the repeal of G.S. 136-28 shall have no application to those contracts and bonds to which section 3 [G.S. 136-28.3] of this act does not apply, and as to those contracts the law that was in effect prior to the passage of this act shall apply."

§ 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 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).

Construction of Section.—In determining whether this section authorizes a suit, the district court notes the principle that statutes in derogation of the common law are generally construed strictly. On the other hand, as a remedial statute, it ought to receive from the courts such a construction as will remedy the existing evil so as to advance the remedy and permit the courts to bring the parties to an issue. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

The rule that statutes waiving governmental immunity must be strictly construed does not compel the court to take the strictest possible view of this section, permitting suit against the Highway Commission on claims arising out of construction contracts, but the district court will simply examine the language of the statute within its context, mindful of the principle that the intent of the legislature controls the interpretation of a statute. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

Former Methods for Presenting Claims.—Prior to enactment of this section, one who had any claim growing out of a contract with the Commission could not bring suit against the Commission, for it is a State agency and no consent to suit has been given. The claimant might present his claim to the General Assembly or he might invoke the original jurisdiction of the Supreme Court under N.C. Const., Art. IV, § 9 (now § 10). The latter course was not very satisfactory for the court has said that in such a proceeding it will consider only questions of law. The decision of the court, if in favor of the claimant, was simply recommendatory and was reported to the next General Assembly for its action. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

General Assembly Relieved of Judicial Function.—The attitude of the General Assembly, which enacted this section, was to relieve that body from the judicial function of passing upon certain claims against the State. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

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).

A ferryboat is included in the term "highway" as used in this section. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

And Action on Contract for Maintenance and Reconditioning of Ferryboats Is Authorized.—This section authorizes an action against the State Highway Commission on a contract for the maintenance and reconditioning of ferryboats used in the North Carolina highway system. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

As "Maintenance" Is Deemed to Be Included within "Construction" for Purposes of Section.—A contract for the establishment of a ferry, which the Commission may undertake by § 136-82, is equivalent to the "construction of a highway." Repair or reconditioning, i.e., "maintenance"—which the Commission may undertake by § 136-82—as a means of reestablishing ferry service, is a lesser act and is deemed to be included within "construction" for the adjustment of claims under this section. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

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 Commission 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.

§ 136-33. Injuring or removing signs; rewards.—(a) Any person who shall willfully deface, injure, knock down or remove any sign posted as provided in G.S. 136-26, G.S. 136-30, or G.S. 136-31 shall be guilty of a misdemeanor.

(b) Any person who without just cause or excuse shall have in his possession any highway sign as provided for by G.S. 136-26, G.S. 136-30, or G.S. 136-31 shall be guilty of a misdemeanor.

(c) The State Highway Commission is authorized to offer a reward of two hundred dollars ($200.00) for information leading to the arrest and conviction of persons who violate the provisions of this section; such reward to be paid from funds of the State Highway Commission. (1927, c. 148, s. 57; 1971, c. 671.)

Editor's Note. — The 1971 amendment designated the former provisions of this section as subsection (a) and inserted the word "willfully" and the reference to § 136-26 therein and added subsections (b) and (c).

§ 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 net amount after refunds that was produced during the fiscal year by a one cent (1¢) tax on each gallon of motor fuel as taxed by G.S. 105-434 and G.S. 105-435, to be allocated in cash on or before October 1st of each year to the cities and towns of the State in accordance with the following formula.

Seventy-five percent (75%) of said funds 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 twenty-five percent (25%) of said funds 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 does not form a part of the highway system bears to the total mileage of the 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 G.S. 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 (1¢) per gallon additional tax on gasoline imposed by Chapter 46 of the Session Laws of 1965, unless and until said additional one-cent (1¢) per gallon gasoline tax produces funds which are not needed for or committed by 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 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 G.S. 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 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 G.S. 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; 1971, c. 182, ss. 1-3.)

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.

The 1971 amendment, in the first para-

graph, substituted "net amount after refunds" for "amount," substituted "a one cent tax" for "½ of one-cent tax," inserted "as" following "gallon of motor fuel," and substituted "October 1st of each year" for "October first each year after March 15, 1951." In the second paragraph, the amendment substituted "Seventy-five percent (75%) of said funds" for "One half of said fund," substituted "Twenty-five percent (25%) of said funds" for "one half of said fund," substituted "does not form" for "do not form," and inserted "the" preceding "public streets in all eligible municipalities." The amendment also deleted references to Chapter 1250 of the Session Laws of 1949 throughout the fifth paragraph.

Session Laws 1971, c. 182, s. 5, provides: "Sections 3 and 4 of this act shall become effective upon ratification. Sections 1 and 2 of this act shall become effective July 1, 1971, provided that neither the appropriations made from the State Highway Fund for the fiscal year 1970-1971 nor the allocation of such funds appropriated shall be affected by this act."

Eligibility of Municipality Incorporated Prior to Jan. 1, 1945.—See opinion of Attorney General to Mr. Wm. F. Caddell, Jr., 41 N.C.A.G. 307 (1971).

Improper to Spend Powell Bill Funds to Finance Engineering Studies under the TOPICS program. — See opinion of Attorney General to Mr. James A. Hudson, 41 N.C.A.G. 359 (1971).

§ 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 G.S. 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 G.S. 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 G.S. 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 G.S. 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 G.S. 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 G.S. 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 re-

quest 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.

The State Highway Commission is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said highway Commission, which the municipality fails to pay:

(1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,

(2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,

(3) For any other work performed for the municipality by the Commission or its contractor by agreement between the Commission and the municipality, and

(4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 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.

The 1971 amendment added the last paragraph.

Session Laws 1971, c. 182, s. 5, provides: "Sections 3 and 4 of this act shall become effective upon ratification. Sections 1 and 2 of this act shall become effective July 1, 1971, provided that neither the appropriations made from the State Highway Fund for the fiscal year 1970-1971 nor the allocation of such funds appropriated shall be affected by this act."

§ 136-42: Transferred to § 136-42.2 by Session Laws 1971, c. 345, s. 2.

§ 136-42.1. Archaeological objects on highway right-of-way. — The State Highway Commission is authorized to expend highway funds for reconnaissance surveys, preliminary site examinations and salvage work necessary to retrieve and record data and the preservation of archaeological and paleontological objects of value which are located within the right-of-way acquired for highway construction. The State Department of Archives and History shall be consulted when objects of scientific or historical significance might be anticipated or encountered in highway right-of-way and a determination made by that Department as to the National, State, or local importance of preserving any or all fossil relics, artifacts, monuments or buildings. The State Department of Archives and History shall request advice from other agencies or institutions having special knowledge or skills that may not be available in the said Department for the determination of the presence of or for the evaluation and salvage of prehistoric archaeological or paleontological remains within the highway right-of-way. The State Highway Commission is authorized to contract with the State Department of Archives and History and to provide funds necessary to perform reconnaissance surveys, preliminary site examination and salvage operation at those sites determined by the Department of Archives and History to be of sufficient importance to be preserved for the inspiration and benefit of the people of North Carolina. The State Department of Archives and History is authorized to enter into contracts and to make arrangements to perform the necessary work pursuant to this section. The State Department of Archives and History shall assume possession and responsibility for any and all historical objects and is authorized to enter into agreements with governmental units and agencies thereof, institutions, and charitable organizations for the preservation of any or all fossil relics, artifacts, monuments, or buildings. (1971, c. 345, s. 1.)

§ 136-42.2. Markers on highway; cooperation of Commission.—The State Highway Commission is hereby authorized to cooperate with the State Department of Archives and History in marking historic spots along the State highways. (1927, c. 226, s. 1; 1933, c. 172, s. 17; 1943, c. 237; 1957, c. 65, s. 11; 1971, c. 345, s. 2.)

Editor's Note.—
The above section was formerly numbered § 136-42. It was renumbered § 136-42.2 by Session Laws 1971, c. 345, s. 2.

§ 136-42.3. Historical marker program.—The State Highway Commission is hereby authorized to expend not more than ten thousand dollars ($10,000.00) a year for the purpose of purchasing historical markers, to be erected by the State Highway Commission on sites selected by the State Department of Archives and History which Department shall also prepare the inscriptions and deliver the completed markers to the State Highway Commission. This expenditure is hereby declared to be a valid expenditure of State highway maintenance funds. No provision in this section shall be construed to prevent the expenditure of any federal highway funds that may be available for this purpose. (1935, c. 197; 1943, c. 237; 1951, c. 766; 1955, c. 543, s. 2; 1957, c. 65, s. 11; 1971, c. 345, s. 2.)

Editor's Note.—
The above section was formerly numbered § 136-43. It was renumbered § 136-42.3 by Session Laws 1971, c. 345, s. 2.

Funds for Historical Markers Not to Be Used for Other Purchases.—See opinion of Attorney General to Mr. George S. Willoughby, Jr., State Highway Commission, 41 N.C.A.G. 241 (1971).

§ 136-43: Transferred to § 136-42.3 by Session Laws 1971, c. 345, s. 2.

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).

Cited in North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969); North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

§ 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 prinicipal 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 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).

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).

No Retroactive Application to Allow Payment for. — See opinion of Attorney General to Mr. Hobart Brantley, Spring Hope Town Attorney, 2/25/70.

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 'Director 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.

Complaint Must Allege Road Is Neighborhood Public Road or Refer to This Article.—In a plaintiff's action seeking to enjoin defendants from obstructing an alleged public road, where the complaint does not allege that the road in controversy is a neighborhood public road nor does it refer to this Article, defendants are not entitled to a dismissal of the action on the ground that the action is one to establish a neighborhood public road under this Chapter and the clerk of superior court therefore has original jurisdiction over the action. Gragg v. Burns, 9 N.C. App. 240, 175 S.E.2d 774 (1970).

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).

Cited in Walton v. Meir, 10 N.C. App. 598, 179 S.E.2d 834 (1971).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

Review of the Law Regarding Appeals in Cartway Proceedings Prior to 1931. — See Lowe v. Rhodes, 9 N.C. App. 111, 175 S.E.2d 721 (1970).

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).

Possession and Use of Land Pending Appeal.—The provision in § 40-19, which gives the court the authority to give possession and use of land to the condemnor while pending appeal, is not applicable to proceedings to establish a cartway brought under this section. Lowe v. Rhodes, 9 N.C. App. 111, 175 S.E.2d 721 (1970).

Dismissal by Clerk a Final Order.—The order of the clerk of superior court that petitioners' action be dismissed was certainly a "final order" within the meaning of this section. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

Reviewable by Judge Without Delay. — Where the only issue to be tried has been determined adversely to the petitioners by the clerk of superior court, they have a right to have that determination reviewed by the judge of superior court, without further delay. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

Superior Court Acquires Full Jurisdiction of Appeal from Clerk's Order.—Upon the docketing of an appeal of a clerk's final order on the civil issue docket the superior court acquires full jurisdiction thereof. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

And Trial Is De Novo.—

When a case involving a cartway is appealed from the clerk to the superior court, trial in superior court is de novo. Lowe v. Rhodes, 9 N.C. App. 111, 175 S.E.2d 721 (1970).

Therefore, it is its duty to determine the issues of fact and questions of law involved. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

The issue to be tried, etc.—

The issue to be tried in superior court is the same as before the clerk—whether petitioners are entitled to a cartway over some lands. It involves only the elements set out in § 136-69. Lowe v. Rhodes, 9 N.C. App. 111, 175 S.E.2d 721 (1970).

If the issue to be determined by the judge on appeal is whether petitioners are entitled to a cartway over some lands, it does not involve the actual location of the road or whose land shall be burdened thereby, these being questions to be initially determined by the jury of view. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

Procedure Where Petitioners Entitled to Cartway.—If the judge determines that the

petitioners are entitled to a cartway, he should so order and remand the matter to the clerk of superior court for the appointment of a jury of view and for further proceedings as prescribed by this section. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

Or Where Additional Parties Deemed Necessary. — If the judge feels that additional parties respondent are necessary before a determination of the appeal, he should enter such orders as necessary to bring them in, but it is not proper to remand the matter to the clerk of superior court without first passing upon the merits of petitioners' appeal. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

Or Where Clerk's Ruling Upheld.—If the clerk of superior court's ruling that the petitioners are not entitled to a cartway is upheld by the judge of superior court, the proceeding should be dismissed. Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

§ 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)

The issue to be tried, etc.—

The issue to be tried in superior court is the same as before the clerk—whether petitioners are entitled to a cartway over some lands. It involves only the elements set out in this section. Lowe v. Rhodes, 9 N.C. App. 111, 175 S.E.2d 721 (1970).

Cited in Taylor v. Askew, 11 N.C. App. 386, 181 S.E.2d 192 (1971).

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 6.

Ferries and Toll Bridges.

§ 136-82. State Highway Commission to establish and maintain ferries.

Establishment or Maintenance of Ferry Deemed Construction of Highway for Purposes of Claims Adjustment.—A contract for the establishment of a ferry, which the Commission may undertake by this section, is equivalent to the "construction of a

highway." Repair or reconditioning, i.e., "maintenance"—which the Commission may undertake by this section—as a means of reestablishing ferry service, is a lesser act and is deemed to be included within "construction" for the § 136-29 adjustment of claims. Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

§ 136-83. Control of county public ferries and toll bridges transferred to State.

Quoted in Wilmington Shipyard, Inc. v. North Carolina State Highway Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

§ 136-89. Safety measures; guard chains or gates.

Cited in North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (1969).

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.

"Frontage Road".—A road constructed by the Highway Commission to provide access to private property which would otherwise be landlocked by construction of a controlled-access highway is a "frontage road" within the meaning of this section and § 136-89.52. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

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.

For article on recent developments in North Carolina law of eminent domain, see 48 N.C.L. Rev. 767 (1970).

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).

At common law the owner of land abutting a highway, while not entitled to access at all points along the boundary between his land and the highway, has a special right of easement for access purposes, and substantial interference with this free and convenient access to the highway is a "taking" of a property right for which he may recover just compensation. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (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).

The landowner has an easement consisting of the right of reasonable access to the particular highway on which his land abuts. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (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).

A landowner has no constitutional right to have anyone pass by his premises at all. Highways are built and maintained for public necessity, convenience and safety in travel and not for the enhancement of property along the route. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

"Frontage Road".—A road constructed by the Highway Commission to provide access to private property which would otherwise be landlocked by construction of a controlled-access highway is a "frontage road" within the meaning of this section and § 136-89.49. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

"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).

A landowner is entitled to compensation where there is a complete denial of access, even if such access did not previously exist because the road in question is a newly constructed limited access facility. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

But Not Where He Is Provided with Freely Accessible Service Road.—A landowner is entitled to no compensation for the restriction of access where he is provided with a freely accessible service road connecting with the highway on which his property formerly abutted. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

Or Where He Is Merely Inconvenienced. — When a road or street is closed or abandoned so as to leave the landowner's property on a cul-de-sac and increase the distance one must travel to reach points in one direction, such inconvenience is not compensable. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

An abutting landowner is not entitled to compensation because of circuity of travel to and from his property; such inconvenience is held to be no different in kind, but merely in degree, from that sustained by the general public, and is damnum absque injuria. This principle does not extend to a situation where the closing of a road, even though private in nature, cuts off the landowner's access to any public road. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

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).

Refusing Access Retained under Right-of-Way Agreement. — Compensation must be paid where under a right-of-way agreement the owner retains the right of access at a particular point and is subsequently refused access at that point. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

Extent That Value of Land Is Diminished by Denial of Access.—To completely cut off one's access over a private way or neighborhood road to the nearest public road, without providing other reasonable access 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. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

Limiting Access to One Traffic Lane by Construction of Median Strip. — The construction of a median strip so as to limit landowner's ingress and egress to lands for southbound travel when he formerly had direct access to both the north and southbound lanes has been held to be a valid traffic regulation adopted by the Highway Commission in the exercise of the police power vested in it by statutes. Injury, if any, caused thereby is not compensable. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

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 prede-

cessor 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).

Condemnation of Land to Provide Access to Landlocked Private Property. — Condemnation of land by the State Highway Commission to provide access to private property which otherwise would have been landlocked by the Highway Commission's construction of a controlled access interstate highway was for a public purpose and was authorized by this section and §§ 136-19 and 136-89.49. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

A service road alleviating a landlocked condition caused by the construction of a freeway constituted a public use whether such road served one property owner or many. North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

Restriction of Access to Protect Those Using Highway. — While a substantial or unreasonable interference with an abutting landowner's access constitutes the taking of a property right, the restriction of his right of entrance to reasonable and proper points so as to protect others who may be using the highway does not constitute a taking. Such reasonable restriction is within the police power of the sovereign and any resulting inconvenience is damnum absque injuria. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

When access has been interfered with by the State the question involved is one of "degree." If the interference is not substantial and if reasonable means of ingress and egress remains or is provided, there has been a legitimate exercise of the police power. If the interference is substantial and no reasonable means of ingress and egress remains or is provided, there has been a taking of a property right under the power of eminent domain. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

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.

Editor's Note.—For article on recent developments in North Carolina law of eminent domain, see 48 N.C.L. Rev. 767 (1970).

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, and 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.

Cited in North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

ARTICLE 6E.

North Carolina Turnpike Authority.

§§ 136-89.59 to 136-89.76: Repealed by Session Laws 1971, c. 882, s. 4, effective July 1, 1971.

§ 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).

§ 136-91. Placing glass, etc., or injurious obstructions in road.—(a) No person shall throw, place, or deposit any glass or other sharp or cutting substance or any injurious obstruction in or upon any highway or public vehicular area.

(b) As used in this section:

(1) "Highway" shall be defined as it is in Article 3 of Chapter 20; and

(2) "Public vehicular area" shall be defined as any driveway, roadway, parking lot, or other public or private area open to the public, or a segment of the public, for vehicular traffic or parking.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine not to exceed two hundred dollars ($200.00) or imprisonment for not more than 30 days. (1917, c. 140, ss. 18, 21; C. S., ss. 2599, 2619; 1971, c. 200.)

Editor's Note.—The 1971 amendment, effective from and after Oct. 1, 1971, designated the first sentence as subsection (a), rewrote the second sentence and designated it as subsection (c), and added subsection (b). In subsection (a) the amendment substituted "highway or public vehicular area" for "or the public highways of this State."

§ 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).

Statutory Obligation of Highway Commission.—This section and §§ 160-54 and 136-66.1 indicate that the Highway Commission is under a statutory obligation 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).

§ 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 Reasonably 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).

§§ 136-99 to 136-101: Repealed by Session Laws 1971, c. 1106.

§ 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.)

§ 136-102.5. Signs on fishing bridges.—When requested to do so by any county or municipality that has enacted an ordinance under G.S. 153-9(66) and G.S. 160-200(47) regulating or prohibiting fishing on any bridge of the North Carolina State highway system, the North Carolina State Highway Commission shall erect signs on such bridges indicating the prohibition or regulation of the

ordinance enacted under G.S. 153-9(66) and G.S. 160-200(47). (1971, c. 690, s. 5.)

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 article on recent developments in North Carolina law of eminent domain, see 48 N.C.L. Rev. 767 (1970).

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. Mat-

this, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

The procedures for acquisition to the time of condemnation are governed by Article 6 of Chapter 146, while the condemnation, if required, is regulated by this Article. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

"Taking".—"Taking" under the power of eminent domain may be defined generally as entering upon private property for more than a momentary period and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment thereof. Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

Taking Occurred When Further Use Prevented.—A taking occurred when the State Highway Commission erected the fence, severing the right-of-way and preventing its further use, and not at the time plaintiffs were first inconvenienced by it. Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

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).

Owner Entitled to Compensation When Deprived of Easement. — An owner whose access to a public road is a right-of-way over adjoining property is entitled to just compensation when the State deprives him of this easement. Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

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); North Carolina State Highway Comm'n v. Asheville School, Inc., 276 N.C. 556, 173 S.E.2d 909 (1970).

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); State Highway Comm'n v. Rowson, 5 N.C. App. 629, 169 S.E.2d 132 (1969); North Carolina State Highway Comm'n v. Asheville School, Inc., 5 N.C. App. 684, 169 S.E.2d 193 (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.

The purpose of the first paragraph is to vest title in the State upon the filing of the complaint, the declaration of taking, and the deposit in cash of the estimated compensation. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

And of the Second Paragraph. — The manifest purpose of the second paragraph of this section is to assure public record of the change in ownership. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

The obvious intent of the second sentence of the second paragraph is to assure that any change in the complaint or declaration of taking that affects the property will be

entered into the land records of the county. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

Supplemental Memoranda Not Required for All Amendments.—The second sentence of the second paragraph does not mean that a supplemental memorandum of action must be filed as to all amendments, significant or insignificant, to the original complaint. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

Where the purpose of this section is to require notice of ownership, an amendment to the complaint which only adds additional parties defendant who may or may not share in the proceeds requires no supplemental notice to the public, and the same is true with respect to an amendment that only substitutes a more specific metes and bounds description for a description less exact, both descriptions covering the same property. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

But Only Where Amendment And Declaration of Taking Affect Property Taken. —A supplemental memorandum is required only where the amendment to the complaint and declaration of taking affect the property taken. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

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).

The right to compensation for a taking of property by the power of eminent domain is in those who owned compensable interests in the property immediately prior to the filing of the complaint and declaration of taking. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

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).

Declaration of Taking by Fee Simple Absolute Destroys Possibility of Reverter.—Where the condemning authority, in its declaration of taking, asserted that it thereby acquired a fee simple absolute in the land described as taken, it therefore took by condemnation both the fee simple determinable estate and the possibility of reverter. These were taken simultaneously, and there was no interval following the taking of the fee simple determinable estate, for use for a purpose other than that stated in the deed, in which the reverter could have occurred. Thus, the condemnation destroyed the possibility of reverter. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

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).

§ 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 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); State Highway Comm'n v. Fry, 6 N.C. App. 370, 170 S.E.2d 91 (1969).

§ 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 and mailed to him or his attorney of record, as required by former § 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).

§ 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 pleadings, 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).

§ 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-

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 rendered 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); State Highway Comm'n v. Gamble, 9 N.C. App. 618, 177 S.E.2d 434 (1970).

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); North Carolina State Highway Comm'n v. Gamble, 6 N.C. App. 568, 170 S.E.2d 359 (1969); Wilcox v. North Carolina State Highway Comm'n, 279 N.C. 185, 181 S.E.2d 435 (1971); Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

§ 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 24 months of the date of the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later, file a complaint in the superior court setting forth the names and places of residence of the parties, so far as the same can 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 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 dis-

bursement shall be made in accordance with the applicable provisions of G.S. 136-105 of this Chapter. If a taking is admitted, the Commission shall, within 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; 1971, c. 1195.)

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, "24" for "twelve (12)" and "date of said taking" for "completion of highway project for which the land was taken."

The 1971 amendment substituted "the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later" for "said taking" in the first sentence.

Section 2 of the 1965 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 appropriate 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).

This section was designed to limit the time within which an action can be brought. Wilcox v. North Carolina State Highway Comm'n, 279 N.C. 185, 181 S.E.2d 435 (1971).

Prescribed Remedy Must Be Pursued within Time Specified.—Although a property owner is always entitled to just compensation when his land is taken for public use, he must pursue the prescribed remedy within the time specified. Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

Otherwise, Plea of Statute of Limitations Is Complete Defense. — Where the plaintiff—notwithstanding he had actual knowledge that the State Highway Commission had appropriated his property—did not bring this action for compensation within the time fixed by this section for its commencement, defendant's plea of the statute is a complete defense to the action. Wilcox v. North Carolina State Highway Comm'n, 279 N.C. 185, 181 S.E.2d 435 (1971).

"Taking". — "Taking" under the power of eminent domain may be defined generally as entering upon private property for more than a momentary period and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment thereof. Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

Taking Occurred When Further Use Prevented.—The taking occurred when the State Highway Commission erected the fence, severing the right-of-way and preventing its further use, and not at the time plaintiffs were first inconvenienced by it. Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

Right to Compensation Not Dependent on Intent of State Highway Commission.—A landowner's right to recover compensation by court action under this section in no way depends upon whether the State Highway Commission intends to compensate him. Wilcox v. North Carolina State Highway Comm'n, 279 N.C. 185, 181 S.E.2d 435 (1971).

Owner Entitled to Compensation When Deprived of Easement.—An owner whose access to a public road is a right-of-way over adjoining property is entitled to just compensation when the State deprives him of this easement. Ledford v. North Carolina State Highway Comm'n, 279 N.C. 188, 181 S.E.2d 466 (1971).

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).

Compensation Must Be Full and Complete.—In condemnation proceedings, damages are to be awarded to compensate for loss sustained by the landowner. The compensation must be full and complete and include everything which affects the value of the property and in relation to the entire property affected. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

All Pertinent Factors Are to Be Considered.—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).

All factors pertinent to a determination of what a buyer, willing to buy but not under compulsion to do so, would pay and what a seller, willing to sell but not under compulsion to do so, would take for the property must be considered. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

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).

Portion of Tract Taken for Highway Purposes.—Where a portion of a tract of land is taken for highway purposes, the just compensation to which the landowner is entitled is the difference between the fair market value of the property as a whole immediately before and immediately after the appropriation of the portion thereof City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Determination of Value.—

Market value in a condemnation case may not be arrived at by assessing separately the value of land and improvements and adding the two together. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

As to land upon which buildings have been erected and affixed to the soil taken by eminent domain, so far as the buildings add to the market value of the land, they must be considered in determining the compensation to be awarded to the owner. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

As to Undeveloped Land Suitable for Subdivision.—A designated number of lots multiplied by a price per lot is not a proper basis for determining value of undeveloped land which is suitable for subdivision. State Highway Comm'n v. Reeves, 8 N.C. App. 47, 173 S.E.2d 494 (1970).

It is proper to show in a highway condemnation proceeding that a particular tract of land is suitable and available for division into lots and is valuable for that purpose, but it is not proper to show the number and value of lots as separated parcels in an imaginary subdivision thereof. In other words, it is not proper for the jury in these cases to consider an undeveloped tract of land as though a subdivision thereon is an accomplished fact. Such undeveloped property may not be valued on a per lot basis. The cost factor is too speculative. State Highway Comm'n v. Reeves, 8 N.C. App. 47, 173 S.E.2d 494 (1970).

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. It is not proper for a jury to consider an undeveloped tract of land as though a subdivision thereon is an accomplished fact. Such undeveloped property may not be valued on a per lot basis. State Highway Comm'n v. Reeves, 8 N.C. App. 47, 173 S.E.2d 494 (1970).

A court is correct in excluding testimony as to value of the land based on supposed subdivisions and the sale of lots at an estimated price per lot after deducting an estimated cost per lot for development. Such a method of valuation is too speculative and remote. State Highway Comm'n v. Reeves, 8 N.C. App. 47, 173 S.E.2d 494 (1970).

The market value of property is to be determined on basis of conditions existing at time of taking. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

And it is not limited by the use then actually being made of the property. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

But it is determined in the light of all uses to which the property was then adapted and for which it could have been used. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Condemnation of Fee Simple Determinable and Possibility of Reverter. — In the absence of exceptional circumstances, if both the fee simple determinable estate and the possibility of reverter are condemned and if, at the time of the taking, the event which would otherwise terminate the fee simple determinable is not a probability for the near future, the award is made on the basis of the full market value of the land without restrictions as to its use. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Where both the fee simple determinable and the possibility of reverter have been taken in the same condemnation proceeding, the full fee simple absolute has been taken and its full value should be paid by the taker to the party or parties rightfully entitled. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Taker-Grantor of Fee Simple Determinable Not Liable for Possibility of Reverter. —Where the taker was the grantor of the fee simple determinable and, therefore, was already the owner of the possibility of reverter, it was not required to pay for it, and the award was properly limited to the value of the fee simple determinable estate. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Taker Only Liable for Value of Servient Estate Where Encumbrance Not Taken or Destroyed.—Where the encumbrance was not taken, or destroyed, by the condemnation proceeding, the taker, not having taken or destroyed the right of the owner of the dominant estate, was held liable for the value of the servient estate only. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

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 282 (1966).

Any witness familiar with the land may testify as to his opinion of the value of the land taken, and as to the value of the respondent's contiguous lands before and after the taking. State Highway Comm'n v. Fry, 6 N.C. App. 370, 170 S.E.2d 91 (1969).

And He May Explain Value Placed on Improvements.—It is competent for a witness to explain the value he placed on improvements in arriving at the total value of the property before the taking. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

It is error to permit testimony which attaches a specific value to an imaginary lot. State Highway Comm'n v. Reeves, 8 N.C. App. 47, 173 S.E.2d 494 (1970).

Son of Landowner as Witness.—An objection to the son of the landowner testifying about the value of the land goes to the weight of the evidence rather than to its admissibility. State Highway Comm'n v. Fry, 6 N.C. App. 370, 170 S.E.2d 91 (1969).

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. 622, 139 S.E.2d 904 (1965).

§ 136-113. Interest as a part of just compensation.

Interest Is Separate from and Additional to Damages.—Interest is an element of recovery that is separate from and in addition to the measure of damages to be used by the jury in arriving at just compensation. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

Formerly It Was Jury's Function to Award Interest.—Prior to the enactment of this section it was the jury's function to award interest as just compensation for a delay in the payment for the property taken and it was necessary for the court to charge as to that duty. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

But now it is the duty of the court to add interest to an award of damages for the taking of property pursuant to this chapter. State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

And Court Has No Duty to Instruct Jury Not to Award Interest. — See State Highway Comm'n v. Yarborough, 6 N.C. App. 294, 170 S.E.2d 159 (1969).

§ 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).

§ 136-117. Payment of compensation.

Taker Not Affected by Court's Division of Award.—The taker of the property, once having its total liability determined, is not affected by or interested in the division of

the award by the court. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Method for Determining Compensation of Holders of Separate Interests in Condemned Property.—In condemnation proceedings, where there are several separately owned interests in the condemned property, a proper method for determining compensation to be paid the holder of each interest is, first, to determine the value of the property taken, as a whole, and then apportion the award among the several claimants. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Owner of Fee Simple Determinable Entitled to Full Compensation for Taking if Termination Not Probable. — If, at the time of the taking of both the fee simple determinable estate and the possibility of reverter, the event which would otherwise have terminated the fee simple determinable estate is not a probability for the near future, the owner of the fee simple determinable estate is entitled to the full award of compensation for the taking, the possibility of reverter being considered of no value. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

Or If Claimants of Possibility of Reverter Fail to Answer or Disclaim Interest. —Where those designated as claimants of the possibility of reverter have either failed to file answer, or have filed answer disclaiming any interest in the award and asserting that they have transferred such interest as they might otherwise have to the holder of the fee simple determinable the holder of that interest is entitled to the full award to be made. City of Charlotte v. Charlotte Park & Recreation Comm'n, 278 N.C. 26, 178 S.E.2d 601 (1971).

§ 136-119. Costs and appeal.—The Highway Commission shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necesssary that an appeal bond be posted.

The court having jurisdiction of the condemnation action instituted by the State Highway Commission to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the State Highway Commission cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the State Highway Commission.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding. (1959, c. 1025, s. 2; 1971, c. 1102, s. 1.)

Editor's Note. — The 1971 amendment added the second and third paragraphs.

Session Laws 1971, c. 1102, s. 2, provides that the amendment shall not affect pending litigation.

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 Kaperonis 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 pro-

mulgated 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 advertising 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 dedetermined 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 pur-

chase, 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 to 136-166: Repealed by Session Laws 1971, c. 1107, s. 2, effective January 1, 1972.

Cross References. — For present provisions as to relocation assistance, see §§ 133-5 to 133-17. As to authority of the Department of Administration to provide relocation assistance in the same manner as is prescribed for the State Highway Commission in this Article, see § 146-26.1.

Editor's Note. — Session Laws 1971, c. 1107, s. 2, provides: "Any rights or liabilities existing under Article 13 or any other laws on January 1, 1972, shall not be affected by the repeal thereof."

The repealed Article derived from Session Laws 1969, c. 733, as amended by Session Laws 1971, c. 1104.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1971

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1971 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