

# THE GENERAL STATUTES OF NORTH CAROLINA

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## 1974 SUPPLEMENT

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

UNDER THE DIRECTION OF

W. M. WILLSON, J. H. VAUGHAN AND  
SYLVIA FAULKNER

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### Volume 3B

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# Preface

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This Supplement to Replacement Volume 3B contains the general laws of a permanent nature enacted at the Second 1973 Session of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein. At the Second 1973 Session, which was held in 1974, the General Assembly enacted Session Laws 1973, Chapters 827 to 1482.

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 all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1974 Cumulative Supplements thereto.

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

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## **Statutes:**

Permanent portions of the general laws enacted at the Second 1973 Session of the General Assembly affecting Chapters 117 through 136 of the General Statutes.

## **Annotations:**

Sources of the annotations:

North Carolina Reports volumes 283 (p. 589)-285 (p. 597).  
North Carolina Court of Appeals Reports volumes 18 (p. 352)-22 (p. 508).  
Federal Reporter 2nd Series volumes 476 (p. 657)-498 (p. 912).  
Federal Supplement volumes 357-377 (p. 192).  
Federal Rules Decisions volumes 56 (p. 663)-63 (p. 229).  
United States Reports volumes 411 (p. 526)-415 (p. 604).  
Supreme Court Reporter volumes 93 (p. 2789)-94 (p. 3234).  
Wake Forest Intramural Law Review volumes 6 (p. 569)-7 (p. 697).  
Opinions of the Attorney General.



# The General Statutes of North Carolina 1974 Supplement

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## VOLUME 3B

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### Chapter 118. Firemen's Relief Fund.

#### Article 3.

#### North Carolina Firemen's Pension Fund.

Sec.

118-19. Creation and membership of board of trustees; compensation.

#### ARTICLE 1.

#### *Fund Derived from Fire Insurance Companies.*

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

**Local Supplemental Firemen's Retirement Funds.** — City of Lenoir: 1973, c. 1261; city of Lumberton: 1973, c. 960, amending 1955, c. 100; city of Reidsville: 1973, c. 1159, amending 1969, c. 412; city of Wilmington: 1973, c. 939, amending 1949, c. 684; town of Smithfield: 1973, c. 941.

#### § 118-6. Trustees appointed; organization.

**Amendment Effective February 1, 1975.** — Session Laws 1973, c. 1365, effective Feb. 1, 1975, will amend subdivision (3) of this section to read as follows:

"(3) The Commissioner of Insurance shall appoint one representative to serve as trustee and he shall serve at the pleasure of the Commissioner."

#### ARTICLE 3.

#### *North Carolina Firemen's Pension Fund.*

§ 118-19. **Creation and membership of board of trustees; compensation.** — There is hereby created a board to be known as the "Board of Trustees of the North Carolina Firemen's Pension Fund." Said board shall consist of five members, namely:

- (1) The State Auditor, who shall act as chairman.
- (2) The State Insurance Commissioner.
- (3) Three members to be appointed by the Governor, one a paid fireman, one a volunteer fireman and one representing the public at large, for terms of four years each.

No member of said board of trustees shall receive any salary, compensation or expenses other than that provided in G.S. 138-5 for each day's attendance at duly and regularly called and held meetings of the board of trustees. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1973, c. 875.)

**Editor's Note.** — The 1973 amendment substituted "State Auditor" for "State Insurance Commissioner" in subdivision (1)

and "State Insurance Commissioner" for "State Auditor" in subdivision (2) and rewrote the last paragraph of the section.

**Chapter 118A.****Firemen's Death Benefit Act.**

§§ 118A-1 to 118A-7: Repealed by Session Laws 1973, c. 970, s. 1.

**Cross Reference.** — For the Rescue Squad Workers' Death Benefit Act, see Law-Enforcement Officers', Firemen's and §§ 143-166.1 through 143-166.7.



**Chapter 118B.**

**Members of a Rescue Squad Death Benefit Act.**

**§§ 118B-1 to 118B-7:** Repealed by Session Laws 1973, c. 970, s. 2.

**Cross Reference.** — For the Rescue Squad Workers' Death Benefit Act, see Law-Enforcement Officers', Firemen's and §§ 143-166.1 through 143-166.7.

**Chapter 119.****Gasoline and Oil Inspection and Regulation.****Article 3.****Gasoline and Oil Inspection.**

Sec.

119-27.1. Self-service gasoline pumps; display of owner's or operator's name, address and telephone number.

**ARTICLE 3.***Gasoline and Oil Inspection.*

**§ 119-27.1. Self-service gasoline pumps; display of owner's or operator's name, address and telephone number.** — (a) Every owner of, or other person in control of, a self-service gas pump or station whose equipment permits purchase and physical transfer of gasoline or oil products by insertion of money into some device or machine without the necessity of personal service by the owner or his agent shall clearly affix a sticker to each pump showing his name, address, and telephone number.

(b) The North Carolina Department of Agriculture shall have the responsibility for the enforcement of this section. (1973, c. 1324, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 1324, s. 2, makes the act effective July 1, 1974.

**Chapter 120.**  
**General Assembly.**

**Article 1.**

**Apportionment of Members;  
Compensation and  
Allowances.**

- Sec.  
120-3. Pay of members and officers of the General Assembly.  
120-3.1. Subsistence and travel allowances for members of the General Assembly.  
120-4.1. [Repealed.]  
120-4.2. Repeal of Legislative Retirement Fund.

**Article 9.**

**Lobbying.**

- 120-44.1. Information furnished members of the General Assembly.

**Article 12.**

**Commission on Children with  
Special Needs.**

- Sec.  
120-58. Creation; appointment of members.  
120-59. Time of appointments; terms of office.  
120-60. Organization of Commission.  
120-61. Members to serve without compensation; subsistence and travel expenses.  
120-62. Assistance to Commission.  
120-63. Duties of Commission.  
120-64. Reports to General Assembly.  
120-65. Assistance of Department of Human Resources and Department of Public Education.

ARTICLE 1.

*Apportionment of Members; Compensation and Allowances.*

**§ 120-3. Pay of members and officers of the General Assembly.** — (a) The Speaker of the House shall be paid an annual salary of nine thousand dollars (\$9,000), payable monthly, and an expense allowance of two hundred fifty dollars (\$250.00) per month. The President pro tempore of the Senate, the Speaker pro tempore of the House, the minority leader in the House and the minority leader in the Senate shall each be paid an annual salary of six thousand dollars (\$6,000), payable monthly, and an expense allowance of one hundred fifty dollars (\$150.00) per month. Every other member of the General Assembly shall be paid an annual salary of four thousand eight hundred dollars (\$4,800), payable monthly, and an expense allowance of one hundred dollars (\$100.00) per month. The salary and expense allowances provided in this action are 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.

(1973, c. 1482, s. 1.)

**Editor's Note.** —

The 1973 amendment, effective as of the end of the term of the members of the 1973 General Assembly, rewrote subsection (a).

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

**§ 120-3.1. Subsistence and travel allowances for members of the General Assembly.** — (a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

- (1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra 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 to State employees for official travel.
- (2) A travel allowance at the rate allowed by statute for State employees

whenever the member is traveling as a representative 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.

- (3) A subsistence allowance in the amount of thirty-five dollars (\$35.00) per day for each day of the period during which the General Assembly remains in session.
- (4) A subsistence allowance in the sum of thirty-five dollars (\$35.00) per day for each day on official legislative business, when the General Assembly is not in session, when traveling as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.

(b) Payment of travel and subsistence allowances shall be made to members of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed 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.

(c) When the General Assembly by joint action of the two houses adjourns to a day certain, which day is more than three days after the date of 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 that 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; 1973, c. 1482, s. 2.)

**Editor's Note.** —

The 1973 amendment, effective as of the end

of the term of the members of the 1973 General Assembly, rewrote this section.

§ 120-4.1: Repealed by Session Laws 1973, c. 1482, s. 3.

**Editor's Note.** — The repeal is effective as of the end of the term of the members of the 1973 General Assembly. For the conditions of the repeal, see § 120-4.2.

§ 120-4.2. **Repeal of Legislative Retirement Fund.** — (a) Effective as of the end of the term of the members of the 1973 General Assembly, G.S. 120-4.1 is repealed, subject to the following provisions to preserve vested and inchoate rights in the Legislative Retirement Fund:

(b) All persons who have at least four terms of creditable service as of the end of the 1973 term shall be entitled to receive the retirement benefits provided under G.S. 120-4.1 as it existed prior to this repealing act, but no credit shall be given for any service performed after the end of the 1973 term.

(c) Solely for purposes of administering the benefits authorized by G.S. 120-3 to 120-4.2, the authority and duties created by G.S. 120-4.1 as it existed prior to this repealing act shall continue in effect. (1973, c. 1482, s. 3.)

**Editor's Note.** — Session Laws 1973, c. 1482, s. 4, makes the act effective as of the end of the term of the members of the 1973 General Assembly.

## ARTICLE 9.

### *Lobbying.*

§ 120-44.1. **Information furnished members of the General Assembly.** — Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as a lobbyist and whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses. (1973, c. 1451.)

## ARTICLE 12.

*Commission on Children with Special Needs.*

**§ 120-58. Creation; appointment of members.** — There is hereby created a Commission on Children with Special Needs to consist of three Senators appointed by the President (or pro tempore) of the Senate, three Representatives appointed by the Speaker of the House, and three parents of children with special needs appointed by the Governor. (1973, c. 1422.)

**§ 120-59. Time of appointments; terms of office.** — Appointments to the Commission shall be made within 15 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 appointments are made. Vacancies occurring during a term shall be filled for the unexpired term by the officer who made the original appointment. (1973, c. 1422.)

**§ 120-60. Organization of Commission.** — Upon its appointment, the Commission shall organize by electing from its membership a chairman. The Commission shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building shall be available to the Commission. The Commission is authorized to conduct hearings and to employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties, with the approval of the Legislative Services Commission. (1973, c. 1422.)

**§ 120-61. Members to serve without compensation; subsistence and travel expenses.** — Members of the Commission shall serve without compensation but they shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally pursuant to G.S. 138-5. (1973, c. 1422.)

**§ 120-62. Assistance to Commission.** — The Commission, in the performance of its duties, may request and shall receive from every department, board, bureau, agency, commission, or institution of this State, or from any political subdivision of the State, information, cooperation, and assistance. (1973, c. 1422.)

**§ 120-63. Duties of Commission.** — The Commission is hereby authorized to:

- (1) Pursue an in-depth study of the services provided by other states for children with special needs.
- (2) Collect and evaluate for comprehensiveness existing legislation in North Carolina which is relevant to programs for children with special needs; as well as pertinent reports, studies and findings from other states and national bodies.
- (3) Collect and evaluate for comprehensiveness the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect services for children with special needs.
- (4) Monitor on a continuing basis the progress of the State as it moves toward meeting the service requirements for children with special needs. (1973, c. 1422.)

**§ 120-64. Reports to General Assembly.** — The Commission shall make a report to the General Assembly not later than February 1, 1975, and February 1 of each subsequent session. The first report shall contain:

- (1) A comparison of services provided by the State with those services provided by other states.
- (2) Legislation designed to strengthen the role of the State in meeting its responsibilities to children with special needs.

Subsequent reports shall contain quantifiable statements of accomplishments by providers of service and any additional legislation deemed necessary.

The report of 1979 shall contain a review of the effectiveness of the Commission and a recommendation concerning further retention of the Commission. (1973, c. 1422.)

**§ 120-65. Assistance of Department of Human Resources and Department of Public Education.** — The Department of Human Resources and the Department of Public Education are hereby declared vital departments of State government to especially assist said Commission and to furnish them [it] with information, and to the extent permitted by the Commission, to actively participate in the work and deliberations of the Commission. (1973, c. 1293, s. 5.)

**Chapter 121.**  
**Archives and History.**

**Article 2.**

**Tryon's Palace and Tryon's  
Palace Commission.**

Sec.

121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's Palace.

ARTICLE 2.

*Tryon's Palace and Tryon's Palace Commission.*

**§ 121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's Palace.** — In addition to exercising the powers and duties imposed upon the Tryon Palace Commission by Chapter 791 of the Session Laws of 1945 and Chapter 233 of the Session Laws of 1949, the Tryon Palace Commission is hereby fully authorized and empowered to receive and expend and disburse, for the restoration of the said Tryon's Palace, all such funds and property which was provided for said purpose by the last will and testament of Maude Moore Latham, deceased, and the said Commission shall likewise have the power and authority to receive and expend all such other funds as may be donated or made available for the purpose of restoring the said Palace or for the purpose of furnishing and equipping same and the grounds on which the same is located at New Bern, North Carolina.

The Tryon Palace Commission is hereby authorized, empowered and directed to designate some person as financial officer and treasurer, to disburse the funds and property devised by Maude Moore Latham to the said Tryon Palace Commission for the aforesaid purpose and all such other funds as may be donated or made available to the said Commission for expenditure for the aforesaid purposes. The said financial officer and treasurer shall be made the custodian of all stocks, bonds and securities and funds hereinbefore referred to and shall be authorized and empowered to sell, convert and transfer any stocks, bonds and securities held for such purpose, subject to, and with the advice and approval of a finance committee to be appointed by the Tryon Palace Commission for such purpose. The sale and conversion and transfer of said securities shall be made when necessary to provide funds required for the said restoration and at such time as, in the opinion of the finance officer and treasurer, when approved by the finance committee, will be to the interests and advantage of the Tryon Palace Commission and the purposes for which said funds and securities were provided.

The finance officer and treasurer aforesaid shall be required to give such bond as, in the opinion of the Tryon Palace Commission, is proper for the faithful performance as finance officer and treasurer, and shall render to the Tryon Palace Finance Committee, with copies to the Department of Natural and Economic Resources and the State Treasurer, annual or ad interim detailed reports of moneys and/or securities received, exchanged or converted into cash. Checks issued against such funds shall be countersigned by the chairman of Tryon Palace Commission, or by one duly authorized by the said Commission.

The finance officer and treasurer shall serve without compensation, however, any expenses incurred for the faithful performance of said duties, including the cost of the bond, shall be borne by the Tryon Palace Commission, from the proceeds of the funds thus handled.

The Tryon Palace Commission shall have the power and authority in its discretion to call upon the Treasurer of the State of North Carolina to act as

treasurer of the said funds and properties and, if so designated, said treasurer shall exercise all the powers and duties herein imposed upon the financial officer and treasurer hereinbefore referred to.

The Tryon Palace Commission is hereby authorized and empowered to expend the funds hereinbefore referred to and it may disburse said funds through the Department of Natural and Economic Resources in the event it is found more practical to do so, and said Commission shall cooperate with the Department of Natural and Economic Resources of the State of North Carolina in the expenditure of the funds for the restoration of said Tryon's Palace, provided by two trust funds created by Maude Moore Latham in her lifetime, which funds shall be expended in accordance with the terms and provisions of said trusts for the purposes therein set out. (1953, c. 1100; 1973, c. 1262, s. 86.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and

Economic Resources" for "Department of Conservation and Development."

**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.**

**Legislative Intent.** — An examination of the face of the statute and its legislative history reveal the manifest intent of the legislature to vest title in the State of all archeological artifacts recovered from navigable waters. Nowhere does it appear that the legislature intended to limit the coverage of this section to artifacts associated with shipwrecks. State v.

Armistead, 19 N.C. App. 704, 200 S.E.2d 226 (1973).

**A cannon rolled off a bluff into the river by the Confederate Army** in 1865 is an archeological artifact within the meaning of this section. State v. Armistead, 19 N.C. App. 704, 200 S.E.2d 226 (1973).



**Chapter 122.**

**Hospitals for the Mentally Disordered.**

**Article 1.**

**Organization and Management.**

Sec.

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

**Article 2B.**

**Rehabilitation of Alcoholics.**

122-35.15. Allocation by Department of Human Resources; local funds.

**Article 2C.**

**Establishment of Area Mental Health Programs.**

122-35.20. Area mental health boards.

**Article 2D.**

**Community Drug Abuse Programs.**

122-35.25. Funding of community-based drug abuse programs.

**Article 3.**

**Admission of Patients; General Provisions; Patients' Rights.**

**Part 1. Admission of Patients; General Provisions.**

122-36. Definitions.

122-43. Fees for examination; payment.

**Part 2. Patients' Rights.**

122-55.1. Declaration of policy on patients' rights.

122-55.2. Patients' rights.

122-55.6. Right to treatment.

122-55.8 to 122-55.12. [Reserved.]

**Part 3. Rights of Minor Patients.**

122-55.13. Declaration of policy on rights of minor patients.

122-55.14. Rights of minor patients.

**Article 4.**

**Voluntary Admission.**

122-56.1. Declaration of policy.

122-56.2. Definitions.

122-56.3. Procedure for voluntary admissions.

Sec.

122-56.4. Voluntary admission to Psychiatric Training and Research Center at North Carolina Memorial Hospital.

122-56.5. Representation of minors and persons adjudicated non compos mentis.

122-56.6. Voluntary admission not admissible in involuntary proceeding.

**Article 5A.**

**Involuntary Commitment.**

122-58.1. Declaration of policy.

122-58.2. Definitions.

122-58.3. Affidavit and petition before clerk or magistrate; custody order.

122-58.4. Duties of law-enforcement officer; examination by qualified physician.

122-58.5. Duties of clerk of superior court.

122-58.6. Treatment and release pending hearing.

122-58.7. District court hearing.

122-58.8. Disposition.

122-58.9. Appeal.

122-58.10. Duty of assigned counsel; discharge.

122-58.11. Rehearings.

122-58.12. Counsel for indigents at rehearings.

122-58.13. Release and conditional release.

122-58.14. Transportation.

122-58.15. Commitment of eligible veterans to Veterans Administration facility.

122-58.16. Use of community and area mental health facilities.

122-58.17. Respondents committed under prior law.

122-58.18. Special emergency procedure for violent persons.

**Article 11.**

**Mentally Ill Criminals.**

122-84.1. Acquittal of defendant on grounds of mental illness; procedure.

122-85. Convicts becoming mentally ill.

122-86. [Repealed.]

122-87, 122-87.1. [Repealed.]

122-91. [Repealed.]

**ARTICLE 1.**

*Organization and Management.*

**§ 122-1. Jurisdiction and authority of Department of Human Resources.**

Cited in *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).

**§ 122-8.1. Disclosure of information, records, etc.** — (a) No physician, psychiatrist or any other officer, agent or employee of any of the institutions or hospitals under the management, control and supervision of the Department of Human Resources shall be required to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating an inmate or patient of said institutions or hospitals in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said inmate or patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure: Provided that where a person or persons are defendants in criminal cases and a mental examination of such defendants has been ordered by the court, the Department of Human Resources through its agents and officers may transmit the results or the report of such mental examination to the clerk of said court and to the solicitor or prosecuting officer and to the attorney or attorneys of record for the defendant or defendants.

(b) Notwithstanding the provisions of subsection (a), certified copies of written results of examinations by qualified physicians and medical records in the cases of mentally ill and inebriate respondents committed or facing commitment proceedings under Article 5A of this Chapter shall be furnished through the appropriate clerk's office to the respondent's counsel, and to the court and the solicitor in hearings and rehearings conducted pursuant to Article 5A. Except as to matters pertaining to the commitment under review, the confidentiality of the physician-patient relationship shall be preserved. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2.)

**Editor's Note.** —  
The third 1973 amendment, ratified April 12, 1974, and made effective 60 days after

ratification, designated the former provisions of the section as subsection (a) and added subsection (b).

**ARTICLE 2B.**

*Rehabilitation of Alcoholics.*

**§ 122-35.15. Allocation by Department of Human Resources; local funds.** — Allocation of funds pursuant to the provisions of this Article by the Department of Human Resources shall be made on the same basis as those under Article 2C of this Chapter as provided by G.S. 122-35.23A. (1967, c. 1240, s. 4; 1973, c. 1465, s. 1.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote this section, which formerly required local government

agencies to match State funds on a dollar-for-dollar basis.

**ARTICLE 2C.**

*Establishment of Area Mental Health Programs.*

**§ 122-35.20. Area mental health boards.**

(b) In areas consisting of only one county with a population of 275,000 or more, the board of county commissioners may serve as the area mental health board, or they shall appoint all the members of the area mental health board. In areas consisting of more than one county and in areas consisting of only one county where the population is less than 275,000, 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.

(1973, c. 1355.)

**Editor's Note.** —  
The third 1973 amendment substituted "275,000" for "325,000" in the first and second sentences of subsection (b).

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

ARTICLE 2D.

*Community Drug Abuse Programs.*

**§ 122-35.25. Funding of community-based drug abuse programs.** — Moneys appropriated to the Department of Human Resources to be used for funding community-based drug abuse programs shall be allocated and expended on the same basis as those under Article 2C of this Chapter as provided in G.S. 122-35.23A. (1971, c. 1123, s. 2; 1973, c. 476, s. 133; c. 1465, s. 2.)

**Editor's Note.** — under Article 2C of this Chapter as provided in  
The second 1973 amendment, effective July 1, 1974, substituted "on the same basis as those G.S. 122-35.23A" for "in such manner as is provided in the act appropriating same."

ARTICLE 3.

*Admission of Patients; General Provisions; Patients' Rights.*

Part 1. Admission of Patients; General Provisions.

**§ 122-36. Definitions.**

(f) Repealed by Session Laws 1973, c. 1408, s. 3. (1973, c. 1408, s. 3.)

**Editor's Note.** — As the other subsections were not changed by the amendment, they are not set out.  
The second 1973 amendment, ratified April 12, 1974, and made effective 60 days after ratification, repealed subsection (f), defining "qualified physician."  
**Stated** in *Powell v. Duke Univ., Inc.*, 18 N.C. App. 736, 197 S.E.2d 910 (1973).

**§ 122-43. Fees for examination; payment.** — The fees listed below shall be allowed to the officers who make the examination and they shall be paid by the county in which the alleged mentally ill person or alleged inebriate has residence if the alleged mentally ill person or alleged inebriate, or one legally responsible for the support of such person, is unable to pay for the same.

To the physicians making the examination, the usual and customary fees. If the county physician is a salaried officer, he is not to be allowed any fee for making this examination. (1899, c. 1, s. 15; Rev., ss. 4580, 4581; C. S., s. 6198; 1947, c. 537, s. 17; 1955, c. 887, s. 8; 1957, c. 1232, s. 19; 1961, c. 511, s. 7; 1963, c. 1184, s. 1; 1973, c. 108, s. 75; c. 1408, s. 4.)

**Editor's Note.** — "sum of fifteen dollars (\$15.00) each and mileage at the rate of ten cents (10¢) per mile" at the end of the first sentence of the second paragraph.  
The second 1973 amendment, ratified April 12, 1974, and effective 60 days after ratification, substituted "usual and customary fees" for

Part 2. Patients' Rights.

**§ 122-55.1. Declaration of policy on patients' rights.** — It is the policy of North Carolina to insure to each adult patient of a treatment facility basic human rights. These rights include the right to dignity, privacy, and humane care. It is further the policy of the State that each treatment facility shall insure to each patient the right to live as normally as possible while receiving care and treatment. (1973, c. 475, s. 1; c. 1436, s. 1.)

**Cross Reference.** — As to rights of minor patients, see §§ 122-55.13, 122-55.14. inserted "adult" near the middle of the first sentence.

**Editor's Note.** — The 1973 amendment

**§ 122-55.2. Patients' rights.** — (a) Each adult patient of a treatment facility shall at all times retain the right to:

- (1) Send and receive sealed mail, and have access to writing material, postage, and staff assistance when necessary;
- (2) Contact and consult with legal counsel and private physicians of his choice at his expense.

(b) Except as provided in (d) below, each adult patient of a treatment facility shall at all times retain the right to:

- (1) Make and receive confidential telephone calls, provided that all long distance calls shall be paid for by the patient at the time of making the call or made collect to the receiving party;
- (2) Receive visitors between the hours of 8:00 A.M. and 9:00 P.M. for a period of at least six hours daily, two hours of which shall be after the hour of 6:00 P.M.;
- (3) Make visits outside the institution unless such patient was committed to a treatment facility under Article 11 of Chapter 122 of the General Statutes;
- (4) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;
- (5) Keep and use his own clothing and personal possessions;
- (6) Communicate and meet under appropriate supervision with persons of his own choice, upon the consent of such persons;
- (7) Participate in religious worship;
- (8) Keep and spend a reasonable sum of his own money;
- (9) Retain a motor vehicle driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes;
- (10) Have access to individual storage space for the patient's private use.

(c) Each adult patient of a treatment facility shall retain the right to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, register and vote, and marry and obtain a divorce, unless such patient has been adjudicated incompetent under the provisions of Chapter 35 of the General Statutes and has not been restored to legal capacity; provided, however, that this Part shall not be construed as validating the act of any patient who was at the time of the Part in fact incompetent.

(d) No right enumerated in subsection (b) above may be limited or restricted without a written statement in the patient's treatment or habilitation plan which indicates the detailed reason for such a restriction or limitation. No restriction of rights shall be made except by mental health or mental retardation professionals responsible for the formulation of the patient's treatment or habilitation plan. In each instance of restriction of rights, the patient's next of kin or guardian shall be given written notice of the restriction and the reason therefor. A written restriction shall be effective for a period not to exceed 60 days and shall be renewed only by a written statement entered by a mental health or mental retardation professional in the patient's treatment or habilitation plan which indicates the reason for such renewal of the restriction. In each instance of renewal of a restriction, the patient's next of kin or guardian shall be given written notice of the renewal of the restriction and the reason therefor. The right to receive visitors and to make visits outside the facility shall be subject to reasonable written regulations imposed by the director of the facility and approved in writing by the Secretary of the Department of Human Resources to prevent passage of contraband to patients; provided, however, that no restriction may be placed upon the right of any patient to communicate with an attorney of the patient's choice, to have that attorney visit with him and, with the consent of the patient, to have the attorney provided with copies of all pertinent records and information relating to the patient. (1973, c. 475, s. 1; c. 1436, ss. 2-5.)

**Editor's Note.** — The 1973 amendment inserted "adult" in the introductory language in subsections (a) and (b) and near the beginning of subsection (c), deleted "the patient and" preceding "the patient's next of kin" and "and the Secretary of Human Resources" following "guardian" in the third and fifth sentences of subsection (d), substituted "60 days" for "30 days" and deleted "detailed" preceding "reason" in the fourth sentence of subsection (d) and added the last sentence of subsection (d).

**§ 122-55.6. Right to treatment.** — Each institutionalized patient shall have the right to receive appropriate treatment for mental and physical ailments and for the prevention of illness or disability. Each patient within 30 days after admission shall have an individual written treatment or habilitation plan formulated by the treatment facility's mental health or mental retardation professionals. Each patient who has been institutionalized in a State hospital shall have, as soon as practical but not later than the time of discharge, an individualized written postinstitutionalization plan setting forth a program of recommended vocational counseling or outpatient care. A copy of such plan shall be furnished to the patient or his guardian and, with the consent of the patient, to his attorney and his next of kin.

Each patient shall have a right to be free from unnecessary or excessive medication with drugs. Such medication shall not be used as punishment or discipline. No medication shall be administered except upon a written order of a qualified physician. Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery, other than emergency surgery, shall not be given without the express and informed written consent of the patient if competent, otherwise of the patient and guardian as hereinafter defined, unless the patient has been adjudicated an incompetent under Chapter 35 of the General Statutes and has not been restored to legal capacity, in which case express and informed written consent of his guardian or trustee appointed pursuant to Chapter 35 of the General Statutes must be obtained. Such consent may be withdrawn at any time by the person who gave such consent. Except in case of transfer for emergency surgery, no patient shall be transferred to another treatment facility without receiving reasonable written notice which shall include the reason for the transfer. Such notice shall be given to the patient and to the next of kin or guardian of the patient. (1973, c. 475, s. 1; c. 1436, ss. 6, 7.)

**Editor's Note.** — The 1973 amendment rewrote the first paragraph and deleted "patently" preceding "competent" near the middle of the fourth sentence of the second paragraph. In directing the deletion of the

word "patently," the amendment referred to "line 6 of the second paragraph." The reference was plainly to line six of the paragraph as set out in the 1973 Cumulative Supplement, rather than in 1974 Replacement Volume 3B.

§§ 122-55.8 to 122-55.12: Reserved for future codification purposes.

Part 3. Rights of Minor Patients.

**§ 122-55.13. Declaration of policy on rights of minor patients.** — It is the policy of North Carolina to insure basic rights to each minor patient of a treatment facility. These rights include the right to dignity, humane care, and proper adult supervision and guidance. In recognition of his status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the treatment facility shall stand in loco parentis to the minor when he is in residence. (1973, c. 1436, s. 8.)

**Parent-Child Relationship Unaffected.** — See opinion of Attorney General to Dr. Lenore Behar, Chief, Children and Youth Services,

Division of Mental Health Services, 44 N.C.A.G. 3 (1974).

**§ 122-55.14. Rights of minor patients.** — (a) Each minor patient of a treatment facility may at all reasonable times:

- (1) Communicate and consult with the agency or individual having legal custody of him; and
- (2) Communicate and consult with legal counsel and private mental health or mental retardation specialists of his or his legal custodian's or guardian's choice, at his own expense.

(b) Except as provided in subsection (c), each minor patient of a treatment facility shall have the right to:

- (1) Receive special education and vocational training in addition to other forms of treatment;
- (2) Participate in play, recreation, physical exercise, and outdoor activity on a regular basis, in accordance with his needs;
- (3) Keep and use his own clothing and personal possessions under appropriate supervision;
- (4) Participate in religious worship;
- (5) Receive such assistance as needed in sending and receiving correspondence, and in making telephone calls at his own expense;
- (6) Receive visitors, under appropriate supervision, between the hours of 8 A.M. and 9 P.M. for a period of at least six hours daily, two hours of which shall be after the hour of 6 P.M., such visiting not to take precedence over school or therapies; and
- (7) Have access to individual storage space for his own use.

(c) No right enumerated in subsection (b) may be restricted without a written statement in the minor's treatment or habilitation plan which indicates the detailed reason for such restriction. No restriction of rights shall be made except by mental health or mental retardation professionals responsible for the formulation of the patient's treatment or habilitation plan. A written restriction shall be effective for a period not to exceed 60 days and shall be renewed only by a written statement entered by a mental health or mental retardation professional in the minor's treatment or habilitation plan which indicates the detailed reasons for such renewal. Provided, however, that no restriction may be placed upon the right of any patient to communicate with an attorney of the patient's choice, to have that attorney visit with him and, with the consent of the patient, to have the attorney provided with copies of all pertinent records and information relating to the patient.

(d) G.S. 122-55.3, 122-55.4, 122-55.5, and 122-55.6 are also applicable to minors. (1973, c. 1436, s. 8.)

#### ARTICLE 4.

##### *Voluntary Admission.*

**§ 122-56.1. Declaration of policy.** — It is the policy of the State to encourage voluntary admissions to treatment facilities; and to assure that the admission of any person with mental illness to a treatment facility shall be implemented under conditions that protect the dignity and rights of the person. (1973, c. 723, s. 1; c. 1084.)

**Revision of Article.** — Session Laws 1973, c. 1084, revised and rewrote this Article, substituting present §§ 122-56.1 through 122-56.6 for former §§ 122-56.1 through 122-56.3 and 122-57. No attempt has been made to point out the changes effected by the revision, but, where appropriate, the historical citations to the sections of this Article as it

stood before the revision have been added to similar sections in the Article as revised.

**A Minor May Be Voluntarily Admitted upon His Request without Application for Admission by Parent.** — See opinion of Attorney General to Dr. Lenore Behar, Chief, Children and Youth Services, Division of Mental Health Services, 44 N.C.A.G. 3 (1974).

**§ 122-56.2. Definitions.** — (a) The words "inebriety," "mental illness," and "qualified physician," as used in this Article, have the same meaning as they are given in G.S. 122-36, subsections (c), (d), and (f), respectively.

(b) The words "treatment facility," as used in this Article, mean any hospital or institution operated by the State of North Carolina and designated for the admission of any person in need of care and treatment due to mental illness or inebriety, and any community mental health clinic or center operated in conjunction with the State. (1973, c. 723, s. 1; c. 1084.)

**§ 122-56.3. Procedure for voluntary admissions.** — Any person who believes himself to be in need of treatment for mental illness or inebriety may

seek voluntary admission to a treatment facility by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the person seeking admission, is required. The application shall acknowledge that the applicant may be held by the treatment facility for a period of 72 hours subsequent to any written request for release that he may make. At the time of application, the facility shall provide the applicant with the appropriate form for discharge. The application form shall be available at all times at all treatment facilities. However, no one shall be denied admission because application forms are not available. Any person voluntarily seeking admission to a treatment facility must be examined and evaluated by a qualified physician of the facility within 24 hours of presenting himself for admission. The evaluation shall determine whether the person is in need of treatment for mental illness or inebriety, or further psychiatric evaluation by the facility. If the evaluating physician or physicians determine that the person is not in need of treatment or further evaluation by the facility, or that the person will not be benefitted by the treatment available, the person shall not be accepted as a patient. (1973, c. 723, s. 1; c. 1084.)

**§ 122-56.4. Voluntary admission to Psychiatric Training and Research Center at North Carolina Memorial Hospital.** — Any person believing himself in need of treatment for mental illness or inebriety may voluntarily apply for admission to the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital in Chapel Hill in the same manner as he would apply for voluntary admission to any State hospital. Upon approval of his application by the Director of the Inpatient Service, the applicant may be admitted. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2; 1973, c. 723, s. 3; c. 1084.)

**§ 122-56.5. Representation of minors and persons adjudicated non compos mentis.** — In applying for admission to a treatment facility, in consenting to medical treatment when consent is required, in giving or receiving any legal notice, and in any other legal procedure under this Article, a parent, person standing in loco parentis, or guardian shall act for a minor, and a guardian or trustee shall act for a person adjudicated non compos mentis. (1973, c. 1084.)

**§ 122-56.6. Voluntary admission not admissible in involuntary proceeding.** — The fact that one has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding. (1973, c. 1084.)

**§ 122-57:** Repealed by Session Laws 1973, c. 1084.

**Revision of Article.** — See same catchline under § 122-56.1.

#### ARTICLE 5A.

##### *Involuntary Commitment.*

**§ 122-58.1. Declaration of policy.** — It is the policy of the State that no person shall be committed to a mental health facility unless he is mentally ill or an inebriate and imminently dangerous to himself or others; that a commitment will be accomplished under conditions that protect the dignity and constitutional rights of the person; and that committed persons will be discharged as soon as a less restrictive mode of treatment is appropriate. (1973, c. 726, s. 1; c. 1408, s. 1.)

**Revision of Article.** — Session Laws 1973, c. 1408, ratified April 12, 1974, and made effective 60 days after ratification, revised and rewrote this article, substituting present §§ 122-58.1 through 122-58.18 for former §§ 122-58.1 through 122-58.8. No attempt has been

made to point out the changes effected by the revision, but where appropriate, the historical citations to the sections of the former Article

have been added to corresponding sections in the Article as revised.

**§ 122-58.2. Definitions.** — As used in this Article:

- (1) The phrase “dangerous to himself” includes, but is not limited to, those mentally ill or inebriate persons who are unable to provide for their basic needs for food, clothing, or shelter;
- (2) The words “inebriety” and “mental illness” have the same meaning as they are given in G.S. 122-36; and
- (3) “Law-enforcement officer” means sheriff, deputy sheriff, police officer, and State highway patrolman. (1973, c. 726, s. 1; c. 1408, s. 1.)

**§ 122-58.3. Affidavit and petition before clerk or magistrate; custody order.** — (a) Any person who has knowledge of a mentally ill or inebriate person who is imminently dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate of district court and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a qualified physician. The affidavit shall include the facts on which the affiant’s opinion is based. The respondent must be found in or be a resident of the same county as the clerk or magistrate.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably mentally ill or inebriate and imminently dangerous to himself or others, he shall issue an order to a law-enforcement officer to take the respondent into custody for examination by a qualified physician.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry, as soon as may be and in any manner deemed reliable, as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) An affiant who is a qualified physician may execute the oath to the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. (1973, c. 726, s. 1; c. 1408, s. 1.)

**Physician Who Is Licensed Other Than in North Carolina and Who Is Practicing with Veterans Administration Is “Qualified Physician”.** — See opinion of Attorney

General to Dr. N.P. Zarzar, Division of Mental Health Services, 43 N.C.A.G. 400 (1974), issued under this Article prior to its 1973 revision.

**§ 122-58.4. Duties of law-enforcement officer; examination by qualified physician.** — (a) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer, within 24 hours after the order is signed, shall take the respondent into custody. Immediately upon assuming custody, and in any event within 48 hours, the officer shall take the respondent to a community mental health center for an examination by a qualified physician; if a qualified physician is not available in the community mental health center, he shall take the respondent to any qualified physician locally available. If a physician is not immediately available, the officer may temporarily detain the respondent in a community mental health facility, if one is available; if such a facility is not available, he may cause the detention of the respondent, under appropriate supervision, in the respondent’s home, in a private hospital or a clinic, in a general hospital, or in a regional mental health facility, but not in a jail or other penal facility.

(b) If the affiant who obtained the custody order is a qualified physician, the examination set forth in subsection (a) is not required. In this case, the law-enforcement officer shall take the respondent directly to a mental health facility described in subsection (c).



(c) The qualified physician shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. If the physician finds that the respondent is not mentally ill or an inebriate, or is not imminently dangerous to himself or others, the law-enforcement officer shall release him, and the proceedings shall be terminated. If the physician finds that the respondent is mentally ill or an inebriate, and is imminently dangerous to himself or others, the law-enforcement officer shall take the respondent to a community mental health facility or public or private facility designated or licensed by the Division of Mental Health Services of the Department of Human Resources for temporary custody, observation, and treatment of mentally ill or inebriate persons pending a district court hearing. If there is no community mental health facility so designated, and if the respondent is indigent and unable to pay for his care at a private facility, the law-enforcement officer shall take the respondent to a regional psychiatric facility designated by the Division of Mental Health Services for custody and treatment of the mentally ill and inebriate, and immediately notify the clerk of superior court of his actions.

(d) The findings of the qualified physician and the facts on which they are based, shall be in writing, in all cases. A copy of the findings shall be transmitted to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician shall also communicate his findings to the clerk by telephone. (1973, c. 726, s. 1; c. 1408, s. 1.)

**§ 122-58.5. Duties of clerk of superior court.** — Upon receipt of a qualified physician's finding that a respondent is mentally ill or an inebriate, and imminently dangerous to himself or others, the clerk of superior court shall, upon direction of a district court judge, assign counsel, if necessary, calendar the matter for hearing, and notify the respondent and counsel of the time and place of the hearing. Notice must be given at least 48 hours in advance, unless waived by counsel for the respondent. (1973, c. 1408, s. 1.)

**§ 122-58.6. Treatment and release pending hearing.** — (a) Within 24 hours of arrival at a community or regional mental health facility described in G.S. 122-58.4(c), the respondent shall be examined by a qualified physician. If the qualified physician finds that the respondent is mentally ill or an inebriate, and is imminently dangerous to himself or others, he shall hold the respondent at the facility pending the district court hearing. If the qualified physician finds that the respondent is not mentally ill or inebriate, or is not imminently dangerous to himself or others, he shall release the respondent pending the district court hearing and so notify the clerk of superior court of the county from which the respondent was sent. Unless the respondent provides his own transportation, the law-enforcement officer shall return the respondent to the originating county. If a respondent, so released, fails, upon proper notification, to attend the hearing, and his presence is not waived by his counsel and the court, he may be taken into custody and returned to the releasing facility by any law-enforcement officer on order of the judge. Days the respondent is on release shall not be counted in computing the 10-day period in which the hearing must be held.

(b) The findings of the qualified physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be transmitted to the clerk of superior court by reliable and expeditious means.

(c) Pending the district court hearing, the qualified physician attending the respondent is authorized to administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. (1973, c. 726, s. 1; c. 1408, s. 1.)

§ 122-58.7. **District court hearing.** — (a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon motion of the respondent's counsel, sufficiently in advance to avoid movement of the respondent, continuances of not more than five days each may be granted.

(b) On order of the presiding judge, the solicitor (district attorney) shall represent the petitioner.

(c) The respondent shall be represented by counsel of his choice, or, if he is indigent within the meaning of G.S. 7A-450, or refuses to retain counsel if financially able to do so, by counsel appointed by the court.

(d) With the consent of the court, counsel may in writing waive the presence of the respondent.

(e) Certified copies of reports and findings of qualified physicians and medical records of the mental health facility are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(f) Hearings may be held in an appropriate room not used for treatment of patients at the mental health facility in which the respondent is being treated, if it is located within the judge's judicial district, or in the judge's chambers. A hearing shall not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge, a more suitable place is available.

(g) The hearing shall be closed to the public, unless the respondent requests otherwise.

(h) A copy of all documents admitted and, where applicable, a transcript of oral testimony considered shall be furnished by the clerk to the respondent on request. If the respondent is indigent, the transcript shall be provided at State expense.

(i) To support a commitment order, the court is required to find, by clear, cogent, and convincing evidence, that the respondent is mentally ill or inebriate, and imminently dangerous to himself or others. The court shall record the facts which support its findings. (1973, c. 726, s. 1; c. 1408, s. 1.)

§ 122-58.8. **Disposition.** — (a) If the court finds that the respondent is not mentally ill or inebriate, or is not imminently dangerous to himself or others, he shall be discharged, and the facility in which he was last a patient so notified.

(b) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill or inebriate, and is imminently dangerous to himself or others, it may order treatment, inpatient or outpatient, for a period not in excess of 90 days, at a mental health facility, public or private, designated or licensed by the Division of Mental Health Services. Treatment at a private facility shall be at the expense of the respondent to the extent that such charges are not disposed of by contract between the county and the private facility.

(c) If the court orders outpatient treatment, and the respondent fails to adhere to the prescribed outpatient treatment program, on report of the failure by the chief of medical services of the treatment facility, the court, upon notice to the respondent and his counsel, may order a supplemental hearing, and further order inpatient treatment in a designated or licensed facility for a period of not more than 90 days running from the date of the order. (1973, c. 726, s. 1; 1408, s. 1.)

§ 122-58.9. **Appeal.** — The judgment of the district court is final. Appeal may be had to the Court of Appeals, on the record, as in civil cases. Appeal does not stay commitment, unless so ordered by the Court of Appeals. The Attorney General shall represent the petitioner on appeal. (1973, c. 726, s. 1; c. 1408, s. 1.)

§ 122-58.10. **Duty of assigned counsel; discharge.** — Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, if any, or upon transfer of the respondent to a regional

mental health facility, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a community mental health facility, assigned counsel remains responsible for his representation until discharged by order of district court, or until the respondent is unconditionally discharged from the community facility. (1973, c. 1408, s. 1.)

**§ 122-58.11. Rehearings.** — (a) Fifteen days before the end of the initial treatment period, if the chief of medical services of the inpatient facility determines that treatment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the judicial district in which the facility is located, shall calendar the rehearing, shall notify the respondent and his counsel of the time and place of the rehearing.

(b) Rehearings shall be held at the facility in which the respondent is receiving treatment. The judge shall be a judge of the district court of the judicial district in which the facility is located, or a district court judge temporarily assigned to that district.

(c) Rehearings are governed by the same procedures as initial hearings, and the respondent has the same rights he had at the initial hearing, including the right to appeal.

(d) If the court finds that the respondent is not in need of continued hospitalization, or of outpatient care, it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk of superior court of the county of original commitment and the facility from which the respondent is being discharged. If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill or inebriate, and imminently dangerous to himself or others, and in need of continued hospitalization, or, in the alternative, of outpatient care, it may order hospitalization (or outpatient care, as the case may be) for an additional period not in excess of 180 days.

(e) Fifteen days before the end of the second commitment period, and annually thereafter, the chief of medical services of the facility shall review and evaluate the condition of each respondent, and if he determines that a respondent is in continued need of hospitalization or, in the alternative, of outpatient treatment, shall so notify the respondent, his counsel, and the clerk of superior court of the county in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. Any recommitment ordered shall be for only such period of time as continued treatment is deemed necessary by the chief of medical services of the treatment facility, but in no event longer than one year.

(f) There are no rehearings for outpatients. (1973, c. 726, s. 1; c. 1408, s. 1.)

**Actual Notice of Rehearing Required** Jacob, Jr., Broughton Hospital, 44 N.C.A.G. 33  
**Absent Waiver or Consent to Nonservice.** — (1974).  
 See opinion of Attorney General to Mr. J. Laird

**§ 122-58.12. Counsel for indigents at rehearings.** — (a) The senior regular resident superior court judge of a judicial district in which a regional psychiatric facility for the care and treatment of the mentally ill and inebriate is located shall appoint an attorney licensed to practice in North Carolina as special counsel for the mentally ill and inebriate who are indigent. Such special counsel shall serve at the pleasure of the appointing judge, shall not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys, as fixed by the Administrative Officer of the Courts. It shall be the duty of the special counsel to represent at rehearings under this Article all indigent respondents committed to the facility by a district court judge for

mental illness or inebriety, and to represent all indigent respondents who, after a rehearing, appeal to the Court of Appeals. The initial determination of indigency shall be made by the special counsel in accordance with G.S. 7A-450(a), but is subject to redetermination by the presiding judge.

(b) The regional facility shall provide suitable office space for the counsel to meet privately with respondents. The Administrative Office of the Courts shall provide secretarial and clerical service, and necessary equipment and supplies for his office.

(c) In the event of a vacancy in the office of special counsel, or his incapacity, or a conflict of interest, counsel for indigents at rehearings may be assigned by a district judge of the district from among those members of the bar who maintain law offices within 20 miles of the regional facility. Counsel may also be so assigned when, in the opinion of the Administrative Officer of the Courts, the volume of cases warrants. (1973, c. 47, s. 2; c. 1408, s. 1.)

**Editor's Note.** — Pursuant to Session Laws substituted for "solicitors" in subsection (a) as 1973, c. 47, s. 2, "district attorneys" has been enacted by Session Laws 1973, c. 1408, s. 1.

**§ 122-58.13. Release and conditional release.** — The chief of medical services of a public or private mental health facility shall discharge a committed respondent unconditionally at any time he determines that the patient is no longer in need of hospitalization. He may also release a respondent conditionally, for periods not in excess of 30 days, on specified medically appropriate conditions. Violation of the conditions is grounds for return to the releasing facility. A law-enforcement officer, on written request of the chief of medical services of the facility, shall take a conditional releasee into custody and return him to the facility. Notice of discharge and of conditional release shall be furnished the clerk of superior court of the county of commitment, and the county in which the facility is located. (1973, c. 726, s. 1; c. 1408, s. 1.)

**§ 122-58.14. Transportation.** — (a) Transportation of a respondent to or from a clerk or magistrate, a qualified physician, a community mental health facility, and a hearing shall be provided by the city or county, which said transportation may be by city- or county-owned vehicles, or by private ambulance by contract with the city or county. If the respondent is a resident of a city, the city has the duty to provide the transportation; if the respondent is a resident of a county, outside of city limits, the county has the duty to provide transportation; if a respondent resides outside of the county, the city (or county, as the case may be) in which he is taken into custody has the duty to provide transportation; but cities and counties may contract with each other to accomplish this function. Transportation to or from a regional hospital outside the county, for any purpose, is the responsibility of the county, pursuant to G.S. 122-42. If the respondent is not indigent, the city or county is entitled to recover the costs of transportation from the respondent. A respondent being discharged from a facility may elect to use his own transportation.

(b) To the extent feasible, law-enforcement officers transporting respondents shall dress in plain clothes, and shall travel in unmarked vehicles. (1973, c. 1408, s. 1.)

**§ 122-58.15. Commitment of eligible veterans to Veterans Administration facility.** — References in this Article to community or regional mental health facilities shall be deemed to include any facility operated by the Veterans Administration for inpatient care and treatment of mentally ill or inebriate veterans. Such a facility may be used for temporary detention pending a district court hearing, and for commitment subsequent to such a hearing. Eligibility of the veteran-respondent for treatment at a Veterans Administration facility, and the availability of space therein, shall be determined in all cases prior to sending or committing a veteran-respondent thereto by filing with the court a certificate of eligibility from the Veterans Administration.

Rehearings for veteran-respondents committed to a Veterans Administration facility shall be held at the facility or at the county courthouse in the county in which the facility is located, and counsel for rehearings shall be assigned from among the members of the bar of the same county. (1973, c. 1408, s. 1.)

**§ 122-58.16. Use of community and area mental health facilities.** — Directors of community mental health facilities and area mental health programs shall submit for approval by the Division of Mental Health Services, plans consistent with this Article, for maximum utilization of community and area mental health facilities. Such plans shall be formulated after consultation with local court officials and the local medical society. (1973, c. 1408, s. 1.)

**§ 122-58.17. Respondents committed under prior law.** — Respondents committed to a mental health facility for a specific period of time prior to the effective date of this Article shall be deemed to have been committed, for the same period of time, under this Article. Respondents committed for an indefinite period of time shall be processed under this Article, with the initial district court hearing conducted within 30 days after the effective date of this Article. (1973, c. 1408, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 1408, ratified April 12, 1974, was made effective 60 days after ratification.

**§ 122-58.18. Special emergency procedure for violent persons.** — When a person subject to commitment under the provisions of this Article is also violent and requires restraint, and delay in taking him to a qualified physician for examination would likely endanger life or property, a law-enforcement officer may take the person into custody and take him immediately before a magistrate or clerk. The law-enforcement officer shall execute the affidavit required by G.S. 122-58.3, and in addition shall swear that the respondent is violent and requires restraint, and that delay in taking the respondent to a qualified physician for an examination would endanger life or property.

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, and that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a qualified physician for an examination would endanger life or property, he shall order the law-enforcement officer to take the respondent directly to a community or regional mental health facility designated for the custody and treatment of such persons under this Article.

Respondents received at a community or regional mental health facility under the provisions of this section shall be examined and processed thereafter in the same manner as all other respondents under this Article. (1973, c. 726, s. 1, c. 1408, s. 1.)

## ARTICLE 6.

### *Emergency Hospitalization.*

**§ 122-59:** Repealed by Session Laws 1973, c. 726, s. 2.

**Repealed Section Was Unconstitutional.** — The provisions of this section, before its repeal, did not comport with constitutional requirements of procedural due process, and it was unconstitutional on its face. In re Confinement of Hayes, 18 N.C. App. 560, 197 S.E.2d 582, appeal dismissed, 283 N.C. 753, 198 S.E.2d 729 (1973).

**But Doctors Had Right to Rely on It.** — While a party may not assert a right arising out

of a statute which has been declared unconstitutional, the principle does not strike down all undertakings made in reliance upon said statute. *Powell v. Duke Univ., Inc.*, 18 N.C. App. 736, 197 S.E.2d 910 (1973), holding that doctors were entitled to rely on provisions of section prior to time it was held unconstitutional.

## ARTICLE 7.

*Judicial Hospitalization.*

§§ 122-60 to 122-65: Repealed by Session Laws 1973, c. 726, s. 2.

**Repealed §§ 122-63 and 122-65 Were Unconstitutional.** — The provisions of §§ 122-63 and 122-65, before their repeal, did not comport with constitutional requirements of procedural due process, and they were

unconstitutional on their face. In re Confinement of Hayes, 18 N.C. App. 560, 197 S.E.2d 582, appeal dismissed, 283 N.C. 753, 198 S.E.2d 729 (1973).

## ARTICLE 11.

*Mentally Ill Criminals.*

§ 122-83. **Mentally ill persons charged with crime to be committed to facility.**

**Amendment Effective July 1, 1975.** — Session Laws 1973, c. 1286, s. 20, effective July 1, 1975, will amend this section by deleting "by the court before whom they are or may be arraigned for trial" following "shall be sent" near the middle of the first sentence.

Session Laws 1973, c. 1286, s. 29, contains a severability clause.

Session Laws 1973, c. 1286, s. 31, provides: "Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

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

**Cross References.** —

For section superseding the provisions of this section which prescribe procedures to be used in the case of a defendant acquitted of a criminal charge by reason of mental illness, see § 122-84.1.

**Amendment Effective July 1, 1975.** — Session Laws 1973, c. 1286, s. 21, effective July 1, 1975, will rewrite the second paragraph of this section to read as follows:

"When a person has been determined to be incapable of proceeding as provided in Article 56 of Chapter 15A of the General Statutes and has been committed to a State hospital, if the hospital authorities feel that an outright discharge or release of said person (in the event he is subsequently tried and found not guilty), would be harmful or dangerous to himself or the public at large involved, and that further care and treatment is necessary, said authorities will when reporting that he is able to proceed, make a request for his return for further care and treatment, in the event he is found not guilty."

**Ability to Plead and Conduct Defense, etc.** —

In accord with original. See *State v. Thompson*, 285 N.C. 181, 203 S.E.2d 781 (1974).

**And May Be Determined, etc.** —

The preliminary question of a defendant's mental capacity to plead to a bill of indictment and to aid in the preparation and conduct of his defense is properly a question to be decided by the trial judge. *State v. Thompson*, 285 N.C. 181, 203 S.E.2d 781 (1974).

**Because Formal Inquiry as to Defendant's Mental Capacity, etc.** —

In accord with original. See *State v. Thompson*, 285 N.C. 181, 203 S.E.2d 781 (1974).

Session Laws 1973, c. 1286, s. 29, contains a severability clause.

Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

**How Mental Capacity of Accused, etc.** —

In accord with 2nd paragraph in original. See *State v. Thompson*, 285 N.C. 181, 203 S.E.2d 781 (1974).

The preliminary question of a defendant's mental capacity to plead to a bill of indictment and to aid in the preparation and conduct of his defense is properly a question to be decided by the trial judge. *State v. Thompson*, 285 N.C. 181, 203 S.E.2d 781 (1974).

**The test of mental responsibility, etc.** —

In accord with 3rd paragraph in original. See

State v. Potter, 285 N.C. 238, 204 S.E.2d 649 (1974).

**When Determination of Mental Capacity, etc. —**

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. State v. Thompson, 285 N.C. 181, 203 S.E.2d 781 (1974).

**§ 122-84.1. Acquittal of defendant on grounds of mental illness; procedure.** — (a) Upon the acquittal of any criminal defendant on grounds of mental illness, the trial court shall order the defendant held under appropriate restraint pending a hearing on the issue of whether the defendant is mentally ill and imminently dangerous to himself or others, as these terms are defined in Article 5A of this Chapter. The hearing shall be conducted in accordance with the provisions of G.S. 122-58.7 except that the hearing shall be held in a courtroom and need not be closed to the public. Evidence adduced at the trial of the defendant on the criminal charges on the issue of mental illness shall be admissible at the hearing. If the hearing cannot be conducted prior to the termination of the session of court in which the criminal trial was had, it shall be calendared in the district court in the same county within 10 days. If the court finds that the defendant-respondent is mentally ill and imminently dangerous to himself and others, it shall order him committed to a regional psychiatric facility designated by the Division of Mental Health Services for a period of not more than 90 days. The defendant shall thereafter be considered as though he had been committed initially under the provisions of Article 5A of this Chapter. If the court finds that the defendant is not mentally ill and imminently dangerous to himself or others, it shall order his discharge.

(b) The provisions of this section supersede those provisions of G.S. 122-84 which prescribe the procedures to be used in the case of a defendant acquitted of a criminal charge by reason of mental illness. (1973, c. 1437, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 1437, s. 3, provides that the act shall become effective on the same day as Session Laws 1973, c. 1408,

which rewrote Article 5A of this Chapter. Chapter 1408 was ratified April 12, 1974, and made effective 60 days after ratification.

**§ 122-85. Convicts becoming mentally ill.** — (a) A convict who becomes mentally ill and imminently dangerous to himself or others after commitment to any penal institution in the State shall be processed in accordance with Article 5A of this Chapter, as modified by this section, except when the provisions of Article 5A are manifestly inappropriate. A staff psychiatrist of the prison shall execute the affidavit required by G.S. 122-58.3, and send it to the clerk of superior court of the county in which the penal facility is located. Upon receipt of the affidavit, the clerk shall calendar a district court hearing, and notify the respondent and his counsel as required by G.S. 122-58.5. The hearing shall be conducted in a district courtroom. If the judge finds by clear, cogent, and convincing evidence that the respondent is mentally ill and imminently dangerous to himself or others, he shall order him transferred for treatment to a regional psychiatric facility designated by the Division of Mental Health Services.

(b) If the sentence of a convict-respondent expires while he is committed to a regional psychiatric center, he shall be considered in all respects as if he had been initially confined under Article 5A.

(c) If, in the opinion of the chief of medical services of the regional psychiatric facility, a convict-respondent ceases to be mentally ill and imminently dangerous to himself or others, he shall notify the Department of Correction which shall arrange for the convict-respondent's return to a prison facility.

(d) Special counsel at a regional psychiatric facility shall represent any convict who becomes mentally ill and imminently dangerous to himself or others while confined in a penal facility in the same county. (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; 1973, c. 253, s. 3; 1973, c. 1433.)

**Editor's Note.** —

The second 1973 amendment rewrote this section. The second amendatory act was made effective on the same date as Session Laws 1973,

c. 1408, which rewrote Article 5A of this Chapter. Chapter 1408 was ratified April 12, 1974, and made effective 60 days after ratification.

**§ 122-86:** Repealed by Session Laws 1973, c. 1437, s. 2.

**Cross Reference.** — For present provisions as to procedure to be followed upon acquittal of a criminal defendant on grounds of mental illness, see § 122-84.1.

on the same day as Session Laws 1973, c. 1408, which rewrote Article 5A of this Chapter. Chapter 1408 was ratified April 12, 1974, and made effective 60 days after ratification.

**Editor's Note.** — Session Laws 1973, c. 1437, s. 3, provides that the act shall become effective

**§§ 122-87, 122-87.1:** Repealed by Session Laws 1973, c. 1286, s. 26, effective July 1, 1975.

**Cross Reference.** — See Editor's note following the analysis to Chapter 15.

reenactment of the common law."

Session Laws 1973, c. 1286, s. 29, contains a severability clause.

**Editor's Note.** — Session Laws 1973, c. 1286, ss. 27 and 28, effective July 1, 1975, provide:

Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 27. All statutes which refer to sections repealed or amended by this act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

"Sec. 28. None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a

**§ 122-91.** Repealed by Session Laws 1973, c. 1286, s. 26, effective July 1, 1975.

**Cross Reference.** — See Editor's note following the analysis to Chapter 15.

Session Laws 1973, c. 1286, s. 29, contains a severability clause.

**Editor's Note.** — Session Laws 1973, c. 1286, ss. 27 and 28, effective July 1, 1975, provide:

Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 27. All statutes which refer to sections repealed or amended by this act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

"Sec. 28. None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

**Applied** in *State v. Davis*, 284 N.C. 701, 202 S.E.2d 770 (1974).



## Chapter 122A.

### North Carolina Housing Finance Agency.

Sec.	Sec.
122A-1. Short title.	122A-9. Trust agreement or resolution.
122A-2. Legislative findings and purposes.	122A-10. Validity of any pledge.
122A-3. Definitions.	122A-11. Trust funds.
122A-4. North Carolina Housing Finance Agency.	122A-12. Remedies.
122A-5. General powers.	122A-15. Refunding obligations.
122A-5.1. Rules and regulations governing Agency activity.	122A-16. Oversight by committees of General Assembly; annual reports.
122A-5.2. Mortgage insurance authority.	122A-17. Officers not liable.
122A-6. Credit of State not pledged.	122A-18. Authorization to accept appropriated moneys.
122A-7. [Repealed.]	122A-19. Tax exemption.
122A-8. Bonds and notes.	122A-20. Conflict of interest.

§ 122A-1. **Short title.** — This Chapter shall be known and may be cited as the “North Carolina Housing Finance Agency Act.” (1969, c. 1235, s. 1; 1973, c. 1296, s. 1.)

**Editor’s Note.** — The 1973 amendment substituted “Finance Agency” for “Corporation” in the title of the act. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

§ 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 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 Finance Agency, 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 Finance Agency, 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.

The General Assembly hereby further finds and declares that it shall be the

policy of said Agency, whenever feasible, to give first priority in its programs to assisting persons and families of lower income in the purchase and rehabilitation of residential housing, and to undertake its programs in the areas where the greatest housing need exists, and to give priority to projects and individual units which conform to sound principles and practices of comprehensive land use and environmental planning, regional development planning and transportation planning as established by units of local government and regional organizations having jurisdiction over the area within which such projects and units are to be located if such government agencies exist in an area under consideration. However, no area of need shall be penalized because government planning agencies do not exist in such areas. (1969, c. 1235, s. 2; 1973, c. 1296, s. 2.)

**Editor's Note.** — The 1973 amendment deleted "development costs, land development and" following "financing for" in the third paragraph, substituted "Agency" for "Corporation" in two places in the fourth paragraph and added the last paragraph. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 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 Agency under this Chapter;
- (2) "Agency" means the North Carolina Housing Finance Agency created by this Chapter;
- (3) Repealed by Session Laws 1973, c. 1296, s. 5;
- (4) Repealed by Session Laws 1973, c. 1296, s. 6;
- (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) Repealed by Session Laws 1973, c. 1296, s. 8;
- (7) Repealed by Session Laws 1973, c. 1296, s. 9;
- (8) "Mortgage" or "mortgage loan" means a mortgage loan for residential housing, including a mortgage loan insured or guaranteed by the United States or an instrumentality thereof or by [for] which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage;
- (9) Repealed by Session Laws 1973, c. 1296, s. 11;
- (10) "Obligations" means any bonds or bond anticipation notes authorized to be issued by the Agency under the provisions of this Chapter;
- (11) "Persons and families of lower income" means persons and families deemed by the Agency to require such assistance as is made available by this Chapter on account of insufficient personal or family income, taking into consideration, without limitation, (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 Agency therefore to be eligible to occupy residential housing financed wholly or in part, with 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 rehabilitation of buildings and improvements, and such other nonhousing facilities as may be incidental or appurtenant thereto;

- (13) "State" means the State of North Carolina;
- (14) "Federally insured securities" means an evidence of indebtedness secured by a first mortgage lien on residential housing for persons of lower income and insured or guaranteed as to repayment of principal and interest by the United States or any agency or instrumentality thereof; and
- (15) "Mortgage lenders" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, mortgage banking company, the federal government and any other financial institution authorized to transact business in the State. (1969, c. 1235, s. 3; 1973, c. 1296, ss. 3-6, 8-14, 16, 17.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. The amendment also deleted "but shall not include any fund notes" at the end of subdivision (1) and repealed subdivisions (3), defining "development costs," (4), defining "fund notes," (6), defining "housing development fund," (7), defining "insured construction loan" and (9), defining "land development." In subdivision (8), the amendment deleted "Insured" preceding "mortgage" at the beginning of the subdivision and "insured" preceding "mortgage loan" where that phrase first appears and inserted "including a mortgage loan." In subdivision (10), the amendment substituted "bonds or

bond anticipation notes" for "bonds, bond anticipation notes or fund notes." In subdivision (11), the amendment deleted "such factors as" preceding "(i)," and "constructed and" preceding "financed" and "insured construction loans or insured" preceding "mortgages" near the end of this subdivision. In subdivision (12), the amendment substituted "rehabilitation of buildings and improvements" for "acquisition, construction or rehabilitation of land, buildings and improvements thereto" and deleted "and" at the end of the subdivision. The amendment also added subdivisions (14) and (15).

Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-4. North Carolina Housing Finance Agency.** — There is hereby created a body politic and corporate to be known as "North Carolina Housing Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The Agency shall be governed by a Board of Directors composed of 13 members. Four of the members of said Board shall be members of the General Assembly, two from each house thereof, the two members from the Senate to be appointed by the President of the Senate and the two members from the House to be appointed by the Speaker of the House. The remaining nine directors of the Agency shall be residents of the State and shall not hold other public office. The President of the Senate also shall appoint one director who shall be experienced with a savings and loan institution and one director who shall be experienced in home building. The Speaker of the House also shall appoint one director who shall have had experience with a mortgage-servicing institution and one director who shall be experienced as a licensed real estate broker. The Governor shall appoint four of the directors of the Agency, one of such appointees shall be experienced in community planning, one shall be experienced in subsidized housing management, one shall be experienced as a specialist in housing public policy [public housing policy], and one shall be experienced in the manufactured housing industry. The eight nonlegislative directors of the Agency thus appointed shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and Speaker of the House respectively, two for two years, by the President of the Senate and by the Speaker of the House respectively, two for three years and two for four years, respectively, as designated by the Governor, and shall continue in office 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 Board of Directors shall be eligible for reappointment. The four directors who are members of the General Assembly shall be appointed for a term of two years. The 12 members of the Board shall then elect a thirteenth member to the Board by simple majority vote who shall serve as chairman. Each nonlegislative member of the Board of Directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each nonlegislative member of the Board of Directors before entering upon his duties 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 Board of Directors shall designate one of its members to serve as vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then-current terms as members of the Board of Directors of the Agency. The Agency shall be placed within the Department of the Treasurer and shall be subject to the general supervision of the Treasurer; provided, however, that the approval of the Treasurer shall not be required for the exercise by the Agency of any of the powers granted by this Chapter. The Board of Directors shall, subject to the approval of the Treasurer, elect and appoint and prescribe the duties of such other officers as it shall deem necessary or advisable, including an executive director and a secretary, and the Advisory Budget Commission shall fix the compensation of such officers. All personnel employed by the Agency shall be subject to the State Personnel Act and the books and records of the Agency shall be subject to audit by the State.

No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Agency shall receive no compensation for their services but shall be entitled to receive, from funds of the Agency, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and 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 Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The secretary of the Agency shall keep a record of the proceedings of the Agency and shall be custodian of all books, documents and papers filed with the Agency, the minute book or journal of the Agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Agency and to give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20.)

**Editor's Note. —**

The second 1973 amendment, effective July

1, 1974, as it stood before the third 1973 amendment, substituted "Secretary of Natural

and Economic Resources" for "Director of the Department of Conservation and Development" and "Secretary of the Department of Natural and Economic Resources" for "Director of the Department of Local Affairs" in the second sentence of the first paragraph.

The third 1973 amendment rewrote the first paragraph substituted "Agency" for "Corporation" throughout the second and third paragraphs, deleted "only as to

the members appointed by the Governor" preceding "such per diem" near the end of the second paragraph and rewrote the next-to-last sentence of the third paragraph.

Session Laws 1973, c. 1296, s. 64, provides: "All appointments to the North Carolina Housing Finance Agency Board of Directors shall be made within 60 days of the ratification of this act." The act was ratified April 11, 1974.

Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-5. General powers.** — The Agency 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 participate in any federally assisted lease program for housing for persons of lower income under any federal legislation, including, without limitation, section 23 of the National Housing Act; provided, however, that such participation may take place only upon the request and approval of the governing body of the county, city or town in which any such project is to be located;
- (2) To make or participate in the making of mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the Agency 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 and enter into commitments by itself or together with others for the purchase of mortgage loans made by mortgage lenders to sponsors of residential housing or to persons of lower income for residential housing where the Agency has given approval prior to the initial making of the loan, or where there has been no such prior approval, upon such terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing as the Agency may prescribe by regulation; provided, however, that any such purchase shall be made only upon the determination by the Agency that mortgage loans were not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
- (4) Repealed by Session Laws 1973, c. 1296, s. 24.
- (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 Agency 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 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, contract or agreement of any kind to which the Agency 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 Agency 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 service or contract for the servicing of mortgage loans and to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Chapter, including contracts with any person, firm, corporation, governmental agency or other entity, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the Agency 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, including the proceeds of general obligation bonds of the State;
- (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;
- (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 Agency and to fix and pay their compensation from funds available to the Agency therefor;
- (22) To purchase or to participate in the purchase and enter into commitments by itself or together with others for the purchase of federally insured securities; provided, however, that the Agency shall first determine that the proceeds of such securities will be utilized for the purpose of making new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing, all as specified in regulations to be adopted by the Agency; and
- (23) To provide, or contract for the providing of, management and counseling services whenever, in the judgment of the Agency, no other satisfactory low-income housing counseling service is available for occupants of rental projects for persons of lower income or for prospective homeowners of lower income; provided, however, that no such program shall be undertaken until the Agency shall have made a study of its feasibility and shall have determined that the undertaking

of such program will not adversely affect other programs of the Agency. (1969, c. 1235, s. 5; 1973, c. 1296, ss. 21-24, 27, 29, 35, 36, 40-43.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. The amendment also rewrote subdivisions (1) and (3), deleted "insured" preceding "mortgage loans" near the beginning of subdivision (2), repealed subdivision (4), which read "To make temporary loans from the housing development fund," deleted "construction, land development, mortgage or temporary" preceding "loan" in subdivision (7) and

"construction loan, temporary loan," following "commitment," near the end of subdivision (9), added "To service or contract for the servicing of mortgage loans and" at the beginning of subdivision (15), added "including the proceeds of general obligation bonds of the State" at the end of subdivision (16), deleted "and" at the end of subdivision (20) and added subdivisions (22) and (23).

Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-5.1. Rules and regulations governing Agency activity.** — (a) The Agency shall from time to time adopt, modify or repeal rules and regulations governing the purchase of federally insured securities by the Agency and the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules and regulations as to any or all of the following:

- (1) Procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans or for the purchase of federally insured securities;
- (2) Limitations or restrictions as to the number of family units, location or other qualifications or characteristics of residences to be financed by mortgage loans and requirements as to the income limits of persons and families of lower income occupying such residences;
- (3) Restrictions as to the interest rates on mortgage loans or the return which may be realized by mortgage lenders on any mortgage loans or on the sale of federally insured securities to the Agency;
- (4) Requirements as to commitments by mortgage lenders with respect to the use of the proceeds of sale of any federally insured securities;
- (5) Schedules of any fees and charges necessary to provide for expenses and reserves of the Agency; and
- (6) Any other matters related to the duties and the exercise of the powers of the Agency to purchase and sell mortgage loans, or to purchase federally insured securities.

Such rules and regulations shall be designed to effectuate the general purposes of this Chapter and the following specific objectives: (i) the construction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford; (ii) the rehabilitation of present lower-income housing; (iii) increasing 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 action or natural disaster; (iv) the encouraging of private enterprise and investment to sponsor, build and rehabilitate residential housing for such persons and families to prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout the State; and (v) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions.

(b) The interest rate or rates and other terms of federally insured securities or mortgage loans purchased from the proceeds of any issue of bonds of the Agency shall be at least sufficient to assure the payment of said bonds and the interest thereon as the same become due from the amounts received by the Agency in repayment of such federally insured securities or such loans and interest thereon.

(c) The Agency shall require as a condition of the purchase of federally

insured securities from a mortgage lender and the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender that such mortgage lender shall on or prior to the nintieth day (or such earlier day as shall be prescribed by rules and regulations of the Agency) following the receipt of the loan or sale proceeds have entered into written commitments to make, and shall thereafter proceed as promptly as practicable to make from such loan or sale proceeds, residential mortgage loans having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such prior loan and the Agency shall not purchase nor make commitment to purchase mortgage loans, federally insured securities or other obligations from a mortgage lender from which it has previously purchased mortgage loans or federally insured securities unless said mortgage lender has either restored or made commitments to restore to its portfolio of mortgage loans in the State, mortgage loans having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to either the proceeds of prior sale or the amount of prior loan to said mortgage lender and has provided evidence satisfactory to it of the making of such new mortgage loans. (1973, c. 1296, s. 44.)

**Editor's Note.** — Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-5.2. Mortgage insurance authority.** — (a) The Agency may upon application of a proposed mortgagee insure and make advance commitments to insure payments required by a loan for residential housing for persons of lower income upon such terms and conditions as the Agency may prescribe. Mortgage loans insured by the Agency under this Chapter may provide financing for related ancillary facilities to the extent permitted by applicable Agency regulations. Mortgage loans insured by the Agency under this Chapter shall be secured by a first mortgage.

The aggregate principal amount of all mortgages so insured by the Agency under this Chapter and outstanding at any one time shall not exceed 10 times the average annual balance for the preceding calendar year of funds on deposit in the housing mortgage insurance fund, the creation of which is hereby authorized. The aggregate amount of principal obligations of all mortgages so insured 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 moneys on deposit to the credit of the housing mortgage insurance fund. Any contract of insurance executed by the Agency under this section shall be conclusive evidence of eligibility for such mortgage insurance and the validity of any contract of insurance so executed or of an advance commitment to issue such shall be incontestable in the hands of a mortgagee from the date of execution of such contract or commitment, except for fraud or misrepresentation on the part of such mortgagee and, as to commitments to insure, noncompliance with the terms of the advance commitment or Agency regulations in force at the time of issuance of the advance commitment.

(b) For mortgage payments to be eligible for insurance under the provisions of this Chapter, the underlying mortgage loan shall:

- (1) Be one which is made and held by a mortgagee approved by the Agency as responsible and able to service the mortgage properly;
- (2) Not exceed (i) ninety percent (90%) of the estimated cost of the proposed housing if owned or to be owned by a profit-making sponsor or (ii) one hundred percent (100%) of the estimated cost of such proposed housing if owned or to be owned by a nonprofit housing sponsor or, if owned by a person or family of lower income, in the case of a single family dwelling or condominium;
- (3) Have a maturity satisfactory to the Agency but in no case longer than



eighty percent (80%) of the Corporation's estimate of the remaining useful life of said housing or 40 years from the date of the issuance of insurance, whichever is earlier;

- (4) Contain amortization provisions satisfactory to the Agency requiring periodic payments by the mortgagor not in excess of his ability to pay as determined by the Agency;
- (5) Be in such form and contain such terms and provisions with respect to maturity, property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, equitable and legal redemption rights, prepayment privileges and other matters as the Agency may prescribe.

(c) All applications for mortgage insurance shall be forwarded, together with an application fee prescribed by the Agency, to the executive director of the Agency. The Agency shall cause an investigation of the proposed housing to be made, review the application and the report of the investigation, and approve or deny the application. No application shall be approved unless the Agency finds that it is consistent with the purposes of this Chapter and further finds that the financing plan for the proposed housing is sound. The Agency shall notify the applicant and the proposed lender of its decision. Any such approval shall be conditioned upon payment to the Agency, within such reasonable time and after notification of approval as may be specified by the Agency, of the commitment fee prescribed by the Agency.

(d) The Agency shall fix mortgage insurance premiums for the insurance of mortgage payments under the provision of this Chapter. Such premiums shall be computed as a percentage of the principal of the mortgage outstanding at the beginning of each mortgage year, but shall not be more than one half of one percent ( $\frac{1}{2}$  of 1%) per year of such principal amount. The amount of premium need not be uniform for all insured loans. Such premiums shall be payable by mortgagors or mortgagees in such manner as prescribed by the Agency.

(e) In the event of default by the mortgagor, the mortgagee shall notify the Agency both of the default and the mortgagee's proposed course of action. When it appears feasible, the Agency may for a temporary period upon default or threatened default by the mortgagor authorize mortgage payments to be made by the Agency to the mortgagee which payments shall be repaid under such conditions as the Agency may prescribe. The Agency may also agree to revised terms of financing when such appear prudent. The mortgagee shall be entitled to receive the benefits of the insurance provided herein upon:

- (1) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of the Agency by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure, provided all claims of the mortgagee against the mortgagor or others arising from the mortgage, foreclosure, or any deficiency judgment shall be assigned to the Agency without recourse except such claims as may have been released with the consent of the Agency; or
- (2) The expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of strict foreclosure, foreclosure by sale or other judicial sale, or under a deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to the Agency with an assignment, without recourse, to the Agency of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure, or deficiency judgment; or
- (3) The acceptance by the Agency of title to the property or an assignment of the mortgage, without recourse to the Agency, in the event the Agency determines it imprudent to proceed under (1) or (2) above.

Upon the occurrence of either (1), (2) or (3) hereof, the obligation of the mortgagee to pay premium charges for insurance shall cease, and the Agency shall, within 30 days thereafter, pay to the mortgagee ninety-eight percent (98%) of the sum of (i) the then unpaid principal balance of the insured indebtedness, (ii) the unpaid interest to the date of conveyance or assignment to the Agency, as the case may be, (iii) the amount of all payments made by the mortgagee for which it has not been reimbursed for taxes, insurance, assessments and mortgage insurance premiums, and (iv) such other necessary fees, costs or expenses of the mortgagee as may be approved by the Agency.

(f) Upon request of the mortgagee, the Agency may at any time, under such terms and conditions as it may prescribe, consent to the release of the mortgagor from his liability or consent to the release of parts of the property from the lien of the mortgage, or approve a substitute mortgagor or sale of the property or part thereof.

(g) No claim for the benefit of the insurance provided in this Chapter shall be accepted by the Agency except within one year after any sale or acquisition of title of the mortgaged premises described in subdivisions (1) or (2) of subsection (e) of this section.

(h) There shall be paid into the housing mortgage insurance fund (i) all premiums received by the Agency for the granting of such mortgage insurance, (ii) any moneys or other assets received by the Agency as a result of default or delinquency on mortgage loans insured by the Agency, including any proceeds from the sale or lease of real property, (iii) any moneys appropriated and made available by the State for the purpose of such fund. (1973, c. 1296, s. 45.)

**Editor's Note.** — Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 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 Agency. Each obligation issued under this Chapter shall contain on the face thereof a statement to the effect that the Agency 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 or of the interest on such obligation.

Expenses incurred by the Agency 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 Agency hereunder beyond the extent to which moneys shall have been so provided. (1969, c. 1235, s. 6; 1973, c. 1296, s. 46.)

**Editor's Note.** — The 1973 amendment Session Laws 1973, c. 1296, s. 65, contains a substituted "Agency" for "Corporation" severability clause throughout the section.

**§ 122A-7:** Repealed by Session Laws 1973, c. 1296, s. 47.

**Editor's Note.** — Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-8. Bonds and notes.** — The Agency 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 Agency 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 Agency 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) 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 Agency. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Agency at such price or prices and under such terms and conditions as may be determined by the Agency. 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 Agency. 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 Agency. The Agency 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 Agency 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 Agency 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 Agency requesting that its bonds and 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 Agency and best effectuate the purposes of this Chapter provided that such sale shall be approved by the Agency.

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 Agency 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 Agency 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 Agency 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; 1973, c. 1296, s. 48.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-9. Trust agreement or resolution.** — In the discretion of the Agency any obligations issued under the provisions of this Chapter may be secured by a trust agreement by and between the Agency 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 Agency, including, without limitation, mortgage loans, mortgage loan commitments, contracts, agreements and other security or investment obligations, the fees or charges made or received by the Agency, the moneys received in payment of loans and interest thereon and any other moneys received or to be received by the Agency. 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 Agency in relation to the purposes to which obligation proceeds may be applied, the disposition or pledging of the revenues or assets of the Agency, 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 Agency. 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 Agency 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 Agency. (1969, c. 1235, s. 9; 1973, c. 1296, s. 49.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" throughout the section and deleted "construction loans, temporary loans," following "commitments," near the middle of the second sentence. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-10. Validity of any pledge.** — The pledge of any assets or revenues of the Agency to the payment of the principal of or the interest on any obligations of the Agency 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 Agency, irrespective of whether such parties have notice thereof. Nothing herein shall be construed to prohibit the Agency 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; 1973, c. 1296, s. 50.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 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 Agency may be invested as provided in G.S. 159-28.1. (1969, c. 1235, s. 11; 1973, c. 1296, s. 51.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" in the last sentence. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 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 Agency 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 Agency or by any officer thereof. (1969, c. 1235, s. 12; 1973, c. 1296, s. 52.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" in two places near the end of the section. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-15. Refunding obligations.** — The Agency 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 Agency, for any corporate purpose of the Agency. 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 Agency 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; 1973, c. 1296, s. 55.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-16. Oversight by committees of General Assembly; annual reports.** — The Finance Committee of the House of Representatives and the Finance Committee of the Senate shall exercise continuing oversight of the Agency in order to assure that the Agency is effectively fulfilling its statutory purpose; provided, however, that nothing in this Chapter shall be construed as required by the Agency to receive legislative approval for the exercise of any of the powers granted by this Chapter. The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, State Treasurer, State Auditor, the aforementioned committees of 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 Agency during such year. The Agency 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 Agency. (1969, c. 1235, s. 16; 1973, c. 1296, s. 56.)

**Editor's Note.** — The 1973 amendment added the first sentence, substituted "Agency" for "Corporation" throughout the second, third and fourth sentences and inserted "State Treasurer" and "the aforementioned committees of" in the second sentence. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-17. Officers not liable.** — No member or other officer of the Agency 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; 1973, c. 1296, s. 57.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation." Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 122A-18. Authorization to accept appropriated moneys.** — The Agency 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 Agency. (1969, c. 1235, s. 18; 1973, c. 1296, s. 58.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" in two places. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

**§ 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 Agency shall not be required to pay any tax or assessment on any property owned by the Agency under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Agency 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; 1973, c. 1296, s. 59.)

**Editor's Note.** — The 1973 amendment substituted "Agency" for "Corporation" throughout the section. Session Laws 1973, c. 1296, s. 65, contains a severability clause.

§ 122A-20. Conflict of interest. — If any member, officer or employee of the Agency 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 Agency, including any loan to any sponsor, builder or developer, such interest shall be disclosed to the Agency and shall be set forth in the minutes of the Agency, and the member, officer or employee having such interest therein shall not participate on behalf of the Agency in the authorization of any such contract. (1969, c. 1235, s. 20; 1973, c. 1296, s. 60.)

Editor's Note. — The 1973 amendment Session Laws 1973, c. 1296, s. 65, contains a substituted "Agency" for "Corporation" severability clause. throughout the section.

(1) Have served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or any other branch of the United States Armed Forces for a period of not less than 18 months; or

(2) Have served in the United States Armed Forces for a period of not less than 18 months; or

(3) Have served in the United States Armed Forces for a period of not less than 18 months; or

(4) Have served in the United States Armed Forces for a period of not less than 18 months; or

(5) Have served in the United States Armed Forces for a period of not less than 18 months; or

121-713. Distinguished Service Medal. — The Distinguished Service Medal is hereby created as "North Carolina Distinguished Service Medal" which shall be of appropriate design, and shall be awarded to any member or other person who has served in the United States Armed Forces and distinguished himself or herself by exceptional meritorious service in the performance of outstanding duty while in the North Carolina National Guard. (1973, c. 1296, s. 114; 1974, c. 114, s. 1.)

**Chapter 123.**  
**Impeachment.**

**Article 1.**

**The Court.**

Sec.

123-5. Causes for impeachment.

ARTICLE 1.

*The Court.*

**§ 123-5. Causes for impeachment.** — Each member of the Council of State, each justice of the General Court of Justice, and each judge of the General Court of Justice shall be liable to impeachment for the commission of any felony, or the commission of any misdemeanor involving moral turpitude, or for malfeasance in office, or for willful neglect of duty. (1868-9, c. 168, s. 16; Code, s. 2937; Rev., s. 4628; C. S., s. 6248; 1973, c. 1420.)

**Editor's Note.** — The 1973 amendment rewrote this section.



**Chapter 127.**

**Militia.**

**Article 3.**

**National Guard.**

- Sec.  
127-30.1. Pensions for members of the North Carolina national guard.  
127-37.1. Distinguished Service Medal; ribbon; presentation by Governor.  
127-37.2. North Carolina National Guard Meritorious Service Medal.

Sec.

- 127-37.3. North Carolina National Guard State Active Duty Award.  
127-40. Special courts-martial; appointments, power and authority.

**Article 10.**

**Support of Militia.**

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

**ARTICLE 3.**

*National Guard.*

§ 127-30.1. **Pensions for members of the North Carolina national guard.** — (a) Every member and former member of the national guard of North Carolina who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of fifty dollars (\$50.00) per month for 20 years' creditable military service with an additional five dollars (\$5.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred dollars (\$100.00) per month. The requirements for such pension are that each member shall:

- (1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.
- (2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.
- (3) Have received an honorable discharge from the North Carolina national guard.

(g) The provisions of this section shall apply to any member or former member of the North Carolina national guard who is qualified by the above requirements with eligibility of such person commencing at age 60 or July 1, 1974, whichever is the later date. (1973, c. 625, s. 1; c. 1241, ss. 1-3.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, inserted "and former member" near the beginning of the first sentence of subsection (a), deleted, at the end of subdivision (2) of subsection (a), "and the final or last 10 years of

service immediately prior to retirement shall have been in the North Carolina national guard," and rewrote subsection (g).

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

§ 127-37.1. **Distinguished Service Medal; ribbon; presentation by Governor.** — There is hereby created the "North Carolina Distinguished Service Medal" which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor. The Governor is authorized to present such medal, upon the recommendation of the Adjutant General of North Carolina and a board consisting of all general officers and officers assigned to authorized general-officer-grade vacancies, North Carolina national guard, to any member or former member of the armed forces who has distinguished, or who shall distinguish himself by exceptionally meritorious conduct in the performance of outstanding service to the North Carolina National Guard. (1955, c. 255, s. 2; 1963, c. 1016, s. 2; 1973, c. 1124.)

**Editor's Note. —** The 1973 amendment substituted, in the third sentence, "general officers and officers assigned to authorized general-officer-grade vacancies, North

Carolina national guard" for "active federally recognized general officers of the North Carolina national guard."

**§ 127-37.2. North Carolina National Guard Meritorious Service Medal.** — There is hereby created the “North Carolina National Guard Meritorious Service Medal” which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Governor or his designated representative is authorized to award this medal upon the recommendation of the Adjutant General and a board of officers appointed by the Adjutant General. Any member, or former member discharged under honorable conditions, of the North Carolina national guard who distinguishes himself on or after July 1, 1974, by heroism, meritorious achievement, or meritorious service to the North Carolina national guard is eligible for this award. The required heroism, achievement, or service, while of a lesser degree than that required for award of the North Carolina Distinguished Service Medal, must nevertheless have been accomplished with distinction. (1973, c. 966, s. 1.)

**§ 127-37.3. North Carolina National Guard State Active Duty Award.** — There is hereby created the “North Carolina National Guard State Active-Duty Award” which shall be a ribbon of appropriate design. This ribbon and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina is authorized to award this ribbon to members of the North Carolina national guard who satisfactorily serve a tour of State active duty on or after July 1, 1974, by order of the Governor and said tour of State active duty having been designated by the Adjutant General of North Carolina as worthy of this award. Said tours of State active duty designated for this award are to be of such nature as to be a distinct and notable service to a community or the State. (1973, c. 966, s. 2.)

**§ 127-40. Special courts-martial; appointments, power and authority.** — In the national guard, not in the service of the United States, special courts-martial may be appointed by:

- (1) The commanding officer of a brigade, regiment, comparable or higher command of the North Carolina army national guard;
- (2) The commanding officer of a wing, group, separate squadron, comparable or higher command of the North Carolina air national guard;
- (3) The commanding officer or officer in charge of any North Carolina national guard command when empowered by the Governor or the Adjutant General of North Carolina.

Such courts-martial shall have the power and authority to try any person subject to military law for any crimes or offenses within the jurisdiction of a general military court. A special court-martial may not try a commissioned officer. Such courts-martial shall have the same powers of punishment as general courts-martial except that fines imposed by such courts-martial shall not exceed one hundred dollars (\$100.00), and such courts-martial shall not have the power of dismissal from the national guard. (1917, c. 200, s. 57; C. S., s. 6827; 1957, c. 136, s. 8; 1963, c. 1018, s. 3; 1973, c. 1123.)

**Editor's Note.** — The 1973 amendment “crimes” for “crime” in the first sentence of the rewrote the first paragraph and substituted second paragraph.

## ARTICLE 10.

### *Support of Militia.*

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

(f) There shall be allowed annually to each of the following federally recognized commands of the national guard not to exceed the sum of: one thousand dollars (\$1,000) to headquarters of division or comparable commands;

eight hundred dollars (\$800.00) to headquarters of corps, groups, brigades, or comparable commands; and six hundred dollars (\$600.00) to battalions, squadrons and similar organizations. This amount is to be applied to the payment of necessary administrative expenses of the headquarters in accordance with rules and regulations prescribed by the Adjutant General. (1917, c. 200, s. 97; 1919, c. 311; C. S., s. 6889; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; 1949, c. 1130, s. 5; 1951, c. 1144, s. 1; 1953, c. 1246; 1959, c. 421; 1963, c. 1020; 1967, c. 563, s. 6; 1973, c. 1460.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "eight hundred dollars (\$800.00)" for "six hundred dollars (\$600.00)" and "six hundred dollars

(\$600.00)" for "four hundred dollars (\$400.00)" in the first sentence of subsection (f).

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

**Chapter 128.**

**Offices and Public Officers.**

**Article 1.**

**General Provisions.**

Sec.

128-15.3. Discrimination against handicapped prohibited in hiring; recruitment, etc., of handicapped persons.

**Article 3.**

**Retirement System for Counties, Cities and Towns.**

Sec.

128-26. Allowance for service.  
128-27. Benefits.

ARTICLE 1.

*General Provisions.*

**§ 128-15.3. Discrimination against handicapped prohibited in hiring; recruitment, etc., of handicapped persons.** — 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.

It shall be the policy of this State to give positive emphasis to the recruitment, evaluation, and employment of physically handicapped persons in State government. To carry out the provisions of this section, the Office of State Personnel shall develop methods and programs to assist and encourage the departments, institutions, and agencies of State government in carrying out this policy and to provide for appropriate study and review of the employment of handicapped persons. (1971, c. 748; 1973, c. 1299.)

**Editor's Note.** — The 1973 amendment added the second paragraph of the section.

ARTICLE 3.

*Retirement System for Counties, Cities and Towns.*

**§ 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.

Notwithstanding any other provision of this Chapter, members not otherwise allowed service credit for service in the armed forces of the United States may, upon completion of 10 years of membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made. The provisions of this paragraph 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 provided that such agreement is entered into prior to July 1, 1975.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or G.S. 135-5(f) and who subsequently returns to service may, upon completion of 10 years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one half of the cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s), provided that he left service prior to July 1, 1975. Any person who leaves service after June 30, 1975, and who withdraws his contributions in accordance with G.S. 128-27(f) or G.S. 135-5(f) and who subsequently returns to service may, upon completion of 10 years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover the full cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service

credit of a member is made. 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 provided that such agreement is entered into prior to July 1, 1975.

[All repayments must be made within three years after the member first becomes eligible to make such repayment.]

(j) Notwithstanding any other provision of this Chapter, any member may, upon completion of 10 years of current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this system. Credit will be allowed only if the member was not vested at time of separation and the service was not creditable after separation or withdrawal in any other public retirement system and only if no benefit is allowable in another public retirement system as a result of such service. Payment shall be permitted only on a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made. 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 provided that such agreement is entered into prior to July 1, 1975. (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; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4.)

**Editor's Note. —**

The fourth 1973 amendment, effective July 1, 1974, added the last paragraph of subsection (a) and added subsections (i) and (j). The paragraph in brackets at the end of subsection

(i) was enacted as s. 4 of the fourth 1973 amendatory act.

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

### § 128-27. Benefits.

(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,
  - a. 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);
  - b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the

amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

- c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(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, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; 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.

(p) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (k).

(q) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. (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; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2.)

**Editor's Note. —**

The fourth 1973 amendment, effective July 1, 1974, rewrote subdivision (2) of subsection (d3) and added the proviso to Option two in subsection (g).

The fifth 1973 amendment, effective July 1, 1974, added subsections (p) and (q).

Only the subsections added or changed by the amendments are set out.



**Chapter 130.**  
**Public Health.**

**Article 3.**

**Local Health Departments.**

Sec.

130-13. Provision of public health services.

**Article 7.**

**Vital Statistics.**

130-42. Notification of death.

130-42.1. Disposal permits; permits for disinterment and reinterment; authorization for cremation.

130-43. Fetal death registration.

130-45. [Repealed.]

130-46. Death registration.

130-47. [Repealed.]

**Article 10.**

**Venereal Disease.**

**Part 1. Venereal Disease.**

130-97, 130-98. [Repealed.]

**Article 11.**

**Tuberculosis.**

**Part 1. Prevention of Spread of Tuberculosis.**

130-114. Precautions necessary pending admission to the hospital.

**Part 2. Tuberculous Prisoners.**

130-115 to 130-122. [Repealed.]

**Article 12.**

**Sanitary Districts.**

130-152. Further validation of creation of districts.

130-152.1. Further validation of extension of boundaries of districts.

130-152.2. Additional validation of extension of boundaries of districts.

130-153. Further validation of dissolution of districts.

130-154. Further validation of bonds of districts.

130-156.4. Dissolution of sanitary districts; referendum.

**Article 13.**

**Water and Sewer Sanitation.**

130-160. Sanitary sewage disposal; rules.

130-161.1. Public water supply systems; requirements.

130-165. Discharge of sewage or industrial waste.

**Article 13C.**

**Ground Absorption Sewage Disposal System Act of 1973.**

Sec.

130-166.32. Exemptions.

**Article 14A.**

**Sanitation of Shellfish and Crustacea.**

130-169.02. Agreements between Department of Human Resources and Department of Natural and Economic Resources.

**Article 14B.**

**Sanitation of Scallops.**

130-169.05. Agreements with other agencies.

**Article 15.**

**Private Hospitals and Public and Private Educational Institutions.**

130-170.01. Regulation of sanitation in schools by Commission for Health Services and Department of Human Resources.

130-170.02. Inspection, filing of reports and corrective action by principal.

**Article 20A.**

**Treatment of Self-Inflicted Injuries upon Prisoners.**

130-191.1. Procedure when consent is refused by prisoner.

**Article 21.**

**Postmortem Medicolegal Examinations.**

130-202.1. When medical examiner's permission necessary before embalming, burial and cremation.

**Article 26.**

**Regulation of Ambulance Services.**

130-230. Permit required to operate ambulance.

130-232. Standards for equipment; inspection of medical equipment and supplies required for ambulances.

130-233. Certified ambulance attendant required.

**Article 28.**

**Mass Gatherings.**

Sec.

130-249 to 130-253. [Reserved.]

Sec.

130-255. Establishment of program.

130-256. Powers and duties of Secretary.

130-257. Statewide Advisory Council.

130-258. Coordination of existing programs.

**Article 29.**

**Perinatal Health Care.**

130-254. Purpose.

**ARTICLE 3.**

*Local Health Departments.*

**§ 130-13. Provision of public health services.**

(c) The county board of health shall include: one licensed physician, one licensed dentist, one licensed pharmacist, one county commissioner, and five persons appointed from the general public. In the event there is not a licensed physician, dentist, or pharmacist in the county, or if no physician, dentist, or pharmacist therein will serve on the board, then an additional member from the general public shall be appointed; but if a licensed physician, dentist or pharmacist later becomes available for appointment, he may be appointed to the board in place of such member from the general public. All vacancies in the county board of health occurring from any cause shall be filled by appointment of the county board of commissioners, and the person appointed shall serve for the unexpired portion of the term.

(1973, c. 1151.)

**Editor's Note.** —

The second 1973 amendment added the second and third sentences of subsection (c).

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

**ARTICLE 7.**

*Vital Statistics.*

**§ 130-42. Notification of death.** — The funeral director or person acting as such who first assumes custody of a dead body or fetus shall submit a notification of death on a form prescribed by the State Registrar to the local registrar of the registration district in which death occurred, within 24 hours of taking custody of the body or fetus. Such notification of death shall identify the attending physician responsible for medical certification, except that for deaths under the jurisdiction of the medical examiner, the notification shall identify the medical examiner and certify that he has released the body to the funeral director for final disposition. (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; 1973, c. 873, s. 1.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1975, rewrote this section.

**§ 130-42.1. Disposal permits; permits for disinterment and reinterment; authorization for cremation.** — (a) The funeral director or person acting as such who first assumes custody of a dead body or fetus which is under the jurisdiction of the medical examiner shall obtain a burial-transit permit signed by the medical examiner prior to final disposition or removal from the State and within five days after death.

(b) No cremation of a body shall be carried out unless an authorization-for-cremation form is signed by the county medical examiner certifying that he has made inquiry into the cause and manner of death and is of the opinion that no further examination of the same is necessary. Such form shall be furnished by the office of the Secretary of Human Resources. 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.

(c) 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.

(d) No dead body or fetus shall be brought into this State unless accompanied by a burial-transit permit or disposal permit issued under the law of the state in which death or disinterment occurred. Such permit shall be authority for final disposition of the body or fetus in this State.

(e) The local registrar shall issue a burial-transit permit for the removal of a dead body or fetus from this State provided that the requirements of G.S. 130-42 are met, and that the death is not under the jurisdiction of the medical examiner. (1973, c. 873, s. 2.)

**Editor's Note.** — Session Laws 1973, c. 873, s. 8, makes the act effective Jan. 1, 1975.

Pursuant to Session Laws 1973, c. 476, s. 128, effective July 1, 1973, "Secretary of Human

Resources" has been substituted for "Chief Medical Examiner" in subsection (b) of this section as enacted by Session Laws 1973, c. 873, s. 2.

### § 130-43. Fetal death registration.

(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. 130-46. (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; 1973, c. 873, s. 3.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1975, substituted "130-46" for "130-45" at the end of subsection (c).

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

**§ 130-45:** Repealed by Session Laws 1973, c. 873, s. 4, effective January 1, 1975.

**Cross Reference.** — For present provisions covering the subject matter of the repealed section, see §§ 130-42.1(b) and 130-46(e).

**§ 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 five days after such death. 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 five days 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.

(c) The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease 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, provided that the death does not fall within the circumstances described in G.S. 130-198. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient, 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 or 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 no more than five days 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.

(e) In the case of death or fetal 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 of such death. No disposition or removal of such body shall be carried out without the permission of the medical examiner. If there is no local medical examiner, the Secretary of Human Resources shall be notified. (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; 1973, c. 476, s. 128; c. 873, s. 5.)

**Editor's Note.** — Session Laws 1973, c. 873, s. 5, effective Jan. 1, 1975, substituted "five days" for "seventy-two hours" in the first and second sentences of subsection (a), deleted "and prior to final disposition of the body or removal from the State" at the end of the first sentence of subsection (a), deleted "in order to obtain a burial-transit permit" at the end of the present last sentence of subsection (b) and deleted the former last sentence of subsection (b), relating to disposition of the burial-transit permit. In subsection (c) the amendment deleted "or injury" following "disease" near the beginning of the first sentence, added at the end of that sentence "provided that the death does not fall

within the circumstances described in G.S. 130-198" and deleted "for the issuance of a burial-transit permit" following "sufficient" in the second sentence. The amendment also substituted "no more than five days after death" for "prior to interment but in no event more than seventy-two hours after death" at the end of the first sentence of subsection (d) and added subsection (e).

Pursuant to Session Laws 1973, c. 476, s. 128, "Secretary of Human Resources" has been substituted for "Chief Medical Examiner" in subsection (e) as added to this section by Session Laws 1973, c. 873.

§ 130-47: Repealed by Session Laws 1973, c. 873, s. 6, effective January 1, 1975.

### § 130-54. Contents of birth certificate.

**Consent Required for Change of Illegitimate Child's Name.** — Under this section, a third person having care of an illegitimate child can petition to have the name of the child changed with only the consent of the child's natural mother. Where the natural

mother petitions to change the name of her illegitimate child, the consent of no other person is logically required, as no other person has any "rights" inherent in that child's name. In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

## ARTICLE 10.

### *Venereal Disease.*

#### Part 1. Venereal Disease.

§§ 130-97, 130-98: Repealed by Session Laws 1973, c. 1140, s. 1.

**Cross Reference.** — As to detection, examination and treatment of prisoners infected with venereal diseases, see § 153A-225.

## 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 Department of Correction 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 60 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, of Correction" for "Commissioner of Paroles" effective July 1, 1974, substituted "Department in the last sentence of the second paragraph.

Part 2. Tuberculous Prisoners.

§§ 130-115 to 130-122: Repealed by Session Laws 1973, c. 1140, s. 2.

**Cross Reference.** — As to detection, examination and treatment of prisoners infected with tuberculosis, see § 153A-225.

ARTICLE 12.

*Sanitary Districts.*

§ 130-128. Corporate powers.

**Editor's Note.** —

Session Laws 1973, c. 882, applicable only to counties with a population of more than 70,000, amends subdivision (9)b of this section to read as follows:

"b. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district to supply raw or filtered water and sewer service to said person, firm, corporation, city, town, village, or political subdivision of the State where the service is available: Provided, however, that for service sup-

plied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water and adequate sewer service."

The counties to which the 1973 act applies are: Alamance, Buncombe, Cabarrus, Catawba, Cleveland, Cumberland, Davison, Durham, Forsyth, Gaston, Guilford, Iredell, Mecklenburg, New Hanover, Onslow, Pitt, Randolph, Robeson, Rockingham, Rowan, Wake, and Wayne.

§ 130-143. Engineers to provide plans and supervise work; bids.

**Editor's Note.** — Session Laws 1973, c. 882, applicable only to counties with a population of more than 70,000, amends the third paragraph of this section to read as follows:

"All contracts for work performed, and for the purchase of materials and supplies by the sanitary district shall be in accordance with the provisions of Article 8 of Chapter 143 of the General Statutes."

The counties to which the 1973 act applies are: Alamance, Buncombe, Cabarrus, Catawba, Cleveland, Cumberland, Davison, Durham, Forsyth, Gaston, Guilford, Iredell, Mecklenburg, New Hanover, Onslow, Pitt, Randolph, Robeson, Rockingham, Rowan, Wake, and Wayne.

§ 130-152. Further validation of creation of districts. — All actions prior to June 6, 1961, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the formation and creation, of sanitary districts in the State wheresoever situate, and the formation and creation, or the attempted formation and creation, of any and all such sanitary districts are hereby in all respects legalized, ratified, approved, validated and confirmed, and each and all such sanitary districts are hereby declared to be

lawfully formed and created and to be in all respects legal and valid sanitary districts. (1953, c. 596, s. 1; 1957, c. 1357, s. 1; 1961, c. 667, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S.

130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

This section and note are set out to correct an error in the Replacement Volume.

**§ 130-152.1. Further validation of extension of boundaries of districts.** — All actions prior to April 1, 1957, had and taken by the State Board of Health, any board of county commissioners, and any sanitary district board for the purpose of extending the boundaries of any sanitary district where said territory which was annexed contained no resident freeholders, and where the owner or owners of the real property annexed requested of such sanitary district board that said territory be annexed to and be within the boundaries of such sanitary district, are hereby legalized and validated, notwithstanding any lack of power to perform such acts or to take such proceedings, notwithstanding any defect or irregularity in such acts or proceedings. (1957, c. 1357, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S.

130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

This section and note are set out to correct an error in the Replacement Volume.

**§ 130-152.2. Additional validation of extension of boundaries of districts.** — All actions and proceedings prior to May 1, 1959, had and taken by the State Board of Health or any officer or representative thereof, any board of county commissioners and any sanitary district board for the purpose of annexing additional territory to any sanitary district or with respect to any such annexation are hereby in all respects legalized, ratified, approved, validated and confirmed, notwithstanding any lack of power to take such actions or proceedings or any defect or irregularity in any such actions or proceedings and any and all such sanitary districts are hereby declared to be lawfully extended to include such additional territory and as so extended to be in all respects legal and valid sanitary districts. (1959, c. 415, s. 2.)

**Editor's Note.** — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S.

130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

This section and note are set out to correct an error in the Replacement Volume.

**§ 130-153. Further validation of dissolution of districts.** — All actions prior to April, 1, 1957, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the dissolution of any sanitary district in the State, and the dissolution or attempted dissolution of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed. (1953, c. 596, s. 2; 1957, c. 1357, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S.

130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

This section and note are set out to correct an error in the Replacement Volume.

**§ 130-154. Further validation of bonds of districts.** — All actions and proceedings prior to April 1, 1957, had and taken and all elections held in any sanitary district in the State or in any district purporting to be a legal sanitary district by virtue of the purported authority and acts of any county board of commissioners or the State Board of Health or any other board, officer or agency for the purpose of authorizing, selling or issuing the bonds of any such sanitary district, and all such bonds at any time issued by or on behalf of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such bonds are hereby declared to be the legal and binding obligations of such sanitary district. (1953, c. 596, s. 3; 1957, c. 1357, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 476, s. 128, which substituted "Department of Human Resources" for "State Board of Health" throughout the General Statutes, provides, in subdivision (b)(23): "The words 'State Board of Health' shall be retained on line 3 of G.S.

130-152; line 2 of G.S. 130-152.1; line 1 of G.S. 130-152.2; line 3 of G.S. 130-153; line 5 of G.S. 130-154; and line 5 of G.S. 130-166.7."

This section and note are set out to correct an error in the Replacement Volume.

**§ 130-156.4. Dissolution of sanitary districts; referendum.** — In counties having a population in excess of 275,000, the board of county commissioners may dissolve a sanitary district by first requiring a referendum in which the voters of said county shall favor said dissolution and assumption by the county of any outstanding indebtedness of the district. The board of county commissioners may further dissolve any sanitary district which has no outstanding indebtedness when the members of such district shall vote in favor of dissolution.

Provided however, before the dissolution of any district shall be approved, a plan for continued operation and provision of all services and functions then being performed or rendered by the district shall be adopted and approved by the board of county commissioners.

Provided further, no plan shall be adopted unless at the time of its adoption any water system or sanitary sewer system being operated by the district shall be in compliance with all local, State and federal regulations, and if said system is to be serviced by any municipality, the municipality shall first approve the plan.

When all actions relating to dissolution of the sanitary district have been completed, the chairman of the board of county commissioners shall so notify the Department of Human Resources. (1973, c. 476, s. 128; c. 951.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 476, s. 128, effective July 1, 1973, "Department of Human Resources" has been

substituted for "State Board of Health" in the last paragraph of this section as enacted by Session Laws 1973, c. 951.

ARTICLE 13.

*Water and Sewer Sanitation.*

**§ 130-160. Sanitary sewage disposal; rules.** — Any person owning or controlling any single- or multiple-family residence, place of business or place of public assembly shall provide a sanitary system of sewage disposal consisting of an approved privy, an approved septic tank system, or a connection to a public or community sewerage system. Any such sanitary sewage disposal system with 3000 gallons or less design capacity serving a single- or multiple-family residence, place of business, or place of public assembly, the effluent from which is not discharged to the surface waters, shall be approved under rules and regulations promulgated by the Commission for Health Services. All other such sanitary sewage disposal systems with more than 3000 gallons design capacity shall be approved under rules and regulations promulgated by



the Board of Water and Air Resources pursuant to the applicable provisions of Article 21 of Chapter 143. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860.)

**Editor's Note. —**

The third 1973 amendment substituted "single- or multiple-family" for "two-family" in the first sentence and inserted "single- or" in the second sentence.

**Applied in** *Kamp v. Brookshire*, 21 N.C. App. 280, 204 S.E.2d 208 (1974).

**§ 130-161.1. Public water supply systems; requirements.**

(d) This section shall be construed as providing supplemental authority in addition to the powers of the Commission for Health Services 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 Chapter 62 concerning water supply systems, and in addition to the powers of the North Carolina Environmental Management Commission under General Statutes Chapters 87 and 143.

(1973, c. 1262, s. 23.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in subsection (d).

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

**§ 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 Commission for Health Services and Environmental Management Commission; 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; 1973, c. 476, s. 128; c. 1262, s. 23.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, substituted "Environmental

Management Commission" for "Board of Water and Air Resources."

ARTICLE 13A.

*Sanitation of Agricultural Labor Camps.*

**§ 130-166.1. Definitions.**

**This Article Has Not Been Preempted by the Occupational Safety and Health Act of 1970 or Impliedly Repealed by the Occupational Safety and Health Act of North**

**Carolina. —** See opinion of Attorney General to Mr. Ben Eaton, Division of Health Services, Department of Human Resources, 43 N.C.A.G. 358 (1974).

ARTICLE 13B.

*Solid Waste Disposal.*

**§ 130-166.18. Solid waste disposal program.**

**State Regulations Prevail over Conflicting and Inconsistent Local Ordinances; More Stringent Ordinances May Be Enacted pursuant to G.S. 153A-292.**

Kason Keiger, Town Attorney, Kernersville, N.C., 44 N.C.A.G. 40 (1974).

— See opinion of Attorney General to Mr. R.

## ARTICLE 13C.

*Ground Absorption Sewage Disposal System Act of 1973.***§ 130-166.25. Improvements permit required.**

**Mobile Home Placed on Lot for Storage or Sale or Occupied for Business Purposes.** — Section requires any person who locates, relocates or causes to be located or relocated any mobile home to first obtain an improvements permit and requires a certificate of completion to be obtained before any person occupies a mobile home. Section does not

require an improvements permit and a certificate of completion before a mobile home is placed on a lot for storage and for sale or before a mobile home is occupied for business purposes. Opinion of Attorney General to Mr. Ben Eaton, Division of Health Services, Department of Human Resources, 43 N.C.A.G. 410 (1974).

**§ 130-166.32. Exemptions.** — No provision of this Article shall apply to persons developing land in areas not served by community sewer systems who present acceptable plans for installation of community sewer systems to the local health department and the North Carolina Environmental Management Commission and who certify that such system will be installed before permitting occupancy. (1973, c. 452, s. 12; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board of Water and Air Resources."

## ARTICLE 14A.

*Sanitation of Shellfish and Crustacea.*

**§ 130-169.02. Agreements between Department of Human Resources and Department of Natural and Economic Resources.** — Nothing in this Article is intended to deprive the Department of Natural and Economic Resources 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 Department of Human Resources and the Department of Natural and Economic Resources 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; 1973, c. 476, s. 128; c. 1262, s. 86.)

**Editor's Note.** — The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural

and Economic Resources" for "Department of Conservation and Development."

**§ 130-169.03. Construction of Article.**

**Editor's Note.** — Because this section relates to past events, no changes have been made in it pursuant to

Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

## ARTICLE 14B.

*Sanitation of Scallops.*

**§ 130-169.05. Agreements with other agencies.** — Nothing in this Article is intended to deprive the Department of Natural and Economic Resources 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 Department of Human Resources and the Department of Natural and Economic Resources 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; 1973, c. 476, s. 128; c. 1262, s. 86.)

**Editor's Note.** — The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural

and Economic Resources" for "Department of Conservation and Development."

## ARTICLE 15.

*Private Hospitals and Public and Private Educational Institutions.*

**§ 130-170.01. Regulation of sanitation in schools by Commission for Health Services and Department of Human Resources.** — The Commission for Health Services shall approve minimum sanitation standards for schools, subject to adoption by the State Board of Education. The sanitation standards approved by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, and other facilities; adequacy of lighting, ventilation, water supply, toilet and lavatory facilities, liquid and solid waste disposal; and such other items and facilities as are necessary in the interest of the public health. It shall be the duty of the Department of Human Resources and its officers, sanitarians or agents to visit and inspect schools at least annually to determine compliance with the sanitation standards approved by the Commission for Health Services and to submit written reports on such visits or inspections to the State Board of Education on forms approved by the Commission for Health Services and provided by the Department of Human Resources. If a local administrative unit does not comply with the minimum sanitation standards adopted by the State Board, the Board may, at its discretion, require that the school administrative unit remit any unexpended funds provided by the State for custodial services. (1973, c. 1239, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 1239, s. 3, makes the act effective July 1, 1974.

**§ 130-170.02. Inspection, filing of reports and corrective action by principal.** — It shall be the duty of each principal to make an inspection each month of buildings in his charge and file written reports with the superintendent of his administrative unit, reporting conditions as to cleanliness of floors, walls, ceilings, storage spaces, toilet and lavatory facilities; and such other items and facilities as are necessary in the interest of public health. Sample report blank forms shall be provided the principal upon his request by the Department of Human Resources. It shall be the duty of the principal to take immediate action to correct conditions conducive to uncleanness of floors, walls, ceilings, storage spaces, toilet and lavatory facilities; and such other items and facilities as are necessary in the interest of public health. (1973, c. 1239, s. 2.)

**Editor's Note.** — Session Laws 1973, c. 1239, s. 3, makes the act effective July 1, 1974.

## 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 Secretary of Correction, the chief medical officer of a prison hospital or penal institution, and a representative of the State or county social services 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; 1969, c. 982; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

#### ARTICLE 21.

##### *Postmortem Medicolegal Examinations.*

**§ 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, 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 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; 1973, c. 873, s. 7.)

**Editor's Note.** —

The 1973 amendment, effective Jan. 1, 1975, deleted "required for a burial-transit permit" following "certificate of death" near the end of the introductory paragraph of subsection (a)

and deleted "No burial-transit permit for cremation of a body shall be issued by the local registrar charged therewith and" at the beginning of subsection (c).

#### ARTICLE 26.

##### *Regulation of Ambulance Services.*

**§ 130-230. Permit required to operate ambulance.**

(b) Before a permit may be issued for a vehicle to be operated as an ambulance, its registered owner must apply to the Department for an ambulance permit. Application shall be made upon forms and according to procedures established by the Department. Prior to issuing an original or renewal permit for an ambulance, the Department 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 North Carolina Medical Care Commission. Permits issued for ambulances shall be valid for a period specified by the Department, not to exceed one year.

(1973, c. 1224, s. 1.)

**Cross Reference.** — As to authority of the North Carolina Medical Care Commission to adopt rules and regulations to carry out the purpose of this Article, see § 143-508.

**Editor's Note. —**

The second 1973 amendment substituted "North Carolina Medical Care Commission" for "Commission for Health Services" at the end of the third sentence of subsection (b).

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

**§ 130-232. Standards for equipment; inspection of medical equipment and supplies required for ambulances. —** (a) The North Carolina Medical Care Commission 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 North Carolina Medical Care Commission 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.

(1973, c. 1224, s. 1.)

**Editor's Note. —**

The second 1973 amendment substituted "North Carolina Medical Care Commission" for "Commission for Health Services" in subsections (a) and (b).

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

**§ 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 the driver plus at least one person who possesses a valid ambulance attendant's certificate from the Department of Human Resources. The North Carolina Medical Care Commission shall adopt regulations setting forth exemptions to this requirement applicable to situations where exemptions are considered by the Department to be in the public interest.

(b) The North Carolina Medical Care Commission shall adopt regulations setting forth the qualifications required for certification of ambulance attendants.

(c) Persons desiring certification as ambulance attendants shall apply to the Department using forms prescribed by that agency. Upon receipt of such application the Department 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 North Carolina Medical Care Commission. The Department 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 Department 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; 1973, c. 476, s. 128; c. 725; c. 1224, s. 1.)

**Editor's Note. —**

The third 1973 amendment substituted "North Carolina Medical Care Commission" for "Department, with the approval of the Emergency Medical Services Advisory

Council," in the second sentence of subsection (a) and for "Commission for Health Services" in subsections (b) and (c), and deleted the second sentence of subsection (b).

## ARTICLE 28.

*Mass Gatherings.*

§§ 130-249 to 130-253: Reserved for future codification purposes.

## ARTICLE 29.

*Perinatal Health Care.*

§ 130-254. **Purpose.** — Based upon the report of the Task Force on Maternal-Infant Care of the Governor's Advisory Council on Comprehensive Health Planning, the General Assembly finds and recognizes the following problems related to maternal and infant health care in North Carolina: Perinatal mortality and morbidity rates are excessively high; low socioeconomic status contributes significantly to perinatal mortality and morbidity; existing perinatal health services are inconsistently planned, organized and delivered; many perinatal health facilities are too small, inefficient and underutilized; perinatal education is inadequate; no guidelines exist for assessing perinatal care services; financial support for perinatal services for medically indigent mothers is insufficient; and health insurance maternity coverage is restrictive. The General Assembly finds that these problems can be alleviated by a program of regionalized perinatal care which is to include hospital certification, coordination of other pertinent health care resources, and funding. For purposes of this program the perinatal period is defined as beginning with conception and extending through the first 28 days of life. (1973, c. 1240, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 1240, s. 3, makes the act effective July 1, 1974.

§ 130-255. **Establishment of program.** — The Secretary of the Department of Human Resources is authorized and directed to establish a perinatal health care program with the following components as outlined in the report of the Task Force on Maternal-Infant Care:

- (1) Community perinatal health care services, including health education for pregnant girls of school age, increased prenatal care, identification of high-risk pregnancies, and increased interconceptional care.
- (2) Hospital perinatal health care, including a voluntary certification system for hospitals providing for graduated levels of complexity: level I hospitals to provide normal obstetric and neonatal care, level II hospitals to provide the more complicated obstetric and neonatal care, and level III hospitals to provide care for the most complicated maternal and neonatal problems.
- (3) Regionalized perinatal health care services, including a plan for effective communication, consultation, referral and transportation links among hospitals, health departments, physicians, schools and other relevant community resources for mothers and infants at high risk for preventable mortality and morbidity. (1973, c. 1240, s. 1.)

§ 130-256. **Powers and duties of Secretary.** — The Secretary is authorized to establish procedures and guidelines for the development, implementation and evaluation of this program. He may make contracts with hospitals, local health departments, and other public or private and governmental or nongovernmental agencies and organizations to develop, implement and evaluate this program, including for the purposes of renovating and equipping hospitals and other health care facilities, salaries for health care professionals at such hospitals and facilities and for patient care reimbursement. He shall request the appropriate area-wide health planning agencies for review and comments on any proposed contract involving purchase of perinatal health services in an area. (1973, c. 1240, s. 1.)

**§ 130-257. Statewide Advisory Council.** — The Secretary shall appoint a Perinatal Health Program Advisory Council composed of 10 members with representation as follows: obstetrics, pediatrics, public health, nursing, social services, hospital administration and consumers. The Council shall advise the Secretary in the planning, organization, administration and evaluation of the program. The Council shall annually elect a chairman from among its members and shall meet quarterly or upon the call of the Secretary. (1973, c. 1240, s. 1.)

**§ 130-258. Coordination of existing programs.** — All State agencies concerned with maternal and child health shall cooperate with this program and the Secretary shall coordinate funding and administration in the Department consistent with the objectives of this and other programs. (1973, c. 1240, s. 1.)

**Chapter 131.  
Public Hospitals.**

**Article 13.**

**Department of Human Resources and  
Program of Hospital Care.**

Sec.

- 131-120. Construction and enlargement of local hospitals.
- 131-121. Medical and other students; loan fund.
- 131-124. Medical training for Negroes.

**Article 13A.**

**Hospital Licensing Act.**

- 131-126.5. Issuance and renewal of license.
- 131-126.6. Denial or revocation of license; hearings and review.
- 131-126.9. Inspections and consultations.
- 131-126.12. Information confidential.
- 131-126.14. Judicial review.

**Article 13B.**

**Additional Authority of Subdivisions of  
Government to Finance Hospital  
Facilities.**

- 131-126.25. Federal and State aid.

**Article 13C.**

**Creation of Hospital Districts with  
Authority to Issue Bonds  
and Levy Taxes for  
Hospital Purposes.**

Sec.

- 131-126.31. Petition for formation of hospital district; hearing.
- 131-126.32. Result of hearing; name of district; limitation of actions.

**Article 16.**

**Department of Human Resources  
Hospital Facilities Finance Act.**

- 131-163 to 131-167. [Reserved.]

**Article 17.**

**Medical Review Committee.**

- 131-168. Definitions.
- 131-169. Limited liability.

**ARTICLE 2.**

*Hospitals in Counties, Townships, and Towns.*

**§ 131-4. Establishment of public hospitals; election, tax, and bond issue.**

Cited in *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).

**ARTICLE 3.**

*County Tuberculosis Hospitals.*

**§ 131-29. Power to establish.**

Cited in *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).

**ARTICLE 12.**

*Hospital Authorities Law.*

**§ 131-98. Power of authority.**

**Observance of Due Process Requirements.** procedural fairness requirements of the Constitution of the United States. *Poe v. Charlotte Mem. Hosp.*, 374 F. Supp. 1302 (W.D.N.C. 1974).  
— Hospital authority, in the administration of its public duties of determining who practices medicine and surgery in the hospital under this section, must observe the due process or

**ARTICLE 13.**

*Department of Human Resources and Program  
of Hospital Care.*

**§ 131-120. Construction and enlargement of local hospitals.**

(b) The Department of Human Resources 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 in accordance with standards adopted by the North Carolina Medical Care Commission 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 by the Congress of the United States for such purpose. The Department, as such agency of the State of North Carolina, 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 Department 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 Department 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 Department is authorized and empowered to engage under the provisions of this Article establishing said Department, and in connection therewith the North Carolina Medical Care 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.

(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.

(1973, c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility Services and Licensure to North Carolina Medical Care Commission.

As only subsections (b) and (e) were changed by the amendment, the rest of the section is not set out.

**§ 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 Department of Human Resources is hereby authorized and empowered, in

accordance with such regulations as the North Carolina Medical Care Commission may adopt, to make loans and award scholarships to students who are residents of North Carolina and who may wish to become physicians, dentists, optometrists, pharmacists, nurses, nurse instructors, nurse anesthetists, medical technicians, social workers, psychologists and students who are enrolled in other studies to be decided by the Commission leading to specialization in the health professions and who are accepted in any school, college or university giving accredited courses in these specialized areas provided such students shall agree that upon graduation and being duly licensed or qualified to practice their profession in North Carolina in such field, geographic area or facilities as the Commission may designate for one calendar year for each academic year or fraction thereof for which a loan or scholarship is granted. The loans shall bear such interest rate as contracted for not to exceed the per annum interest rate allowed by law. The Department shall have the authority to cancel any contract made between it and any applicant for assistance upon such cause deemed sufficient by the Department; provided, the assent to cancellation be first obtained from the Attorney General of North Carolina. The North Carolina 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 Department of Human Resources 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 North Carolina 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 Department pursuant to the provisions of this section. This section shall be applicable also to all loans or scholarship funds repaid to the Department 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; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

**§ 131-124. Medical training for Negroes. —** The Department of Human Resources shall make careful investigation of the methods for providing necessary medical training for Negro students, and shall report its findings to the next session of the General Assembly. In addition to the benefits provided by G.S. 116-110, the Department of Human Resources is hereby authorized to make loans to Negro medical students from the fund provided in G.S. 131-121, subject to such rules, regulations, and conditions as the North Carolina Medical Care Commission may prescribe. (1945, c. 1096; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

## ARTICLE 13A.

*Hospital Licensing Act.*

§ 131-126.5. **Issuance and renewal of license.** — Upon receipt of an application for license, the Department of Human Resources shall issue a license if it finds that the applicant and hospital facilities comply with the provisions of this Article and the regulations of the said North Carolina Medical Care Commission. Each such license, unless sooner suspended or revoked, shall be renewable annually without charge upon filing of the license, and approval by the Department of Human Resources, of an annual report upon such uniform dates and containing such information in such form as the Department of Human Resources shall prescribe by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the Department of Human Resources. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the said North Carolina Medical Care Commission. (1947, c. 933, s. 6; 1949, c. 920, s. 4; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note.** —

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

§ 131-126.6. **Denial or revocation of license; hearings and review.** — The Department of Human Resources shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this Article or the rules, regulations or minimum standards promulgated under this Article.

Such denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or licensee, within such 30-day period shall give written notice to the North Carolina Medical Care Commission requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the North Carolina Medical Care Commission. At any time at or prior to the hearing, the Department of Human Resources may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee the determination involved in the notice may be affirmed, modified, or set aside, by the North Carolina Medical Care Commission. A copy of such decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by registered mail, or served personally upon, the applicant or licensee. The decision shall become final 30 days after it is so mailed or served, unless the applicant or licensee, within such 30-day period, appeals the decision to the court, pursuant to G.S. 131-126.14 hereof.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said North Carolina Medical Care Commission. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to G.S. 131-126.14 hereof. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be

allowed fees at a rate prescribed by the aforesaid rules. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

**§ 131-126.9. Inspections and consultations.** — The Department of Human Resources shall make or cause to be made such inspections as it may deem necessary. The Department of Human Resources may delegate to any State officer, agent, board, bureau or division of State government authority to make such inspections as the Department of Human Resources may designate and according to rules and regulations promulgated by the North Carolina Medical Care Commission. The Department of Human Resources may revoke such delegated authority in its discretion and make its own inspections according to the powers granted hereunder. The North Carolina Medical Care Commission may prescribe by regulations that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the Department of Human Resources for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

**§ 131-126.12. Information confidential.** — Information received by the North Carolina Medical Care Commission and the Department of Human Resources through filed reports, inspection, or as otherwise authorized under this Article, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure or the denial, suspension or revocation of a license. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

**§ 131-126.14. Judicial review.** — Any applicant or licensee who is dissatisfied with the decision of the North Carolina Medical Care Commission as a result of the hearing provided in G.S. 131-126.6 may, within 30 days after the mailing or serving of notice of the decision as provided in said section, file a notice of appeal to the superior court in the office of the clerk of the superior court of the county in which the hospital is located or to be located, and serve a copy of said notice of appeal upon the Commission. Thereupon the North Carolina Medical Care Commission shall promptly certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the North Carolina Medical Care Commission shall be conclusive unless contrary to the weight of the evidence but upon good cause shown the court may remand the case to the Commission to take further evidence, and the Commission may thereupon make new or modified findings of facts or decision. The court shall have power to affirm, modify or reverse the decision of the North Carolina Medical Care Commission and either the applicant or licensee or the Commission may appeal to the Supreme Court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court shall otherwise order in the public interest. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

## ARTICLE 13B.

*Additional Authority of Subdivisions of Government  
to Finance Hospital Facilities.*

§ 131-126.25. **Federal and State aid.** — (a) Every municipality or nonprofit association is authorized to accept, receive, receipt for, disburse and expend federal and State moneys and other moneys, public or private, made available by grant, loan, gift or devise, to accomplish, in whole or in part, any of the purposes of this Article. All federal moneys accepted under this section shall be accepted and expended by a municipality or nonprofit association upon such terms and conditions as are prescribed by the United States and as are consistent with State law; and all State moneys accepted under this section shall be accepted and expended by the municipality or nonprofit association upon such terms and conditions as are prescribed by the State and/or North Carolina Medical Care Commission. Unless otherwise prescribed by the agency from which such moneys were received, the chief financial officer of the municipality shall, on its behalf, deposit all moneys received pursuant to this section and shall keep them in separate funds designated according to the purposes for which the moneys were made available, in trust for such purposes.

(b) Out of funds made available by the State, the Department of Human Resources shall make grants-in-aid, as provided in this subsection, to municipalities and/or nonprofit associations 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 and/or nonprofit associations for use as community hospitals. The amount of State funds to be granted hereunder shall be determined in each case by the North Carolina Medical Care Commission in accordance with standards, rules and regulations as determined by the North Carolina Medical Care Commission.

Application for a grant under this subsection shall be made to the Department of Human Resources by any municipality, acting separately or with one or more other municipalities, or by any nonprofit association, on such forms and in such manner as may be prescribed by the North Carolina Medical Care Commission. The North Carolina Medical Care Commission may establish such reasonable requirements for approval as it deems necessary or desirable to effectuate the purposes of this Article. The Department of Human Resources shall give preference to applications in accordance with their priority in the hospital construction program established pursuant to the Federal Hospital Survey and Construction Act. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note.** —

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

## ARTICLE 13C.

*Creation of Hospital Districts with Authority  
to Issue Bonds and Levy Taxes  
for Hospital Purposes.*

§ 131-126.31. **Petition for formation of hospital district; hearing.** — Upon receipt of a petition, signed by at least 500 of the qualified voters of the territory described in such petition, praying that such territory be created into a hospital district, the North Carolina Medical Care Commission, with the approval of the board of county commissioners of the county in which such proposed hospital district is located, shall cause notice to be given by posting at the courthouse door, and at three public places in such proposed hospital district, and by three weekly publications in a newspaper circulating in such

proposed hospital district, that on a date to be named in such notice, which shall not be earlier than 20 days after the first posting and publication of such notice, it will hold a public hearing at a designated place within the proposed hospital district or some designated place within the county in which the district is to be created, upon the question of creating a hospital district comprising the territory described in such petition and set forth in such notice, and that any taxpayer or other interested person may appear and be heard at the time and place set forth in such notice.

Such petition shall set forth:

- (1) A description of the territory to be embraced within the proposed district,
- (2) The names of all municipalities or parts thereof located within the area,
- (3) The names of all publicly owned hospitals located within the area,
- (4) The purpose or purposes sought to be accomplished by the creation of the proposed district, and
- (5) The name of the proposed district.

At the time and place set forth in the notice of hearing on such petition, the North Carolina Medical Care Commission, or its duly authorized representative, shall hear all interested persons and may adjourn the hearing from time to time.

A hospital district may be established under this Article in those territories which have less than 1100 qualified voters resident therein upon petition of 250 qualified voters of such territory requesting that such territory be created into a hospital district. (1949, c. 766, s. 5; 1953, c. 1045, s. 1; 1959, c. 877; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note.** —

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

**§ 131-126.32. Result of hearing; name of district; limitation of actions.**

— If, after such hearing, the North Carolina Medical Care Commission shall deem it advisable to create such hospital district, it shall adopt a resolution creating such district, determining that the residents of all the territory to be included in such district will be benefited by the creation of such district; and defining the territory comprising such district, which shall be either the territory described in such petition or a part of such territory; provided, however, that all the territory embraced in a hospital district shall be located in one county; and provided, further, that no municipality or part thereof shall be included in any hospital district unless the governing body of such municipality shall have approved thereof by resolution and shall have filed with the Department of Human Resources a certified copy of such resolution. Each hospital district so created shall be designated by the North Carolina Medical Care Commission as the "..... Hospital District of ..... County," inserting in the blank spaces some name identifying the locality and the name of the county.

Notice of the creation of such hospital district shall be given by publication of the resolution of the North Carolina Medical Care Commission creating such district, once in each of two successive weeks after the adoption of such resolution, in the newspaper in which the notice of hearing mentioned above in G.S. 131-126.31 of this Article was published. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the executive secretary of the Department of Human Resources appended thereto, shall be published with the resolution:

The foregoing resolution was passed by the North Carolina Medical Care Commission on the ..... day of ....., 19 ....., and was first published on the ..... day of ....., 19.....

Any action or proceeding questioning the validity of said resolution or the creation of said..... Hospital District of ..... County or the inclusion

in said district of any of the territory described in said resolution, must be commenced within 30 days after the first publication of said resolution.

.....  
 Secretary of the Department of Human Resources

Any action or proceeding in any court to set aside a resolution of the North Carolina Medical Care Commission creating any hospital district, or questioning the validity of any such resolution or the creation of any hospital district or the inclusion in any such district of any of the territory described in the resolution creating such district, must be commenced within 30 days after the first publication of such resolution and such notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of such resolution or the creation of such district or the inclusion of any territory in such district shall be asserted, nor shall the validity of such resolution or the creation of such district or the inclusion of such territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1949, c. 766, s. 5; 1951, c. 805; 1953, c. 1045, s. 2; 1973, c. 476, s. 152; c. 1090, s. 1.)

**Editor's Note. —**

The second 1973 amendment changed the name of the Commission for Medical Facility

Services and Licensure to North Carolina Medical Care Commission.

ARTICLE 16.

*Department of Human Resources Hospital Facilities Finance Act.*

§§ 131-163 to 131-167: Reserved for future codification purposes.

ARTICLE 17.

*Medical Review Committee.*

§ 131-168. **Definitions.** — As used in this Article, “medical review committees” or “committee” shall mean a committee of a State or local professional society, of a medical staff of a licensed hospital, nursing home, or a committee of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care services, within the purview of section 249F, Public Law 92-603, 92nd Congress, 2nd Session. (1973, c. 1111.)

§ 131-169. **Limited liability.** — A member of a duly appointed medical review committee shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of such committee, if the committee member acts without malice or fraud. (1973, c. 1111.)

**Chapter 132.**

**Public Records.**

**§ 132-1. Public records defined.**

**Municipal Records and Papers, Such as Budgets, Bank Statements, Tax Levies, Utility Accounts, Minutes of Meetings, etc.,**

**Are Public Records.** — See opinion of Attorney General to Honorable R.L. Davis, 43 N.C.A.G. 274 (1973).



**Chapter 133.  
Public Works.**

**Article 1.**

**Article 2.**

**General Provisions.**

**Relocation Assistance.**

Sec.

Sec.

133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

133-14. Regulations and procedures.

**ARTICLE 1.**

*General Provisions.*

**§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.** — (a) In the interest of public health, safety and economy, every officer, board, department or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of forty-five thousand dollars (\$45,000) for the construction or repair of public buildings, or state-owned and operated utilities, shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of Chapter 83 of the General Statutes, or by a registered engineer, in accordance with the provisions of Chapter 89 of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all such plans and specifications.

(d) On construction or repair projects involving the expenditures of public funds in an amount of forty-five thousand dollars (\$45,000) or less, and on which no registered architect or engineer is employed, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer.

(1973, c. 1414, s. 2.)

**Editor's Note.** — The 1973 amendment substituted "forty-five thousand dollars (\$45,000)" for "twenty thousand dollars (\$20,000)" in subsections (a) and (d).

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

**ARTICLE 2.**

*Relocation Assistance.*

**§ 133-5. Short title.**

**Relocation Assistance Act Held Constitutional.** — See *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 133-6. Declaration of purpose.**

Quoted in *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 133-7. Definitions.**

The definition of "displaced person" does not unconstitutionally discriminate against persons who are forced to move from real property before January 1, 1972, by denying to them but granting to others who moved from

the property "on or after January 1, 1972," assistance under the various provisions of the Relocation Assistance Act. *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 133-8. Moving and related expenses.**

Stated in *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 133-9. Replacement housing for homeowners.**

Stated in *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 133-10. Replacement housing for tenants and certain others.**

Stated in *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 133-11. Relocation assistance advisory services.**

Stated in *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 133-12. Expenses incidental to transfer of property.**

Stated in *Quick v. City of Charlotte*, 21 N.C. App. 401, 204 S.E.2d 533 (1974).

**§ 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 G.S. 133-8;
- (4) Standards for decent, safe and sanitary dwelling;
- (5) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments, and the amounts thereof;
- (6) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the 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; 1973, c. 1446, s. 8.)

**Editor's Note.** — The 1973 amendment substituted "G.S. 133-8" for "G.S. 136-8" in subdivision (3).

**Chapter 134.**  
**Youth Development.**

**Article 1.**

**Powers and Duties of Department of Correction.**

- Sec.  
134-1. [Repealed.]  
134-2. Management and control of schools and institutions for juveniles.  
134-3 to 134-7. [Repealed.]

**Article 2.**

**Director; Bonds.**

- 134-8. [Repealed.]  
134-9. Directors.

**Article 3.**

**Commitment, Care and Release.**

- 134-11. Who may be committed.  
134-12. Removal request by Department.  
134-14. Department to be in position to care for offender before commitment.  
134-15. Delivery to institution.  
134-16. Return of boys and girls improperly committed.  
134-17. Conditional release; Department may grant conditional release; revocation of release.  
134-18. Final discharge.

**Article 4.**

**Care of Persons under Federal Jurisdiction.**

- Sec.  
134-19. Care of persons under federal jurisdiction.

**Article 5.**

**General Provisions.**

- 134-22. Care of children born to students.  
134-25. Department of Human Resources to supervise sanitary and health conditions.  
134-26. Providing necessary medical and surgical treatment for students.  
134-27. General program, education and training.  
134-28. Visits; community activities; post-release assistance.  
134-28.1. Compensation to juveniles.  
134-29. Legal effect of commitment.  
134-30 to 134-34. [Reserved.]

**Article 6.**

**Detention Services.**

- 134-35. Legislative intent and purpose.  
134-36. Definitions.  
134-37. Regional detention services.  
134-38. State subsidy to county detention homes.  
134-39. Authority for implementation.

**ARTICLE 1.**

*Powers and Duties of Department of Correction.*

§ 134-1: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

**Cross Reference.** — As to transfer of the functions of the State Board of Youth Development to the Department of Correction, see § 143B-262.

§ 134-2. **Management and control of schools and institutions for juveniles.** — 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 Correction, and the said State Department of Correction 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 Correction. 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 Correction 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; 1973, c. 1262, s. 10.)

*Editor's Note.* — The 1973 amendment, of Correction" for "Department of Youth effective July 1, 1974, substituted "Department Development."

§§ 134-3 to 134-7: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

## ARTICLE 2.

### *Director; Bonds.*

§ 134-8: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

§ 134-9. **Directors.** — The State Department of Correction 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 Secretary of Correction, 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 Secretary of Correction 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

Department of Correction. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Youth Development" and "Secretary of Correction" for "Commissioner of Youth Development."

**Authority to Hire and Dismiss Director of Each of the Schools and Institutions**

**Administered by and under the Supervision of the State Department of Youth Development, Is Vested Solely in the State Board of Youth Development.** — See opinion of Attorney General to Mr. David L. Jones, Secretary, Department of Social Rehabilitation and Control, 43 N.C.A.G. 227 (1973).

### 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 Corrections 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development."

**§ 134-12. Removal request by Department.** — 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 Correction may request the court committing said boy or girl or any court of proper jurisdiction to relieve the Department of the custody of the boy or girl. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development" and "Department" for "Board."

**§ 134-14. Department to be in position to care for offender before commitment.** — Before committing any person to the State Department of Correction, the court shall ascertain whether the State Department of Correction 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 Secretary that such person can be received. It shall be at all times within the discretion of the State Department of Correction 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development" and "Secretary" for "Commissioner."

**§ 134-15. Delivery to institution.** — It shall be the duty of the authorities from which the person is sent to the State Department of Correction 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development."

§ 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 Correction 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 Secretary of Correction, 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development" and "Secretary of Correction" for "Commissioner of Youth Development."

§ 134-17. **Conditional release; Department may grant conditional release; revocation of release.** — The Department of Correction 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 Department. Conditional release may be terminated at any time by written revocation by the director, under the rules and regulations adopted by the Department, 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development" and "Department" for "Board."

§ 134-18. **Final discharge.** — Final discharge may be granted by the Secretary of Correction under the rules adopted by the State Department of Correction at any time after admission to the school; provided, however, that final discharge must be granted any person upon reaching his eighteenth birthday, except as provided in G.S. 7A-286. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Youth Development" and "Department of Correction" for "Board of Youth Development."

ARTICLE 4.

*Care of Persons under Federal Jurisdiction.*

§ 134-19. **Care of persons under federal jurisdiction.** — The State Department of Correction 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development."

ARTICLE 5.

*General Provisions.*

§ 134-22. **Care of children born to students.** — The Department of Correction 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, of Correction" for "Department of Youth effective July 1, 1974, substituted "Department Development."

**§ 134-25. Department of Human Resources to supervise sanitary and health conditions.** — The Department of Human Resources 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 Correction 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; 1973, c. 476, s. 128; c. 1262, s. 10.)

**Editor's Note.** — Correction" for "Department of Youth The second 1973 amendment, effective July Development." 1, 1974, substituted "Department of

**§ 134-26. Providing necessary medical and surgical treatment for students.** — The State Department of Correction is authorized and directed to provide, through licensed physicians and surgeons, such medical and surgical treatment as is necessary to preserve the life and health of the students. The medical staff of any school, institution, or agency, under the management and control of the State Department of Correction, is hereby authorized to perform or cause to be performed, by competent and skillful physicians or surgeons, medical treatment or surgical operations upon any student when such operation is necessary for the physical health of the student. Provided, that no operation shall be performed except as authorized in G.S. 130-191. (1965, c. 1024; 1971, c. 1169; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, of Correction" for "Department of Youth effective July 1, 1974, substituted "Department Development."

**§ 134-27. General program, education and training.** — The Department of Correction 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, of Correction" for "Department of Youth effective July 1, 1974, substituted "Department Development."

**§ 134-28. Visits; community activities; post-release assistance.** — The Department of Correction 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; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, of Correction" for "Department of Youth effective July 1, 1974, substituted "Department Development."

**§ 134-28.1. Compensation to juveniles.** — Persons who are under commitment to the Department of Correction may be compensated in accordance with the rules and regulations of the Department of Correction, at rates set by the Department 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 Department 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 Department. (1971, c. 933; 1973, c. 1262, s. 10.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Juvenile Correction" near the beginning of the first sentence. Pursuant to Session Laws 1973, c. 1262, s. 10, the editors have also substituted "Department of

Correction" for "State Board of Juvenile Correction" and "Department" for "Board" near the middle of the first sentence, although the 1973 act did not make any express reference to the former State Board of Juvenile Correction, which had been superseded by the Board of Youth Development.

**§ 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 Correction 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 Correction 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 Correction, and the Secretary of Correction is authorized to issue a certificate to this effect. (1971, c. 1169; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth

Development" and "Secretary of Correction" for "Commissioner of Youth Development."

**§§ 134-30 to 134-34:** Reserved for future codification purposes.

ARTICLE 6.

*Detention Services.*

**§ 134-35. Legislative intent and purpose.** — The General Assembly hereby declares its intent and legislative policy with respect to detention of children alleged to be within the juvenile jurisdiction of the district court as delinquent or undisciplined: The General Assembly intends that the state-level responsibility for juvenile detention services shall be divided between two State agencies as follows: The Department of Human Resources shall continue to provide the services outlined in Part 3, Article 3, Chapter 108 and Article 10, Chapter 153A, in relation to juvenile detention homes, including development of State standards, inspections, consultation, technical assistance and training so that the providers of juvenile detention care will be subject to inspection by a separate agency. The State Department of Correction shall be responsible for development and administration of the regional detention homes as recommended in the report and for coordination of regional detention services



through existing county detention homes. Further, the General Assembly intends that both State agencies shall have some administrative flexibility in implementation of the report so as to allow appropriate time for planning and to operate within available funds from State and other sources. (1973, c. 1230, s. 1; c. 1262, s. 10.)

**Editor's Note.** — Session Laws 1973, c. 1230, s. 4, makes the act effective July 1, 1975. The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development" in the next-to-last sentence.

**§ 134-36. Definitions.** — The following terms or phrases shall be defined as follows in this Article unless the context or subject matter otherwise requires:

- (1) "County detention home" means one of the existing county-supported detention homes for juveniles or one which may be established by a county or other unit of local government in the future.
- (2) "Department" means the State Department of Correction as provided for in Chapter 134 or any department of State government to which responsibility for operation of institutions for committed delinquent youth may be assigned by legislation relating to State government organization.
- (3) "Holdover facility" means a place approved by the Department of Human Resources for detention of juveniles for not more than 72 hours prior to placement in an approved detention home.
- (4) "Juvenile detention" refers to detention of a child alleged to be undisciplined or delinquent before or after a juvenile hearing as authorized by G.S. 7A-286(3).
- (5) "Regional detention home" means a state-supported and administered regional facility providing detention care as recommended by the report.
- (6) "Report" means the report of the National Juvenile Detention Association entitled *Juvenile Detention in North Carolina: A Study Report*, released in January, 1973. (1973, c. 1230, s. 1; c. 1262, s. 10.)

**Editor's Note.** — Session Laws 1973, c. 1230, s. 4, makes the act effective July 1, 1975. The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Department of Youth Development" in subdivision (2).

**§ 134-37. Regional detention services.** — The Department shall establish a unit for juvenile detention services within the Department which shall be responsible for the development of a statewide plan for regional juvenile detention services as recommended by the report which will offer juvenile detention care of sufficient quality to meet State standards to any child requiring juvenile detention care within the State in a county detention home or a regional detention home by January 1, 1979, as follows:

- (1) The Department shall plan with the counties operating a county detention home to provide regional juvenile detention services to surrounding counties as recommended by the report, except that the Department shall have some discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate variable factors.
- (2) The Department shall plan for and administer five or more regional detention homes as recommended in the report, including careful planning on location, architectural design, construction, and administration of a program to meet the needs of children in juvenile detention care. Both the physical facility and the program of a regional detention home shall comply with State standards. (1973, c. 1230, s. 1.)

**§ 134-38. State subsidy to county detention homes.** — The Department shall develop a State subsidy program to pay a county detention home which provides regional juvenile detention services and meets State standards a certain portion of its operating costs and its per capita daily cost per child for any child cared for from another county as recommended in the report. In general, this subsidy should be fifty percent (50%) of the operating costs of a county detention home and one hundred percent (100%) of the per capita daily cost of caring for a child from another county; any county placing a child in the county detention home of another county providing regional juvenile detention services or a regional detention home should pay fifty percent (50%) of the per capita daily cost of caring for the child to the Department. The exact funding formulas may be varied by the Department to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care. (1973, c. 1230, s. 1.)

**§ 134-39. Authority for implementation.** — In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department shall have legal authority to do the following:

- (1) To make rules and regulations necessary to fulfill its responsibilities under this Article;
- (2) To plan with counties operating county detention homes to provide regional services and to upgrade physical facilities as recommended in the report, to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards;
- (3) To develop one or more pilot programs to demonstrate quality juvenile detention care on a regional basis that meet State standards;
- (4) To develop a plan whereby law-enforcement officers, court personnel or other appropriate employees of local government shall be reimbursed by the State for the costs of transportation of a child to and from any juvenile detention facility;
- (5) To seek funding for juvenile detention services from federal sources, and to accept gifts of funds from public or private sources; and
- (6) To transfer State funds appropriated for institutional programs or other services to develop a pilot program of juvenile detention care, to purchase detention care in a county detention home which meets State standards, or to operate a regional detention home. (1973, c. 1230, s. 1.)

**Chapter 135.**

**Retirement System for Teachers and State Employees;  
Social Security.**

**Article 1.**

**Retirement System for Teachers and  
State Employees.**

Sec.

- 135-1. Definitions.
- 135-3. Membership.
- 135-4. Creditable service.
- 135-5. Benefits.
- 135-5.1. Optional retirement program for State institutions of higher education.
- 135-6. Administration.

**Article 2.**

**Coverage of Governmental Employees  
under Title II of the Social  
Security Act.**

- 135-28.1. Transfer of members to employment covered by the Uniform Judicial Retirement System.

**Article 3.**

**Other Teacher, Employee  
Benefits.**

- 135-33. Hospital and medical insurance.

Sec.

- 135-34. Disability salary continuation.
- 135-36. Membership in Retirement System not necessary.

**Article 4.**

**Uniform Judicial Retirement  
Act of 1973.**

- 135-63. Benefits on death before retirement.
- 135-72 to 135-76. [Reserved.]

**Article 4A.**

**Uniform Solicitorial Retirement Act  
of 1974.**

- 135-77. Short title and purpose.
- 135-78. Scope.

**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:

- (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 person who is a member of the Uniform Judicial Retirement System, 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. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest. "Employee" shall also mean any full-time employee of the North Carolina Symphony Society, Inc.

(1973, c. 1233.)

**Editor's Note.** — The third 1973 amendment, effective July 1, 1974, added the next-to-last sentence of subdivision (10).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (10) are set out.

**§ 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: Provided, further, any State employee who was formerly a member of the Law-Enforcement Officers' Benefit and Retirement Fund and transferred to nonlaw-enforcement State employment within the same department prior to May 26, 1961, and withdrew his contributions from the Law-Enforcement Officers' Benefit and Retirement Fund at a time when the above transfer of contributions and credits was not authorized by statute, and who has

been continuously a member of the Teachers' and State Employees' Retirement System since such transfer to nonlaw-enforcement State employment with the same department, may pay to the Teachers' and State Employees' Retirement System in a lump sum the amount of such withdrawn contributions plus interest and, thereupon, shall be entitled to the same membership and prior service credits as if such contributions had never been withdrawn. This right shall apply retroactively in the case of any member who heretofore has transferred to non-law-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.

- (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 aforesated 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 aforesated 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 Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

- b. In lieu of the benefits provided in paragraph a of this subdivision (8), 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 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.

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
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. 9<sup>1</sup>/<sub>2</sub>; 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; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, added at the end of paragraph a of subdivision (8) "provided that he is otherwise vested."

The third 1973 amendment added the proviso to the fifth sentence in subdivision (1).

As the rest of the section was not changed by the amendments, only the opening paragraph and subdivisions (1) and (8) are set out.

**§ 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 10 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 who retired on a service retirement allowance prior to July 1, 1965, 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 prior service; provided, that any person who is a member of the Teachers' and State Employees' Retirement System on July 1, 1974, 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.

(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.
- (6) Notwithstanding any other provision of this Chapter, teachers and other State employees not otherwise allowed service credit for service in the armed forces of the United States may, upon completion of 10 years of membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.

(k) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or G.S. 135-5(f) and who subsequently returns to service may, upon completion of 10 years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one half of the cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s), provided that he left service prior to July 1, 1974. Any person who leaves service after June 30, 1974, and who withdraws his contributions in accordance with G.S. 128-27(f) or G.S. 135-5(f) and who subsequently returns to service may, upon completion of 10 years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover the full cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.

- (l) Notwithstanding any other provision of this Chapter, any member may,



upon completion of 10 years of current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if the member was not vested at time of separation and the service was not creditable after separation or withdrawal in any other public retirement system and only if no benefit is allowable in another public retirement system as a result of such service. Payment shall be permitted only on a total lump sum, an amount based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made.

(m) The employer portion of the annual cost to fund the provisions of [(f)(6), (k) and (l)] shall be paid by the employer based on the employer contribution rate as determined by the actuary and no cost shall be paid from funds now held by the Retirement System.

All repayments must be made within three years after the member first becomes eligible to make such repayment. (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; 1973, c. 241, s. 2; c. 242, s. 1; c. 667, s. 2; c. 737, s. 1; c. 816, s. 1; c. 1063; c. 1311, ss. 1-5.)

**Editor's Note. —**

The sixth 1973 amendment, effective July 1, 1974, substituted "July 1, 1974" for "July 1, 1963" near the end of subsection (a).

The seventh 1973 amendment, effective July

1, 1974, added subdivision (6) to subsection (f) and added subsections (k), (l) and (m).

Only the subsections added or changed by the amendments are set out.

**§ 135-5. Benefits.**

(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,
  - a. 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);
  - b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such

amounts as may be required to cover such payments as current disbursements; and

- c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(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 acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; 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, and 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.

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) The employer portion of the annual cost to fund the provisions of [subsections (s) and (t)] shall be paid by the employer based on the employer contribution rate as determined by the actuary and no cost shall be paid from funds now held by the Retirement System. (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; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3.)

**Cross Reference.** — As to repayment of contributions withdrawn pursuant to subsection (f) of this section, see § 135-4, subsections (k) and (m).

**Editor's Note.** —

The fifth 1973 amendment, effective July 1, 1974, rewrote subdivision (2) of subsection (d3)

and added the proviso to Option 2 of subsection (g).

The sixth 1973 amendment, effective July 1, 1974, added subsections (s), (t) and (u).

Only the subsections added or changed by the amendments are set out.

### § 135-5.1. Optional retirement program for State institutions of higher education.

(c) Each employing institution shall contribute on behalf of each participant in such optional retirement program an amount equal to the amount which the employee would be required to contribute to the Retirement System as a member of said Retirement System as specified in G.S. 135-8(b)(1). 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.

(1973, c. 1425.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, rewrote the first sentence of subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.

### § 135-6. Administration.

(b) **Membership of Board; Terms.** — The Board shall consist of 12 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 Board of Transportation, who shall be appointed by the Governor for a term of four years commencing April 1, 1947, and quadrennially thereafter; one of the appointive members shall be a representative of higher education appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one of the appointive members shall be a retired teacher or State employee who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one to be a general State employee, and three who are not members of the teaching profession or State employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years;
- (4) Two members, one a member of the House of Representatives, appointed by the Speaker of the House; and one a member of the Senate, appointed by the President of the Senate, neither of which shall be an active or retired teacher or State employee or an employee of a unit of local government to serve terms beginning on April 3, 1974, and to continue for the duration of their current terms of office. Thereafter, their successors shall be appointed for two-year terms to run concurrently with the organization of the General Assembly.

(1973, c. 1114.)

**Editor's Note. —**

The third 1973 amendment substituted "12" for "10" near the beginning of subsection (b) and added subdivision (4) to subsection (b). As only subsection (b) was changed by the amendment, the rest of the section is not set out.

## ARTICLE 2.

### *Coverage of Governmental Employees under Title II of the Social Security Act.*

#### § 135-28.1. Transfer of members to employment covered by the Uniform Judicial Retirement System.

(e) When any judge of a district court division of the General Court of Justice shall have made application for disability retirement prior to January 1, 1974, while a member of this Retirement System to become effective after January 1, 1974, and such judge died before January 1, 1974, and there was filed with the application for disability retirement a statement by a physician that such judge was permanently and totally disabled, such person shall be deemed to have complied with all provisions of this Retirement System as of the date of

application for disability retirement and no action of the medical board shall be necessary. He shall be presumed to have chosen Option 2 as to retirement benefits and survivor's benefits shall commence immediately and shall also be paid retroactively to the first day of the calendar month following such judge's death. (1973, c. 640, s. 2; c. 1221.)

**Editor's Note.** — The 1973 amendment added subsection (e).

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

### ARTICLE 3.

#### *Other Teacher, Employee Benefits.*

**§ 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. 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. Notwithstanding any provisions of this section to the contrary any member who was vested at the time of retirement may obtain or continue coverage for himself and dependents provided he pays the established applicable premium for the plan or plans of insurance as determined by the Board of Trustees of the Teachers' and State Employees' Retirement System based on actuarial experience. (1971, c. 1009, s. 1; 1973, c. 746; c. 1278, s. 1.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, added the fourth sentence.

**§ 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. 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. Benefits provided under this program of disability salary continuation shall not be reduced in any manner as a result of social security payments received with respect to any dependent or dependents of the disabled employee or as a result of compensation received from the Veterans Administration of the United States for disease or disability incurred while a member of the armed forces of the United States. (1971, c. 1009, s. 1; 1973, c. 746; c. 1278, s. 2.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, added the third sentence.

**§ 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; provided that persons employed on a permanent part-time basis designated as half-time or more may obtain for themselves and their dependents the benefits established in G.S. 135-33, as amended, by the payment of the entire premium for the persons so covered. (1971, c. 1009, s. 1; 1973, c. 1278, s. 3.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, added the proviso at the end of the section.

## ARTICLE 4.

*Uniform Judicial Retirement Act of 1973.***§ 135-63. Benefits on death before retirement.**

(b) There shall be paid to the surviving unremarried spouse of any former judge who died in service prior to January 1, 1974, and after his forty-ninth birthday an annual retirement allowance which shall commence on January 1, 1974, and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be computed in accordance with the provisions of subsection (a) above as if the provisions of this Article had been in effect on the date of death of the former judge, and the final compensation of such former judge had been equal to the rate of annual compensation in effect on December 31, 1973, for the office held by the former judge at the time of his death.

(1973, c. 1385.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1974, substituted "forty-ninth" for "fiftieth" in the first sentence of subsection (b).

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

§§ 135-72 to 135-76: Reserved for future codification purposes.

## ARTICLE 4A.

*Uniform Solicitorial Retirement Act of 1974.*

**§ 135-77. Short title and purpose.** — (a) This Article shall be known and may be cited as the "Uniform Solicitorial Retirement Act of 1974."

(b) The purpose of this Article is to improve the administration of justice by attracting the most highly qualified talent available within the State to the position of district attorney and solicitor. (1973, c. 1235, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 1235, s. 3, provides: "This act shall become effective retroactive to January 1, 1974."

**§ 135-78. Scope.** — (a) This Article provides uniform retirement benefits for all solicitors and district attorneys of the General Court of Justice who are so serving on January 1, 1974, or who become such thereafter.

(b) The Board of Trustees of the Teachers' and the State Employees' Retirement System shall administer the provisions of this Article. The benefits and entitlements that solicitors and district attorneys and their widows shall have shall be the same benefits and entitlements as are provided a judge of the district court division of the General Court of Justice pursuant to Article 4 of Chapter 135 of the General Statutes. (1973, c. 1235, s. 1.)

**Chapter 136.**

**Roads and Highways.**

**Article 2.**

**Powers and Duties of Board of Transportation.**

- Sec.  
 136-18.3. Location of garbage collection containers by counties and municipalities.  
 136-21. Drainage of highway; application to court; summons; commissioners.  
 136-28.1. Letting of contracts to bidders after advertisement; exceptions.  
 136-28.3. [Repealed.]

**Article 4.**

**Neighborhood Roads, Cartways, Church Roads, etc.**

136-71.1 to 136-71.5. [Reserved.]

**Article 4A.**

**Bicycle and Bikeway Act of 1974.**

- 136-71.6. How Article cited.  
 136-71.7. Definitions.  
 136-71.8. Findings.  
 136-71.9. Program development.  
 136-71.10. Duties.  
 136-71.11. Designation of bikeways.  
 136-71.12. Funds.

**Article 6D.**

**Controlled-Access Facilities.**

- Sec.  
 136-89.59. Highway rest area refreshments.

**Article 7.**

**Miscellaneous Provisions.**

- 136-102.3. Filing record of results of test drilling or boring with Director of Department of Administration and Secretary of Natural and Economic Resources.

**Article 12.**

**Junkyard Control Act.**

- 136-143. Definitions.  
 136-145. Enforcement provisions.  
 136-146. Removal of junk from illegal junkyards.  
 136-147. Screening of junkyards lawfully in existence.  
 136-149. Permit required for junkyards.  
 136-149.1. Judicial review.  
 136-151. Rules and regulations by Board of Transportation; delegation of authority to Secretary of Transportation.  
 136-155. Availability of federal aid funds.

**ARTICLE 2.**

*Powers and Duties of Board of Transportation.*

§ 136-18.3. **Location of garbage collection containers by counties and municipalities.** — (a) The Board of Transportation is authorized to issue permits to counties and municipalities for the location of containers on rights-of-way of state-maintained highways for the collection of garbage. Such containers may be located on highway rights-of-way only when authorized in writing by the State Highway Administrator in accordance with rules and regulations promulgated by the Board of Transportation. Such rules and regulations shall take into consideration the safety of travelers on the highway and the elimination of unsightly conditions and health hazards. Such containers shall not be located on fully controlled access highways.

(b) The provisions of G.S. 14-399, which make it a misdemeanor to place garbage on highway rights-of-way, shall not apply to persons placing garbage in containers in accordance with rules and regulations promulgated by the Board of Transportation.

(c) The written authority granted by the Board of Transportation shall be no guarantee that the State system highway rights-of-way on which the containers are authorized to be located is owned by the Board of Transportation, and the issuance of such written authority shall be granted only when the county or municipality certifies that written permission to locate the refuse container has been obtained from the owner of the underlying fee if the owner can be determined and located.

(d) Whenever any municipality or county fails to comply with the rules and regulations promulgated by the Board of Transportation or whenever they fail or refuse to comply with any order of the Board of Transportation for the removal or change in the location of a container, then the permit of such county or municipality shall be revoked. The location of such garbage containers on highway rights-of-way after such order for removal or change is unauthorized and illegal, the Board of Transportation shall have the authority to remove such unauthorized or illegal containers and charge the expense of such removal to the county or municipality failing to comply with the order of the Board of Transportation. (1973, c. 1381.)

**§ 136-21. Drainage of highway; application to court; summons; commissioners.** — Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right-of-way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other than said highway will be drained and benefited, then, and in such event, the Board of Transportation, if said highway be a part of the State highway system, or the county commissioners, if said road is not under State supervision, may, by petition, apply to the superior court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than 10 days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Natural and Economic Resources, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; c. 122, s. 44; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1262, s. 86.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural

and Economic Resources" for "Department of Conservation and Development."

**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

(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 Board of Transportation shall be deemed highway construction or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the Secretary of Transportation 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.

(1973, c. 1194, ss. 4, 5.)

**Editor's Note.** —

The second 1973 amendment, effective Sept. 1, 1974, substituted "Chapter 44A" for "G.S. 136-28.3" in the first sentence of subsection (c)

and deleted the former last sentence of subsection (c), which provided that the bonds should cover materials furnished or labor performed in the prosecution of the work called



for in the contract regardless of whether or not it entered into and became a component part of the public improvement. As to the construction of the amendment, see the Editor's note to § 44A-25.

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

§ 136-28.3: Repealed by Session Laws 1973, c. 1194, s. 6.

ARTICLE 4.

*Neighborhood Roads, Cartways, Church Roads, etc.*

§§ 136-71.1 to 136-71.5: Reserved for future codification purposes.

ARTICLE 4A.

*Bicycle and Bikeway Act of 1974.*

§ 136-71.6. **How Article cited.** — This Article may be cited as the North Carolina Bicycle and Bikeway Act of 1974. (1973, c. 1447, s. 1.)

§ 136-71.7. **Definitions.** — As used in this Article, except where the context clearly requires otherwise, the words and expressions defined in this section shall be held to have the meanings here given to them:

- (1) **Bicycle:** A nonmotorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.
- (2) **Bikeway:** A thoroughfare suitable for bicycles, and which may either exist within the right-of-way of other modes of transportation, such as highways, or along a separate and independent corridor.
- (3) **Department:** North Carolina Department of Transportation and Highway Safety.
- (4) **Program:** North Carolina Bicycle and Bikeway Program. (1973, c. 1447, s. 2.)

§ 136-71.8. **Findings.** — The General Assembly hereby finds that it is in the public interest, health, safety, and welfare for the State to encourage and provide for the efficient and safe use of the bicycle; and that to coordinate plans for bikeways most effectively with those of the State and local governments as they affect roads, streets, schools, parks and other publicly owned lands, abandoned roadbeds and conservation areas, while maximizing the benefits from the use of tax dollars, a single State agency, eligible to receive federal matching funds, should be designated to establish and maintain a statewide bikeways program. (1973, c. 1447, s. 3.)

§ 136-71.9. **Program development.** — The Department is designated as such State agency, responsible for developing and coordinating the program. (1973, c. 1447, s. 4.)

§ 136-71.10. **Duties.** — The Department will:

- (1) Assist and cooperate with local governments and other agencies in the development and construction of local and regional bikeway projects;
- (2) Develop and publish policies, procedures, and standards for planning, designing, constructing, maintaining, marking, and operating bikeways in the State; for the registration and security of bicycles; and for the safety of bicyclists, motorists and the public;
- (3) Develop bikeway demonstration projects and safety training programs;
- (4) Develop and construct a State bikeway system. (1973, c. 1447, s. 5.)

§ 136-71.11. **Designation of bikeways.** — Bikeways may be designated along and upon the public roads. (1973, c. 1447, s. 5.)

§ 136-71.12. **Funds.** — The General Assembly hereby authorizes the Department to include needed funds for the program in its annual budgets for fiscal years after June 30, 1975, subject to the approval of the General Assembly.

The Department is authorized to spend any federal, State, local or private funds available to the Department and designated for the accomplishment of this Article. Cities and towns may use any funds available. (1973, c. 1447, s. 6.)

ARTICLE 6D.

*Controlled-Access Facilities.*

§ 136-89.52. **Acquisition of property and property rights.**

**First Sentence Does Not Create Right of View in Landowner.** — The first sentence of this section is a grant of authority to the Board of Transportation to acquire an easement over or title to property not actually needed for roadbed, but needed to prevent blind intersections of highways or other hazardous situations. This sentence of the statute does not create a right of view or sight distance in individual landowners to and from their land nor does it suggest that an individual landowner has a right of view or sight distance for which compensation must be paid. North Carolina State Hwy. Comm'n v. English, 20 N.C. App. 20, 200 S.E.2d 429 (1973).

**But Not Where He Is Provided, etc. —**

The last sentence of the second paragraph of this section, when read in conjunction with the first sentence of said paragraph, contemplates a situation where the remaining property abuts the new controlled-access highway. Where defendants are not denied access to a highway or roadway which abuts their property, the trial judge need not instruct the jury in accordance with the second paragraph. North Carolina State Hwy. Comm'n v. English, 20 N.C. App. 20, 200 S.E.2d 429 (1973).

§ 136-89.53. **New and existing facilities; grade crossing eliminations.**

**Access Cannot Be Taken, etc. —**

The second sentence of this section applies where an existing street or highway is designated a controlled-access facility thereby

depriving a landowner of access from his property which he once had. North Carolina State Hwy. Comm'n v. English, 20 N.C. App. 20, 200 S.E.2d 429 (1973).

§ 136-89.59. **Highway rest area refreshments.** — All civic, nonprofit, or charitable corporations and organizations are authorized to serve nonalcoholic refreshments to motorists at rest areas and welcome centers located on control-access facilities in accordance with the following conditions:

- (1) Thirty-day permits shall be issued without cost by the Highway Division Engineer. Permits shall be subject to revocation by the State Highway Administrator for violations of this section.
- (2) The activity must be carried on solely within the safety rest area free from any ramp or other service used for the movement of vehicles.
- (3) The activity must be conducted for the express purpose of improving the safety of highway travel and the advertisement of any product by any organization shall not be permitted.
- (4) The refreshment and any other service offered must be free of charge to the motorist and solicitation of contributions, donations, etc., shall not be permitted.
- (5) Signs shall be displayed by the corporation or organization, and the Board of Transportation is hereby authorized to promulgate rules and regulations governing the size, content and location of such signs. (1973, c. 1346.)

**Editor's Note.** — The section originally codified as § 136-89.59 was repealed by Session Laws 1971, c. 882, s. 4.

## ARTICLE 7.

*Miscellaneous Provisions.*

§ 136-102.3. **Filing record of results of test drilling or boring with Director of Department of Administration and Secretary of Natural and Economic Resources.** — 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 Secretary of Natural and Economic Resources, 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 G.S. 136-102.2 to 136-102.4 unless otherwise provided in such lease or contract. (1967, c. 923, s. 2; 1973, c. 1262, s. 86.)

**Editor's Note.** — The 1973 amendment, "Director of the Department of Conservation and Development" in the first sentence. effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for

## ARTICLE 9.

*Condemnation.*

§ 136-105. **Disbursement of deposit; serving copy of disbursing order on Board of Transportation.**

Cited in *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

## ARTICLE 12.

*Junkyard Control Act.*

§ 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. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard" within the meaning of this Article.
- (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 Board of Transportation, or other appropriate authorities. As to highways under construction so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purpose of this Article on the date the location of the highway has been approved finally by the appropriate federal 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. An establishment or place of business which stores or keeps for a period of 15 days or more materials within the meaning of "junk" as defined by subdivision (3) of G.S. 136-143 which had been derived or created as a result of industrial activity shall be deemed to be a junkyard within the meaning of this Article.

- (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 Board of Transportation or other appropriate authorities. As to highways under construction so designated as federal-aid primary highways pursuant to the above procedures, the highway shall be part of the federal-aid primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities.
- (6) "Unzoned area" shall mean an area where there is no zoning in effect.
- (7) "Visible" means capable of being seen without visual aid by a person of normal visual acuity. (1967, c. 1198, s. 3; 1973, c. 507, s. 5; c. 1439, ss. 1-5.)

**Editor's Note. —**

The second 1973 amendment added the second sentences to subdivisions (1), (2), (4) and

(5). The amendment also added subdivisions (6) and (7).

**§ 136-145. Enforcement provisions. —** Any person, firm, corporation or association that establishes, operates or maintains a junkyard within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, after the effective date of this Article as determined by G.S. 136-155, that does not come within one or more of the exceptions contained in G.S. 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 Board of Transportation may seek injunctive relief in the superior court of the county in which the offense is committed to abate the said nuisance and to require the removal of all junk from the prohibited area. (1967, c. 1198, s. 5; 1973, c. 507, s. 5; c. 1439, s. 6.)

**Editor's Note. —**

The second 1973 amendment inserted "edge of the" preceding "right-of-way" and "as determined by G.S. 136-155" and substituted "the effective date of this Article" for "July 6,

1967," in the first sentence. The amendment also substituted "offense is committed" for "said junkyard is located" near the end of the section.

**§ 136-146. Removal of junk from illegal junkyards. —** Any junkyard established after the effective date of this Article as determined by G.S. 136-155, in violation of the provisions of this Article or rules and regulations issued by the Board of Transportation pursuant to this Article, shall be illegal and shall constitute a public nuisance. The Board of Transportation or its agents shall give 30 days' notice to the owner of said junkyard to remove the junk or to make the junkyard to conform to the provisions of this Article or rules and regulations promulgated by the Board of Transportation hereunder. The Board of Transportation or its agents may remove the junk from the illegal junkyard at the expense of the owner if the said owner fails to act within 30 days after receipt of such notice. The Board of Transportation 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. Any person aggrieved by the decision declaring the junkyard illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Board of Transportation pursuant to this Article to the Secretary of Transportation

who shall make the final decision on the agency appeal. (1967, c. 1198, s. 6; 1973, c. 507, s. 5; c. 1439, s. 7.)

**Editor's Note.** —

The second 1973 amendment rewrote the first sentence, inserted "or its agents" and deleted "by certified mail" following "notice" near the beginning of the second sentence, inserted "to"

preceding "conform" and substituted "or" for "and" preceding "rules" in the second sentence, substituted "illegal" for "nonconforming" in the third sentence and added the last sentence.

**§ 136-147. Screening of junkyards lawfully in existence.** — Any junkyard lawfully in existence on the effective date of this Article as determined by G.S. 136-155 which does not conform to the requirements for exceptions in G.S. 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 G.S. 136-144 hereof, shall be screened, if feasible, by the Board of Transportation 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 Board of Transportation 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; 1973, c. 507, s. 5; c. 1439, s. 8.)

**Editor's Note.** —

The second 1973 amendment substituted "the effective date of this Article as determined by

G.S. 136-155" for "July 6, 1967," near the beginning of the first sentence.

**§ 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 Board of Transportation or its agents pursuant to the procedures set out by the rules and regulations promulgated by the Board of Transportation. No permit shall be issued under the provisions of this section for the establishment, operation or maintenance of a junkyard within 1,000 feet to 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 G.S. 136-144. The permit shall be valid until revoked for the nonconformance of this Article or rules and regulations promulgated by the Board of Transportation thereunder. Any person aggrieved by the decision of the Board of Transportation or its agents in refusing to grant or revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Board of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision upon the agency appeal. The Board of Transportation shall have the authority to charge reasonable fees to defray the costs of administering the permit procedures under this Article. (1967, c. 1198, s. 9; 1973, c. 507, s. 5; c. 1439, s. 9.)

**Editor's Note.** —

The second 1973 amendment added the language beginning "or its agents" at the end of the first sentence, substituted "permit" for "license" and inserted "establishment" near the beginning of the second sentence, substituted "to" for "of" preceding "the

nearest edge" near the middle of the second sentence, substituted "the nonconformance of" for "noncompliance with" and added "or rules and regulations promulgated by the Board of Transportation thereunder" in the third sentence, rewrote the fourth sentence and added the fifth sentence.

**§ 136-149.1. Judicial review.** — Any person who is aggrieved by a final decision of the Secretary of Transportation after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article is entitled to judicial review of such decision under this Article. In order to obtain judicial review of the Secretary of Transportation's decision under this Article, the person seeking review must file a petition in the superior

court of the county in which the junkyard is located within 30 days after written copy of the decision of the Secretary of Transportation is served upon the person seeking review. Failure to file such a petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter.

The petition shall state explicitly what exceptions are taken to the decisions of the Secretary of Transportation and what relief petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the Board of Transportation or the Secretary of Transportation. Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Secretary of Transportation shall transmit to the reviewing court a certified copy of the written decision.

At any time before or during the review proceeding, the aggrieved party may apply to the reviewing court for an order staying the operation of the decision of the Secretary of Transportation pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. The review of the decision of the Secretary of Transportation under this Article shall be conducted by the court without a jury and shall hear the matter de novo pursuant to the rules of evidence as applied in the general court of justice. The court, after hearing the matter may affirm, reverse or modify the decision if the decision is:

- (1) In violation of constitutional provisions; or
- (2) Not made in accordance with this Article or rules or regulations promulgated by the Board of Transportation;
- (3) Affected by other error or law.

The party aggrieved shall have the burden of showing that the decision was violative of one of the above.

A party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under the rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay for its final determination or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1973, c. 1439, s. 10.)

**§ 136-151. Rules and regulations by Board of Transportation; delegation of authority to Secretary of Transportation.** — The Board of Transportation is authorized to promulgate rules and regulations in the form of ordinances governing:

- (1) The establishment, operation and maintenance of junkyards permitted in G.S. 136-144 which shall include, but not be limited to, rules and regulations for determining unzoned industrial areas for the purpose of this Article.
- (2) The specific requirements and procedures for obtaining a permit for junkyards as required in G.S. 136-149 and for the administrative procedures for appealing a decision at the agency level to refuse to grant or in revoking a permit previously issued.
- (3) The administrative procedures for appealing a decision at the agency level to declare any junkyard illegal and a nuisance as pursuant to G.S. 136-146.
- (4) The specific requirements governing the location, planting, construction and maintenance of material used in the screening or fencing required by this Article, all as may be necessary to carry out the policy of the State as declared in this Article.

The Board of Transportation, in its discretion, may delegate to the Secretary

of Transportation the authority to promulgate such rules and regulations on its behalf. (1967, c. 1198, s. 11; 1973, c. 507, s. 5; c. 1439, s. 11.)

**Editor's Note.** —

The second 1973 amendment rewrote this section.

**§ 136-155. Availability of federal aid funds.** — The Board of Transportation 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 G.S. 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 Board of Transportation has entered into an agreement with the United States Secretary of Transportation as authorized by G.S. 136-152 hereof and as provided by the Highway Beautification Act of 1965 or subsequent amendment thereto. (1967, c. 1198, s. 15; 1973, c. 507, s. 5; c. 1439, s. 12.)

**Editor's Note.** —

The second 1973 amendment inserted "United States" preceding "Secretary of Transportation."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*November 1, 1974*

I, James H. Carson, Jr., Attorney General of North Carolina, do hereby certify that the foregoing 1974 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.

JAMES H. CARSON, JR.

*Attorney General of North Carolina*

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