N.C. Governor's Office - 1969

THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through the Legislative Session of 1963

Prepared under the Supervision of the Department of Justice of the State of North Carolina

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

Under the Direction of

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Volume 3C

1964 Replacement Volume

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Scope of Volume

Statutes:

Full text of Chapters 137 through 156 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1963 heretofore contained in 1958 Replacement Volume 3B and Recompiled Volume 3C of the General Statutes of North Carolina and the 1963 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:
North Carolina Reports volumes 1-260 (p. 132).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-316.
Federal Supplement volumes 1-216.
United States Reports volumes 1-372.
Supreme Court Reporter volumes 1-83 (p. 1559).
North Carolina Law Review volumes 1-41 (p. 662).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R. ..... Potter's Revisal (1821, 1827)
R. S. ..... Revised Statutes (1837)
R. C. ..... Revised Code (1854)
C. C. P. ..... Code of Civil Procedure (1868)
Code ..... Code (1883)
Rev. ..... Revisal of 1905
C. S. ..... Consolidated Statutes (1919, 1924)

Preface

Volume 3 of the General Statutes of North Carolina of 1943 was replaced in 1952 by recompiled volumes 3A, 3B and 3C, containing Chapters 106 through 166 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. In 1958 a replacement volume 3B was published in which the statutes and annotations appearing in the recompiled volume 3B and in the 1957 Cumulative Supplement thereto were combined. Replacement volume 3B and recompiled volume 3C have now been replaced by replacement volumes 3B, 3C and 3D, which combine the statutes and annotations appearing in the previous volumes 3B and 3C and in the 1963 Cumulative Supplement thereto.

Volume 3A contains Chapters 106 through 116. Volume 3B contains Chapters 117 through 136. Volume 3C contains Chapters 137 through 156. Volume 3D contains Chapters 157 through 167.

In replacement volume 3C the form and the designations of subsections, subdivisions and lesser divisions of sections have in many instances been changed, so as to follow in every case the uniform system of numbering, lettering and indentation adopted by the General Statutes Commission. For example, subsections in the replacement volume are designated by lower case letters in parentheses, thus: (a). Subdivisions of both sections and subsections are designated by Arabic numerals in parentheses, thus: (1). Lesser divisions likewise follow a uniform plan. Attention is called to the fact that it has not, of course, been possible, except in replacement volumes 3B and 3D, to make corresponding changes in any references that may appear in other volumes to sections contained in volume 3C.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5.1 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

This replacement volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

THOMAS WADE BRUTON,
Attorney General.

April 1, 1964.

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Division XVI. State Government and Agencies.

Chapter 137.

Rural Rehabilitation.

Article 1.

State Rural Rehabilitation Law.

§§ 137-1 to 137-30: Repealed by Session Laws 1955, c. 190.

Article 2.

North Carolina Rural Rehabilitation Corporation.

§ 137-31. Designated a State agency.—The North Carolina Rural Rehabilitation Corporation, a non-profit corporation, organized by the members of the commission of the North Carolina Emergency Relief Administration, and chartered by the State to serve as a social and financial instrumentality in assisting to rehabilitate individuals and families by enabling them to secure subsistence and gainful employment from the soil and co-ordinated and other enterprises in order to restore them as self-sustaining citizens and thereby reduce the burden of public relief for the needy and unemployed, is hereby recognized and designated as an agency of the State of North Carolina and of the North Carolina Emergency Relief Administration and its successor within the powers and limitations of its charter for the carrying out of said objects and purposes. (1935, c. 314, s. 1.)

§ 137-31.1. State agency and its rights, functions, etc., continued.—The North Carolina Rural Rehabilitation Corporation shall be and continue as an agency of the State of North Carolina, and as such is vested with and shall continue to have and be vested with all the rights, powers, functions, objects and purposes granted to and vested in it by the certificate of incorporation of said Corporation, as amended, or by statute or act of the General Assembly of North Carolina. (1953, c. 724, s. 1.)

§ 137-31.2. Property of Corporation.—All lands, buildings, structures, funds, notes, bonds, mortgages, contracts, records, reports, equipment, vehicles, supplies, materials and other property, real, personal or mixed, tangible or intangible, which are owned by said Corporation or in which said Corporation has an interest on

April 8, 1953, shall continue and remain the property of said Corporation. (1953, c. 724, s. 2.)

§ 137-31.3. **Members of board of directors; terms of office; per diem and expenses.**—The governing body of the North Carolina Rural Rehabilitation Corporation shall be a board of directors consisting of nine members, of whom the Commissioner of Agriculture, the Director of the Co-operative Agricultural Extension Service of the North Carolina State College of Agriculture and Engineering of the University of North Carolina, the Director of the Division of Vocational Education of the State Department of Public Instruction, and the North Carolina State Director of the Farmers Home Administration of the United States Department of Agriculture, or in the event of a change of name of any of said offices, the persons performing the principal duties of said offices, by whatever name called, shall be ex officio members, and the remaining five members shall be named by the Governor of North Carolina. Of the five directors first named by the Governor, one shall be appointed for a term of one year, two shall be appointed for terms of two years each and two for terms of three years each, and subsequent appointments shall be made for terms of three years each. The members of the board appointed by the Governor shall serve without compensation, but in attending meetings of the board they shall be paid such per diem and actual necessary expenses as may be incurred in travel and subsistence while attending such meetings from funds of the Corporation not in excess of that allowed by the biennial appropriation act for other State agencies. The ex officio members of the board shall serve without compensation and shall be reimbursed for actual costs of travel and subsistence by the agency which they represent. (1953, c. 724, s. 3; 1963, c. 1005.)

Editor's Note.—The 1963 amendment added the last two sentences.

§ 137-31.4. **Cancellation of stock; Corporation to be nonstock.**—On April 8, 1953, all of the capital stock of the Corporation, including both the stock held by the stockholders of the Corporation and the stock held by the Corporation itself, shall be cancelled and shall be surrendered to the Secretary of State of the State of North Carolina, who shall cancel and destroy such stock and make an appropriate notation upon the original records of the Corporation in his office showing the cancellation and destruction of such stock. Thereafter, said Corporation shall cease to have any capital stock and shall be a nonstock Corporation. (1953, c. 724, s. 4.)

§ 137-31.5. **Annual audit and financial statement.**—The State Auditor shall, at least once in each year, make or cause to be made a detailed audit of all moneys received and disbursed by the Corporation during the preceding year and shall make or cause to be made a statement of the financial condition of the Corporation as of the close of such preceding year. A copy of said audit and statement shall be furnished to the Governor and to each member of the board of directors, and two copies shall be furnished to the principal office of the Corporation. (1953, c. 724, s. 5.)

§ 137-32. **Powers of Corporation.**—The Corporation is hereby authorized to accept and receive loans, grants and other assistance from the United States government, departments and/or agencies thereof for its use or for relief and rehabilitation purposes as well as to receive like financial and other aid when extended by the State of North Carolina or any of its departments, political subdivisions or agencies or any municipality, or from other sources, either public or private, and to employ the same in carrying out its rehabilitation purposes and activities; to utilize such means and agencies as shall be found useful or necessary to carry out the purposes of this article and which will facilitate the securing of co-operation and financial assistance from the government of the United States, its departments or agencies, in aid thereof. (1935, c. 314, s. 2.)

§ 137-32.1. **Powers of board of directors.**—The existing board of directors of said Corporation shall have all the powers and authority of the stockholders and directors of said Corporation only until the appointment and qualification of the board of directors provided for in G. S. 137-31.3; and upon the appointment and qualification of the board of directors provided for in G. S. 137-31.3 it shall have all of the powers and authority heretofore vested in the stockholders and directors of the Corporation, and as such shall be vested with all the rights, powers, functions, and authority vested in said Corporation or its stockholders or directors by its certificate of incorporation, as amended, or by the statute or act of the General Assembly of North Carolina, including, but not limited to, the following powers:

(1) To adopt, alter or repeal its own bylaws, rules and regulations governing the conduct of its affairs and the manner in which its business shall be transacted and in which the powers granted to it shall be exercised.

(2) To elect or appoint all necessary officers and committees, and to employ agents, clerks, workmen and such other personnel as said board may deem advisable, to fix their compensation, to prescribe their duties, to dismiss without previous notice; and generally to be in sole and final control and management of the personnel of said Corporation.

(3) To contract for the purchase of, and to purchase all supplies, materials, equipment, printing, telephone, telegraph, electric light and power, postal and all other contractual services and needs of said corporation, to rent, lease or purchase all offices and office space, lands, buildings and equipment, needful or desirable in the conduct of the Corporation's business, to pay for same out of the funds of the Corporation; and generally to be in sole and final control and management of the acquisition, use and disposition of such property on behalf of the Corporation.

(4) To elect or appoint a treasurer or other officers or agents for the handling of the funds and fiscal affairs of the Corporation, to require the posting of surety bonds of such officers and agents and to fix the amount of such bonds, to provide for the methods and procedures for the collection and disbursement of the funds of the Corporation by such treasurer or other officers or agents, to fix the depository or depositories for the funds of the Corporation and to provide for the investment of the surplus funds of the Corporation from time to time, to make loans or grants and to expend the funds of the Corporation for the furtherance and accomplishment of the objects and purposes of the Corporation as granted to it by its certificate of incorporation, as amended, or by statute or act of the General Assembly; and generally to be in sole and final control and management of the funds and fiscal affairs of the Corporation.

Provided, however, that any obligations or indebtedness incurred or created by the Corporation shall be that of the Corporation only and shall not constitute an obligation or indebtedness of the State of North Carolina, and no such obligation or indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina. (1953, c. 724, s. 6.)

§ 137-33. **Co-operation by State officers, boards, etc.**—The various officers, boards, courts and governing bodies of the State engaged in any way in the relief of destitution and unemployment are hereby authorized to co-operate with the North Carolina Rural Rehabilitation Corporation for the purposes specified in § 137-31. (1935, c. 314, s. 3.)

§ 137-34. **Fund for loans to county boards of education for erecting or equipping vocational buildings, etc.**—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina Rural Rehabilitation Corporation is hereby authorized to create a fund of three hundred twenty-five thousand dollars ($325,000.00) to be used, together with any net income accruing thereon, for loans, to be made in the manner hereinafter set forth, to county boards

of education for the purpose of erecting or equipping vocational buildings for teaching agriculture and home economics. (1939, c. 241, s. 1; 1941, c. 307, s. 1.)

Editor's Note.—The 1941 amendment inserted "net" before "income."

§ 137-35. Loans to be made through State Board of Education.—The said loans shall be made through and with the assistance of the State Board of Education in the following manner:

(1) As applications for loans are made, the Director of Schoolhouse Planning and the Director of Vocational Education, State Department of Public Instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(2) The Local Government Commission will then determine whether the county or school district can, under the Constitution, borrow funds necessary for the construction or equipment of such buildings.

(3) The State Board of Education will then pass upon, and approve or disapprove, the project from the standpoint of the State educational system.

(4) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina Rural Rehabilitation Corporation for final approval.

(5) Upon such final approval the North Carolina Rural Rehabilitation Corporation will deliver to the State Board of Education the funds which are to be advanced.

(6) Said funds will be loaned by the State Board of Education according to the same rules and regulations and legal requirements as those under which the State Literary Fund is now administered.

(7) Said loans will be repayable in ten (10) equal annual installments and will bear interest at four per cent per annum, payable annually, semi-annually, or quarterly, as the State Board of Education shall determine.

(8) All loans made by the State Board of Education from such funds so advanced by the Rural Rehabilitation Corporation shall be evidenced by notes payable to the order of the Rural Rehabilitation Corporation and upon completion of said loan, such notes shall be delivered, without further liability upon the State Board of Education, to the Rural Rehabilitation Corporation and a proper receipt taken therefor. (1939, c. 241, s. 2.)

§ 137-36. Approval of applications from county boards by State Board of Education.—The State Board of Education is hereby empowered to receive and approve applications from county boards of education for such vocational agricultural and home economics buildings or equipment loans in the same manner and on the same forms as it now receives applications for loans from the State Literary Fund, and in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 3.)

§ 137-37. Loans from State Literary Fund.—As an alternative method of making loans to county boards of education for the purpose of erecting or equipping such vocational agricultural and home economics buildings, the State Board of Education is hereby empowered to make loans for said purposes from the State Literary Fund and to sell or transfer, without recourse, the notes received for said loans (together with the security therefor) to North Carolina Rural Rehabilitation Corporation. Loans so made from the State Literary Fund for such vocational agricultural and home economics buildings shall be made in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 4.)

§ 137-38. County boards of education authorized to borrow funds.—County boards of education are hereby empowered to borrow through or from the State Board of Education amounts necessary for constructing or equipping vocational agricultural and home economics buildings to the same extent and in the same manner as they are now authorized by law to borrow from the State Literary Fund by the provisions of §§ 115-220 to 115-224, and by other applicable provisions of law. (1939, c. 241, s. 5.)

§ 137-39. Creation of fund for loans to students of rural social science authorized.—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina Rural Rehabilitation Corporation is hereby authorized to create a fund of twenty-five thousand dollars ($25,000.00) to be used, together with any net income accruing thereon, for loans to students engaged in the study of rural social science; and the directors of North Carolina Rural Rehabilitation Corporation are hereby authorized to make such regulations relative to said loans as to the said board of directors may seem advisable. (1939, c. 241, s. 6; 1941, c. 307, s. 2.)

Editor's Note.—The 1941 amendment inserted "together with any net income accruing thereon."

§ 137-40: Repealed by Session Laws 1951, c. 155, s. 3.

§ 137-41. Transfers of real and personal assets to Farm Security Administration in trust, etc., ratified.—There is hereby ratified the act of North Carolina Rural Rehabilitation Corporation and its board of directors in transferring to the Farm Security Administration of the United States Department of Agriculture all of its real and personal assets of every kind and description (except the funds hereinabove referred to and except sums necessary for or incident to making the transfer to Farm Security Administration), in trust until the twentieth day of May, one thousand nine hundred and fifty, to use said property for certain purposes of the North Carolina Rural Rehabilitation Corporation selected and designated by the board of directors of said Corporation, and in trust thereafter to repay or redeliver to North Carolina Rural Rehabilitation Corporation any unused or unexpended portions of said property. (1939, c. 241, s. 8.)

§ 137-42. Agreements as to retransfer and future use of assets.—The North Carolina Rural Rehabilitation Corporation is hereby authorized and empowered to enter into all such contracts and agreements with the United States of America, acting by and through the Secretary of Agriculture or other appropriate officials of the United States government, as may be necessary or appropriate to accomplish the retransfer to the North Carolina Rural Rehabilitation Corporation of the funds and assets of said Corporation now held by the Secretary of Agriculture pursuant to the agreement of transfer between the North Carolina Rural Rehabilitation Corporation and the United States of America, bearing date of May 20, 1938. Said Corporation is further authorized and empowered to enter into such covenants and agreements with the Secretary of Agriculture or other appropriate officials of the United States government in regard to the future use of said returned assets or in any other regard as may be required by Public Law 499, 81st Congress, approved May 3, 1950, or by the Secretary of Agriculture acting pursuant thereto. (1951, c. 155, s. 1.)

§ 137-43. Agreements for transfer of assets to Secretary of Agriculture for rural rehabilitation purposes.—The North Carolina Rural Rehabilitation Corporation is further authorized and empowered to enter into such agreements with the Secretary of Agriculture or other appropriate officials of the United States government, and upon such terms and conditions and for such periods of time as may be mutually agreeable, for the transfer by the Corporation to the Secretary of

Agriculture of all or any part of its assets for use in the State of North Carolina in carrying out the purpose of titles I and II of the Bankhead-Jones Farm Tenant Act as now or hereafter amended by the Congress of the United States and for such other rural rehabilitation purposes within the State of North Carolina as said Corporation may deem advisable. (1951, c. 155, s. 2.)

Chapter 138.

Salaries, Fees and Allowances.

§ 138-1. Annual salaries payable monthly.—All annual salaries shall be paid monthly. (Code, s. 3731; 1893, c. 54; Rev., s. 2772; C. S., s. 3847; 1925, c. 230; 1928, c. 100.)

§ 138-2. Payment of fees; when to be paid in advance.—All public officers shall receive the fees prescribed for them respectively, from the persons for whom, or at whose instance, the service shall be performed, except persons suing as paupers, and no officer shall be compelled to perform any service, unless his fee be paid or tendered, except in criminal actions. The said officers shall receive no extra allowance or other compensation whatever, unless the same shall be expressly authorized by statute. In case the service shall be ordered by any proper officer of the State, or of a county, for the benefit of the State or county, the fees need not be paid in advance; but if for the State, shall be paid by the State, as other claims against it are; if for a county, by the board of commissioners, out of the county funds. The fees in criminal cases are not demandable in advance. (Code, ss. 1173, 3758; Rev., s. 2804; C. S., s. 3849.)

Cross References.—As to fees in criminal cases not being demandable in advance, see § 6-6. As to summary judgment for official fees, see § 6-2. As to liability of defendant in criminal actions for costs, see §§ 6-45 through 6-48. As to liability of prosecutor for costs, see § 6-49 et seq. As to constitutional provision, see Const. Art. IV, § 19.

Officers of Court Must Demand Fees.—Officers of the courts are not compelled to perform their duties, unless the fees prescribed by law are paid or tendered them, but they must demand them before laches can be imputed to the litigants. West v. Reynolds, 94 N. C. 333 (1886).

Same—When Demand Not Made.—The officer is not "compelled to perform" the required service, but he may perform it, and dispense with the payment, and if he does not so intend, he should say so at the time, and not presume that the posting of the notice in his office, of an inflexible rule that he had adopted and from which he would not under any circumstances depart would be known to every one. West v. Reynolds, 94 N. C. 333 (1886).

Effect of Unconditional Pardon.—Fees due officers of the court are vested rights by law, and are not discharged when the defendant receives an unconditional pardon, after conviction and sentence, from the Governor of the State. State v. Mooney, 74 N. C. 98 (1876).

When Pardon Discharges Defendant from Costs.—In State v. Underwood, 64 N. C. 599 (1870), it was held that where the pardon is pleaded after verdict and before judgment, it will discharge the defendant from the costs. State v. Mooney, 74 N. C. 98 (1876).

Supreme Court Clerk's Fee for Docketing Case.—The appellant's undertaking does not cover the fee of the clerk of the Supreme Court in docketing the case, and the clerk is in the exercise of his right in refusing to docket the transcript where he has demanded the prescribed fee in advance and its payment has been refused. Dunn v. Clerk's Office, 176 N. C. 50, 96 S. E. 738 (1918).

Right of Clerk of Superior Court.—The clerk had the right, even under the common law, as he has under the statute, to demand his fees in advance. Clerk v. Wagoner, 26 N. C. 131 (1843); Martin v. Chesteen, 75 N. C. 96 (1876); Andrews v. Whisnant, 83 N. C. 446 (1880); West v. Reynolds, 94 N. C. 333 (1886); Long v. Walker, 105 N. C. 90, 10 S. E. 858 (1890); Ballard v. Gay, 108 N. C. 544, 13 S. E. 207 (1891).

Same—In Criminal Actions.—In criminal actions, the clerk of the superior court cannot require that the costs of transcript upon appeal shall be paid in advance, although the defendant did not appeal in forma pauperis, and a certiorari will issue directing the clerk to send up the transcript which he holds for such prepayment. State v. Nash, 109 N. C. 822, 13 S. E. 733 (1891).

Same—Section 1-305.—This section and

§ 1-305 providing that clerks shall issue execution on all judgments rendered in their respective courts, within six weeks of the rendition thereof, or be amerced in the sum of one hundred dollars, must be construed together, it follows that clerks of the superior court will not incur the penalty prescribed in § 1-305 unless the plaintiff pays or tenders him his fees for that service. Bank v. Bobbitt, 111 N. C. 194, 16 S. E. 169 (1892).

Register May Refuse to Function.—The register has the right to refuse to treat a mortgage as delivered to him for registration until his fees in that respect have been paid. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714 (1891).

Legislative Power.—The legislature may reduce or increase the salaries of such officers as are not protected by the Constitution, during their term of office. Cotten v. Ellis, 52 N. C. 545 (1860).

Taxation of Salary.—But the State cannot tax the salary of a State officer whose office is created by the Constitution. Purnell v. Page, 133 N. C. 125, 45 S. E. 534 (1903). And this applies to the salaries of judges. Const. Art. IV, § 18, and notes thereto.

Improperly Collected Fee Subject to Recovery.—Where a person is compelled to pay a public officer fees which he had no right to claim, in order to induce him to do his duty such fees may be recovered back. Robinson v. Ezzell, 72 N. C. 231 (1875).

§ 138-3. Compensation limited to that fixed by law.—No officer or employee of the State shall receive any compensation other than the salaries fixed by law, except as provided by way of fees or by special appropriation or from any departmental funds. (1907, c. 830, s. 1, c. 994, s. 1; C. S., s. 3850; 1925, c. 128, s. 1.)

§ 138-4. Governor to set salaries of administrative officers; exceptions.—The salaries of all State administrative officers not subject to the State Personnel Act shall be set by the Governor, subject to the approval of the Advisory Budget Commission and shall be payable in equal monthly installments. In setting the salaries of those who serve as administrative officers to a board or commission, the Governor and Advisory Budget Commission shall give consideration to the recommendations, if any, of the board or commission involved. This provision does not apply to State officials whose positions are specifically authorized by the Constitution, nor to the chief administrative assistants of such officials, nor to the administrative officers of the occupational licensing boards of the State, except those administrative officers of occupational licensing boards whose salaries are now set by the Governor, subject to the approval of the Advisory Budget Commission. (1947, c. 898; 1957, c. 541, s. 1.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 138-5. Per diem and allowances of State boards, etc.—(a) Members of State boards, commissions, and committees which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

(1) Advisory Budget Commission, seven dollars ($7.00) per diem: Provided, that the rate during the period from July 1 through December 31 of each even-numbered year shall be twenty-five dollars ($25.00) per diem;

(2) All other boards, commissions and committees, except those boards, commissions, and committees the members of which are now serving without compensation, seven dollars ($7.00) per diem.

(b) Members of State boards, commissions, and committees shall be allowed travel expenses at the following rates:

(1) For transportation by privately-owned automobile, eight cents (8¢) per mile of travel and the actual cost of tolls paid;

(2) For bus, railroad, pullman, or other public conveyance, actual fare;

(3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of twelve dollars ($12.00) per day when traveling in State or a total of fourteen dollars ($14.00) when traveling out of State: Provided, that subject to the approval of the Director of the Budget, members who attend meetings of boards, commissions and committees held in their home communities shall be al-

lowed subsistence reimbursement for meals on the days they attend such meetings;

(4) For convention registration fees, not to exceed ten dollars ($10.00) per convention.

(c) The schedules of per diem, subsistence, and travel allowances established in this section shall apply to members of all State boards, commissions, and committees which operate from funds deposited with the State Treasurer, excluding those boards, commissions and committees the members of which are now serving without compensation; and all special statutory provisions relating to per diem, subsistence, and travel allowances are hereby amended to conform to this section.

(d) Out-of-State travel on official business by members of State boards, commissions, and committees which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget. (1961, c. 833, s. 5; 1963, c. 1049, s. 1.)

Editor's Note.—The act inserting this and the two following sections became effective July 1, 1961.

The 1963 amendment, effective July 1, 1963, increased the mileage allowance from seven cents to eights cents per mile in subdivision (1) of subsection (b).

§ 138-6. Travel allowances of State officers and employees.—(a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately-owned automobile, eight cents (8¢) per mile of travel and the actual cost of tolls paid;

(2) For bus, railroad, pullman, or other conveyance, actual fare;

(3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of ten dollars ($10.00) per day when traveling in State or a total of fourteen dollars ($14.00) per day when traveling out of State;

(4) For convention registration fees, not to exceed ten dollars ($10.00) per convention.

(b) Out-of-State travel on official business by the officers and employees of State departments, institutions, and agencies which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget. (1961, c. 833, s. 6; 1963, c. 1049, s. 2.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, increased the mileage allowance from seven cents to eight cents per mile in subdivision (1) of subsection (a).

§ 138-7. Exceptions to G. S. 138-5 and 138-6.—The Director of the Budget, with the approval of the Advisory Budget Commission, shall establish and publish uniform standards and criteria under which actual expenses in excess of the ten dollars ($10.00) for in-State travel, fourteen dollars ($14.00) for out-of-State travel, and the ten dollar ($10.00) limit on convention registration, prescribed in G. S. 138-5 and 138-6, may be authorized for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business. No expenditures in excess of the maximum amounts set forth in G. S. 138-5 and 138-6 shall be reimbursed unless the head of the State department, agency or institution involved has secured the approval of the Director of the Budget prior to the making of such expenditures. (1961, c. 833, s. 6.1.)

Chapter 139.

Soil and Water Conservation Districts.

Article 1.
General Provisions.

Article 2.
Watershed Improvement Districts.

Article 3.
Watershed Improvement Programs; Expenditure by Counties.

Article 1.
General Provisions.

§ 139-1. Title of chapter.—This chapter may be known and cited as the Soil Conservation Districts Law. (1937, c. 393, s. 1.)

Editor's Note.—Session Laws 1959, c. 781, s. 1, provides: "Chapter 139 of the General Statutes is amended by classifying the first fifteen sections thereof as article 1."

§ 139-2. Legislative determinations, and declaration of policy.—(a) Legislative Determinations.—It is hereby declared, as a matter of legislative determination:

(1) The Condition.—The farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this State by wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the topsoil is being blown and washed out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

(2) The Consequences.—The consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydro-electric power, municipal water supply, drainage developments, farming, and grazing.

(3) The Appropriate Corrective Methods.—To conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, utilization, and disposal of water, and the development of water resources it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, utilization, and disposal of water and the development of water resources be adopted and carried out. Among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, desilting basins, flood-water retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, contour furrowing, farm drainage, land irrigation; seeding and planting of waste, sloping,

abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments, manurial materials, and fertilizers for the correction of soil deficiencies and to promote increased growth of soil-protecting crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(b) Declaration of Policy.—It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this State, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, utilization, and disposal of water, and the development of water resources and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this State. (1937, c. 393, s. 2; 1947, c. 131, s. 1; 1959, c. 781, ss. 2, 3.)

Editor's Note.—The 1947 amendment inserted "farm drainage" near the middle of subsection (a), subdivision (3).

The 1959 amendment rewrote subdivision (3) of subsection (a) and inserted, near the beginning of subsection (b), "and for the prevention of floodwater and sediment damages, and for furthering the conservation, utilization, and disposal of water, and the development of water resources."

§ 139-3. Definitions.—Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the State.

(2) "A qualified voter" includes any person qualified to vote in elections by the people under the Constitution of this State.

(3) "Board" or "State Board" means the Board of Water Commissioners of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Board of Water Commissioners.

(4) "Committee" or "State Soil Conservation Committee" means the agency created in § 139-4.

(5) "District" or "soil conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(6) "Due notice" means notice given by posting the same at the courthouse door and at three other public places in the county, including those where it may be customary to post notices concerning county or municipal affairs generally, not less than ten days before the date of the event of which notice is being given. At any hearing held pursuant to such a notice at the time and place designated in such a notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(7) "Government" or "governmental" includes the government of this State, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(8) The terms "land occupier" or "occupier of land", and "landowner" or "owner of land" include any person, firm or corporation who shall hold title to or shall have contracted to purchase any lands lying within a

soil conservation district or a watershed improvement district organized under the provisions of this chapter.

(9) "Nominating petition" means a petition filed under the provisions of § 139-6 to nominate candidates for the office of supervisor of a soil conservation district.

(10) "Notice" as used in article 2 of this chapter shall mean notice published at least once a week for two consecutive weeks in at least one newspaper of general circulation published in each county wherein any part of a watershed improvement district lies or if in any instance there is no such newspaper then, in lieu thereof, in a newspaper of general circulation in such county.

(11) "Petition" means a petition filed under the provisions of article 1 of this chapter for the creation of a soil conservation district, or a petition filed under the provisions of article 2 of this chapter for the creation of a watershed improvement district.

(12) "State" means the State of North Carolina.

(13) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

(14) "Trustees" means residents within a watershed improvement district who are appointed or elected to carry on the business of a watershed improvement district, organized under the provisions of article 2 of this chapter.

(15) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(16) "Watershed improvement district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of article 2 of this chapter, for the purposes, with the powers, and subject to the restrictions therein set forth. (1937, c. 393, s. 3; 1947, c. 131, s. 2; 1959, c. 781, s. 4.)

Editor's Note.—The 1947 amendment rewrote subdivision (6).

The 1959 amendment rewrote subdivisions (8) and (11) and added subdivisions (3), (10), (14) and (16).

The Board of Water Commissioners has been succeeded by the Board of Water Resources. See § 143-353 et seq.

§ 139-3.1. Change of names in General Statutes.—The General Statutes of North Carolina are hereby amended by striking out the words "soil conservation district" wherever they appear in chapter 139 and any other place in the General Statutes, and inserting in lieu thereof in each instance the words "soil and water conservation district;" and by striking out the words "State Soil Conservation Committee" wherever they appear in chapter 139 and at any other place in the General Statutes, and inserting in lieu thereof in each instance the words "State Soil and Water Conservation Committee." (1961, c. 746, s. 1.)

§ 139-4. State Soil and Water Conservation Committee.—(a) There is hereby established to serve as an agency of the State and to perform the functions conferred upon it in this chapter, the State Soil and Water Conservation Committee which shall be composed of the following members. The following shall serve, ex officio, as members of the Committee: the director of the State Agricultural Extension Service, the director of the State Agricultural Experiment Station, and the State Forester. Three members shall consist each year of the president, first vice-president and the immediate past president of the North Carolina Association of Soil Conservation Districts. Vacancies arising in any of these three positions shall be filled through appointment by the executive committee of the North Carolina

Association of Soil Conservation Districts. An additional member shall be designated by the State Soil and Water Conservation Committee for a term of two years; appointment to be made by calendar years beginning January 1. No person so designated by the Committee may be appointed for more than two successive terms. The Committee shall invite the North Carolina State Conservationist, Soil Conservation Service, to serve as an advisory nonvoting member of the Committee. The Committee, in co-operation with the North Carolina State College of Agriculture and Engineering in the State, shall develop a program for soil conservation and for other purposes as provided for in this chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

(b) The State Soil Conservation Committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The Committee may call upon the Attorney General of the State for such legal services as it may require; it shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the seat of the State government, and shall be furnished with the necessary supplies and equipment. Upon request of the Committee, for the purpose of carrying out any of its functions, the supervising officer of any State agency, or of any State institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the Committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the Committee may request.

(c) The Committee shall designate its chairman, and may, from time to time, change such designation. A member of the Committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the Committee. A majority of the Committee shall constitute a quorum, and the concurrence of a majority of the Committee in any matter within their duties shall be required for its determination. Every member of the State Committee who does not receive a salary from an agency of the State or federal government, shall receive a per diem of seven dollars ($7.00) while engaged in the discharge of the duties of the Committee. All members of the State Committee, except those who are State or federal employees shall be entitled to their necessary expenses, including traveling expenses incurred in the discharge of their duties as members of the Committee. The Committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(d) In addition to the duties and powers hereinafter conferred upon the State Soil Conservation Committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and co-operation between them.

(3) To co-ordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

(6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the State Committee may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.

(7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2.)

Editor's Note.—The 1947 amendment rewrote subsection (a) and the fourth sentence of subsection (c).

The 1953 amendment added subdivision (6) to subsection (d). The 1957 amendment increased the per diem in the fourth sentence of subsection (c) from $5.00 to $7.00, and rewrote the latter part of the sentence as a new sentence.

The 1959 amendment added subdivision (7) to subsection (d).

The 1961 amendment deleted the former third and fourth sentences of subsection (a) and inserted the present third through seventh sentences. By virtue of § 139-3.1 the name of the State Soil Conservation Committee has been changed.

§ 139-5. Creation of soil conservation districts.—(a) Any twenty-five occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Soil Conservation Committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the State Soil Conservation Committee duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the Committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State Soil Conservation Committee may consolidate all or any such petitions.

No town or village lots or government owned or controlled lands shall be included within the boundaries of any district. As used in this subsection: The term "government owned or controlled land" includes land owned or controlled by any governmental agency or subdivision, federal, State or local; and the term "town and village lots" means parcels or tracts on which no agricultural operations are conducted, or (being less than three acres in extent) whose production of agricultural products for home use or for sale during the immediately preceding calendar year was of less than $250.00 in value. This section applies to existing soil conservation districts as well as districts that may hereafter be formed. Insofar as it applies to existing districts it is intended to be declaratory of the present boundaries of such districts as defined by their charters.

(b) Within thirty days after such a petition has been filed with the State Soil Conservation Committee, it shall cause due notice to be given of a proposed hearing

upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for the inclusion of the district, and such further hearing held. After such hearing, if the Committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Committee shall give due weight and consideration to the topography or the area considered and of the state and composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in § 139-2. The territory to be included within such boundaries need not be contiguous. If the Committee shall determine after such hearing after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

(c) After the Committee has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the Committee in the determination of such administrative practicability and feasibility, it shall be the duty of the Committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of ....., ... and ....." and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of ..... and ....." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the Committee. All occupiers of land lying within the boundaries of the territory, as determined by the State Soil Con-

servation Committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

(d) The Committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(e) The Committee shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in § 139-2: Provided, however, that the Committee shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

(f) If the Committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two temporary supervisors to act as the governing body of the district, who shall serve until supervisors are elected or appointed and qualify as provided in §§ 139-6 and 139-7. Such districts shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed temporary supervisors shall present to the Secretary of State an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals):

(1) That a petition for the creation of the district was filed with the State Soil Conservation Committee pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this chapter; and that the Committee has appointed them as supervisors;

(2) The name and official residence of each of the temporary supervisors, together with a certified copy of the appointment evidencing their right to office;

(3) The name which is proposed for the district; and

(4) The location of the principal office of the supervisors of the district.

The application shall be subscribed and sworn to by each of the said temporary supervisors before an officer authorized by the laws of this State to take and certify

oaths, who shall certify upon the application that he personally knows the temporary supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State Soil Conservation Committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the Committee did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the Committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Committee.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil conservation district of this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the State Soil Conservation Committee, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the State Soil Conservation Committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

(g) After six months shall have expired from the date of entry of a determination by the State Soil Conservation Committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

(h) Petitions for including additional territory within an existing district may be filed with the State Soil Conservation Committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The Committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than twenty-five, the petition may be filed when signed by two-thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(i) In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible

in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5; 1947, c. 131, s. 4; 1959, c. 781, s. 6.)

Editor's Note.—The 1947 amendment rewrote the first two paragraphs of subsection (f). The 1959 amendment added the last paragraph to subsection (a).

§ 139-6. Election and duties of county supervisors; members of county supervisor board to be ex officio district supervisors.—After issuance by the Secretary of State of the certificate of organization of the soil conservation district, nominating petitions may be filed with the State Soil Conservation Committee not less than ten nor more than sixty days preceding the first day of election week as provided in this section, to nominate candidates for a soil conservation committee in each county of the district, to be composed of three members. Any qualified voter may sign as many nominating petitions as there are vacancies on the county committee to be filled, but no nominating petition shall be accepted by the Committee unless it shall be subscribed by twenty-five or more qualified voters of such county.

An election to elect a member or members of a county committee shall be held annually during the period December first through December fifteenth on a date to be determined annually by the said county committee. If the committee fails to make such determination prior to November first in any year, the election shall be held on the same date of the month as in the preceding year except when such date falls on Sunday, the election shall be held on the following Monday. The committee shall publish notice of the election date each year at least one time, not less than fourteen (14) days preceding said election date, in a newspaper of general circulation in the county. The district board of supervisors shall assign an election official to each polling place for the said election, who shall be responsible for the conduct of the election at the polling place to which he is assigned. Each election official shall maintain a registration book and shall enter therein the name of each qualified voter voting at said polling place.

At the first election held pursuant to this chapter, as amended, the candidate receiving the largest vote shall be elected for a term of three years, the candidate receiving the next largest number of votes shall be elected for a term of two years and the candidate receiving the third largest number of votes shall be elected for a term of one year. The names of all nominees on behalf of whom such petitions have been signed within the time herein designated, shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference in said first election. All qualified voters residing within the county shall be eligible to vote in such election. The three candidates who shall receive the largest number of the votes cast in such election shall be elected members of the soil conservation committee for the county. Their successors shall be elected for a term of three years. All members of the county committee elected pursuant to this chapter shall take office on the first Monday in January following their election.

The State Committee shall pay all of the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such an election and the determination of the eligibility of voters therein, and shall publish the results thereof.

A county committee shall select from its members a chairman, a vice-chairman, and a secretary. A county supervisor board shall select from its members a chairman, a vice-chairman and a secretary. Each member of the county supervisor board shall be a member of the soil conservation district board of supervisors.

It shall be the duty of members of a county soil conservation committee

(1) To be responsible for the securing of nominating petitions for the election of the county committee, providing for elections, reporting the results thereof to the district supervisors, who, in turn, shall report the results to the State Committee, all to be done under the supervision of the State Committee;

(2) To work in close harmony with the district supervisors of their district in the performance by the district supervisors of their duties set out in subdivisions (1), (2), and (6) of § 139-8;

(3) To further develop annual county goals and plans for reaching these goals for soil conservation work in their county; and

(4) To request agencies whose duties are such as to render assistance in soil and water conservation to set forth in writing or memorandum what assistance they may have available in the county and report such to the district supervisors. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815.)

Editor's Note.—The 1947 amendment rewrote this section, and the 1949 amendment rewrote the caption.

The 1957 amendment rewrote the fifth paragraph.

The 1963 amendment rewrote the second paragraph.

§ 139-7. Appointment, qualifications and tenure of supervisors.—The governing body of any district shall consist of all the members of the county supervisor board or boards of the county or counties within the district, together with such additional supervisor or supervisors as may be appointed by the State Committee pursuant to this paragraph. When a district is comprised of less than four counties, the State Committee shall appoint two residents of the district to serve as district supervisors along with the elected supervisors. When a district is comprised of four or more counties, the State Committee may, but is not required to, appoint one resident of the district to serve as a district supervisor along with the elected supervisors. Such appointive supervisors shall qualify and assume their duties at the same time as the elected supervisors and shall serve for a term of three years. When a vacancy arises with respect to an appointive supervisor, the State Committee shall fill such vacancy for the unexpired term by appointment of a resident of the district in which the vacancy occurs. Every supervisor shall hold office until his successor has been elected or appointed and qualifies. When a vacancy arises on a county committee, the vacancy shall be filled by appointment by the State Committee, of a resident of the county, to serve the remainder of the unexpired term.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G. S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the State Committee.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the State Committee, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the State Soil Conservation Committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the

keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the State Soil Conservation Committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, c. 481; 1947, c. 131, ss. 6, 7; 1957, c. 1374, s. 3; 1963, c. 563.)

Editor's Note.—Prior to the 1943 amendment the supervisors received no compensation for their services. The 1947 amendment rewrote the first two paragraphs and added the last paragraph. The 1957 amendment rewrote the first sentence of the first paragraph. The 1963 amendment rewrote the last sentence of the second paragraph.

§ 139-8. Powers of districts and supervisors.—A soil conservation district organized under the provisions of this article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this chapter.

(1) To conduct surveys and investigations relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, utilization, and disposal of water, the development of water resources, and the preventive and control measures and works of improvement needed, to publish the results of such surveys and investigations, and to disseminate information concerning such preventive and control measures and works of improvement.

(2) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (a), subdivision (3) of G. S. 139-2, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands.

(3) To cooperate, or enter into agreements with, and within the limits or appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupiers of land within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter.

(4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to ex-

pend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of its property or interests therein in furtherance of the purposes and the provisions of this chapter.

(5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water and the development of water resources.

(6) To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.

(7) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, utilization and disposal of water and development of water resources, within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the State Forest Nursery, operated by the State Department of Conservation and Development in cooperation with the United States Department of Agriculture.

(9) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.

(10) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages therein.

(11) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

(12) Nothing contained in this chapter shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this

State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State. (1937, c. 398, s. 8; 1939, c. 341; 1959, c. 781, s. 7.)

Editor's Note.—The 1939 amendment deleted an exception clause formerly contained in subdivision (7) relating to obtaining forest tree seedlings from the State forest nursery.

The 1959 amendment rewrote this section.

§ 139-9. Adoption of land-use regulations.—The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving the soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance number ....., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance number ....., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations, governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least two-thirds of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a two-thirds of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adop-

tion of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation.

(3) Specifications of cropping programs and tillage practices to be observed.

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.

(5) Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in § 139-2.

The regulations shall be uniform, throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. (1937, c. 393, s. 9.)

§ 139-10. Enforcement of land-use regulations.—The supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of § 139-9 are being observed. The supervisors are further authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation. (1937, c. 393, s. 10.)

§ 139-11. Nonobservance of prescribed regulations; performance of work under the regulations by the supervisors.—Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of § 139-9 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and its interfering with the prevention of control of erosion on other lands within the district, the supervisors may present to the superior court for the county or counties within which the lands of the defendant lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it appear to

the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. This judgment, when filed in accordance with the provisions of § 1-234, shall constitute a lien upon such lands. (1937, c. 393, s. 11.)

§ **139-12. Co-operation between districts.**—The supervisors of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. (1937, c. 393, s. 12.)

§ **139-13. Discontinuance of districts.**—At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five occupiers of land lying within the boundaries of such districts may file a petition with the State Soil Conservation Committee praying that the operations of the district be terminated and the existence of the district discontinued. The Committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the Committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert any X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such de-

termination the Committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in § 139-2: Provided, however, that the Committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the State Soil Conservation Committee of a certification that the Committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the State Soil Conservation Committee setting forth the determination of the Committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The State Soil Conservation Committee shall be substituted for the district or supervisors as party to such contracts. The Committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of § 139-11, nor the pendency of any action instituted under the provisions of such section, and the Committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The State Soil Conservation Committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this chapter, more often than once in five years. (1937, c. 393, s. 13.)

§ 139-14. Dividing large districts.—Whenever the State Committee shall receive a petition from any board of district supervisors signed by all supervisors of such district, the State Committee shall have the authority to divide such district into two or more districts. The governing bodies of the resulting districts shall be composed of supervisors in the same manner and in the same number as is provided in §§ 139-6 and 139-7. Upon the creating of new districts through dividing an existing district under the provisions of this section, the State Committee shall appoint all district supervisors necessary to give such district its full quota of supervisors who shall serve until regular supervisors are elected or appointed, as the case may be, at the time of the next regular election of supervisors. The State Committee shall

assign a name to each district resulting from the division of the district under the provisions of this section and do all other things necessary to complete the organization of such new districts and place them on an operating basis. (1947, c. 131, s. 8.)

§ 139-15. "County committeeman" construed to mean "county supervisor"; powers and duties.—Wherever the words "county committeeman" or "county committeemen" appear in this chapter, the same shall be construed to mean "county supervisor" or "county supervisors;" and each such county committeeman or county supervisor shall receive the same compensation and have and exercise the same rights, powers, duties, responsibilities and voting privileges granted to or imposed upon district supervisors in respect to soil conservation activities under the provisions of this chapter. (1949, c. 268, s. 2.)

Article 2.

Watershed Improvement Districts.

§ 139-16. Establishment within soil conservation district authorized.—Watershed improvement districts may be established within one or more soil conservation districts or within and without such districts, to the extent permitted by G. S. 139-18 (a), in accordance with the provisions of this article. (1959, c. 781, s. 8.)

Editor's Note.—Session Laws 1959, c. 781, s. 9, provide that nothing in the provisions of the act shall change or modify the substantive law relative to the rights, powers and duties concerning the utilization or disposal of water as the same existed under the common and statute law of this State immediately prior to June 9, 1959.

§ 139-17. Petition for establishment; what to set forth.—Any 100 owners of land lying within the limits of a proposed watershed improvement district, or a majority of such owners if their total number be less than 200, may file a petition with the supervisors of the soil conservation district in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the area described in the petition. Any petition circulated in person by an official or employee of the United States Soil Conservation Service shall be void. Each owner of an undivided interest in real property located within the proposed watershed district shall have the right to sign petitions under this section and subsection (c) of G. S. 139-21, to register and vote under G. S. 139-18 and otherwise exercise any right granted owners of land under this article. The petition shall set forth:

(1) The proposed name of the watershed improvement district;

(2) That the said district appears to hold promise of administrative, engineering and economic feasibility, and the reasons therefor;

(3) A description of the area proposed to be organized as a watershed improvement district, and the names and addresses of those landowners therein who are known to petitioners. The description shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the petitioners, the boundaries may be described by any of the following methods or any combination thereof: By reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land;

(4) That the area described in the petition consists of contiguous territory and in what watershed or watersheds such area lies;

(5) To the extent feasible, a description of the proposed work or works of improvement for the control and prevention of soil erosion, flood prevention, or the conservation, utilization, and disposal of water and develop-

ment of water resources, contemplated for said district, together with an explanation of the effect which said work or works of improvement will have upon the lands of the various landowners in the proposed district;

(6) That none of the land within the proposed watershed improvement district lies within the boundaries of any other watershed improvement district;

(7) A request that the area described in the petition be organized as a watershed improvement district; and

(8) The maximum rate of initial annual assessment proposed for levy against specially benefited lands of the proposed district, not in excess of the maximum annual assessment rate provided in G. S. 139-26. (1959, c. 781, s. 8; 1961, c. 746, s. 3; 1963, c. 1151, s. 1.)

Editor's Note.—The 1961 amendment added the second and third sentences to subdivision (3).

The 1963 amendment rewrote subdivision (8), which formerly referred to the amount of the maximum annual assessment as provided in § 139-26.

§ 139-18. Notice and hearing on petition; determination of need for district and defining boundaries.—(a) Within thirty days after such petition has been filed with the supervisors of the soil conservation district, they shall set the time and place for a public hearing upon the practicability and feasibility of creating the proposed watershed improvement district, and shall publish notice thereof once a week for two consecutive weeks. All owners of land within the proposed watershed improvement district and all other interested parties shall have the right to attend such a hearing and to be heard and may register their name and address with the supervisor if they want the notice provided for under G. S. 139-18 (m) sent to them. During the hearings or thereafter the supervisors may recommend that the purposes of the proposed district or its proposed boundaries be changed. The supervisors may amend the proposed boundaries to include within such boundaries lands which lie within the watershed of the proposed district but do not lie within an existing Soil Conservation District, if the owner of such lands consents to their inclusion.

(b) In passing upon the petition the supervisors shall consider whether:

(1) The area proposed to be organized as a district consists of contiguous territory none of which lies in any other watershed improvement district. It is the intention of the General Assembly that the territory of a watershed district shall normally comprise all or part of a single watershed, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases, but it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(2) Any land or structure has been included in the proposed district which cannot be served or benefited by the proposed work or works of improvement and which could be excluded from the boundaries of the district without substantially impairing the effective purpose of the proposed work or works of improvement; and

(3) The proposed district appears to hold promise of administrative, engineering and economic feasibility.

If, in the judgment of the supervisors there is substantial compliance with these requirements, the supervisors shall issue an order setting dates and places for a referendum (and for registration of voters therefor) to be held, after publication of the order as herein provided, among the landowners of the proposed district in order to assist the supervisors in determining the administrative and economic feasibility of creating the proposed district. The supervisors shall publish such order once a week for two successive weeks in the manner provided by this article for publication of notices. They shall also send to the board of county commissioners of each county wherein any part of the proposed district lies a copy of the order, together with a request that the said board or boards conduct the referendum within their respective counties on the date set out in the order, and a cash or certified check deposit fur-

nished by the petitioners and sufficient in the judgment of said board or boards to defray the expenses of conducting the referendum within their respective counties. If (in connection with a district that lies in more than one county) the supervisors determine that only a single voting place shall be used or that all voting places should be located within one county, the said order and request shall be sent only to the board of county commissioners of the county containing such voting place or places.

(c) The registration and voting dates and places shall be set by the supervisors and after consulting with the said board or boards of county commissioners. The referendum may be held on any day (Sunday excluded) during the week following the last day for registration as hereafter provided for, but the county commissioners shall not be required to conduct the referendum during any thirty-day period immediately preceding nor during any ten-day period immediately following a county-wide election. Any such board of county commissioners may require its county board of elections or any other designated persons to conduct on its behalf the said referendum, and the term "county election authority" as used in this section means whatever authority shall be designated by the board of county commissioners to conduct the referendum.

(d) All owners of land lying within the boundaries of the proposed watershed improvement district, and only such owners, shall be eligible to register and vote in the referendum. The registration shall be conducted at one or more registration places within the proposed district, as established by the supervisors. The supervisors shall furnish a registration book for each registration place, and shall appoint for each registration place at least two registrars to register the voters. One or more supervisors may be assigned to perform the function of registrar. If the proposed district lies within more than one county, separate registration books shall be supplied and kept for each such county, regardless of the number of registration or voting places. Each registrar before entering upon the discharge of his duties shall take an oath before a justice of the peace or some other person authorized to administer oaths, that he will support the Constitution of the United States and the Constitution of North Carolina not inconsistent therewith and that he will honestly and impartially discharge his duties in registering the voters. The registration book shall be opened for the registration of voters at nine o'clock a.m. on the second Saturday before the referendum, and closed at sunset on the Saturday before the election. On each such Saturday, the registrars shall attend their respective registration places and keep open the registration books between the hours of nine o'clock a.m. and sunset for the registration of voters. If any person shall give satisfactory evidence to the registrars that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date and his name shall be inserted in the registration book, except that no registration shall be allowed on the day of the referendum.

(e) Each applicant for registration shall be sworn before being registered, shall state his name and place of residence, shall describe as accurately as possible the land he owns that lies within the boundaries of the proposed district, and shall state his interest in such land. The oath to be taken shall be as follows:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Carolina not inconsistent therewith, and that I am the owner of land lying within the boundary of the proposed (here insert name of proposed district) watershed improvement district. So help me, God."

The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to qualifications of the applicant. Thereupon, if the applicant be found to be qualified to be registered, the registrar shall register the applicant and record his name, place of residence, and a description of the land he owns that lies within the boundaries of the proposed district.

(f) On the second Saturday of the registration period, from the hour of nine a.m. until sunset, the registration books shall be open for inspection by the land-

owners of the proposed district, and any of said landowners shall be allowed to object to the name of any person appearing on the books. In case of any such objection, the registrars shall enter on their books opposite the name of the person so objected to, the word "challenged," and shall appoint a time and place, before the referendum date, when they shall hear and decide said objection, giving personal notice of such challenge to the voters so objected to. If for any cause personal notice cannot be given, then it shall be sufficient notice to leave a copy thereof at his residence. Nothing in this subsection shall prohibit any landowner from challenging or objecting to the name of any person registered or offering to register at any time other than that above specified. If any person so challenged or objected to shall be found not duly qualified, the registrars shall erase his name from the books.

(g) When any person is challenged, the registrars shall explain to him the qualifications of a voter in the referendum, and shall examine him as to his qualifications. If the person insists that he is qualified and proves his identity with the person in whose name he offers to vote, and his continued ownership of qualifying property since his name was placed on the registration book, as the case may be, by the testimony under oath of at least one person qualified to vote in the referendum, one of the registrars shall tender him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States, that your name is (here insert name given), that in such name you were duly registered as a voter of the proposed (here insert name of proposed district) watershed improvement district, and that you are the owner of lands that lie within the boundaries of the proposed district. So help you, God."

If he refuses to take such oath or affirmation when tendered, his vote shall be rejected. If, however, he does take the oath or affirmation when tendered, his vote shall be received; provided, that after such oath or affirmation shall have been taken, the registrars may nevertheless refuse to permit such person to vote, unless they be satisfied that he is a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of a person offering to vote. Whenever any such person's vote shall be received, after having taken the oath or affirmation prescribed in this section, one of the registrars shall write in the registration book, at the end of such person's name, the word "sworn". The same powers as to the administration of oaths and affirmations and the examination of witnesses, as in this section granted to registrars, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to.

(h) After all challenges have been heard and decided, and before the day of the referendum, the registrars shall deliver the registration books to the county election authorities responsible for conducting the referendum. The supervisors of the soil conservation district shall cause to be printed or otherwise duplicated ballots for the referendum in substantially the form set forth in G. S. 139-5 (c), but the watershed improvement district shall be substituted by name for the soil conservation district. Not later than the day before the referendum, the supervisors shall cause to be delivered to the county election authorities a number of said ballots equal to five per cent greater than the number of persons registered to vote therein. The supervisors shall appoint one registrar from each registration place to attend the referendum as a poll watcher and to assist the election authorities in identifying the voters.

(i) The county election authorities shall conduct the referendum at the date and place or places set out in the order published pursuant to subsection (d) of this section. They shall open the polls and superintend the same until the close of elections, shall keep poll books in which shall be entered the name of every person who shall vote, and at the close of the referendum they shall certify the same over their proper signatures and deposit them with the supervisors of the soil conservation district. The polls shall open and close at the same hours as provided for primary

and general elections by chapter 163 of the General Statutes. At the end of the referendum at each voting place the polls shall be closed, the ballot boxes opened, and the ballots counted by or under the supervision of the county election authorities in the manner provided for with respect to general elections by chapter 163 of the General Statutes.

(j) If there be only one voting place the county election authorities shall immediately after the counting of the ballots form a board of canvassers and, in the presence of such voters as choose to attend, shall canvass and judicially determine the results.

If there be more than one voting place the county election authorities at each voting place shall elect one of their members to attend the meeting of the board of canvassers as a member thereof. When the results of the counting of the ballots shall have been ascertained, such results shall be embodied in a duplicate statement, one copy of which shall be placed in a sealed envelope and delivered to the official elected to attend the meeting of the board of canvassers, and the other copy of which shall be mailed by another county election official to the board of supervisors of the soil conservation district. The members of the board of canvassers so appointed shall meet at eleven a.m. on the second day after the election at the county courthouse of the county wherein the largest portion of the proposed district lies, as determined by the said board of supervisors. A majority of the board of canvassers shall constitute a quorum, and such board shall organize by the election of one of its number as chairman and one as secretary. Any member of such board who shall fail to deliver the certified returns from his voting place by twelve noon on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. If any returns have not been received by twelve noon on the day of the meeting, or if any returns are incomplete or defective, it may dispatch an officer to the residence of such officials for the purpose of securing the proper returns for such voting place. The board of canvassers at its meeting shall in the presence of such voters as choose to attend, open, canvass, and judicially determine the results.

Whether there be one or more than one voting place, the board of canvassers after judicially determining the results shall make abstracts stating the number of legal ballots cast in each voting place and the number of votes cast for and against creation of the watershed improvement district, and shall sign the same in duplicate with its certificate as to the correctness of the abstracts. It shall have power to pass upon judicially all the votes relative to the election and judicially determine and declare the results of the same; to send for papers and persons and examine the latter upon oath; and to pass upon the legality of any disputed ballots transmitted to it by any election official. The board of canvassers shall transmit one copy of the certified abstract of the results to the State Soil Conservation Committee, and shall file the other copy with the supervisors of the soil conservation district.

(k) The board of county commissioners shall apply the deposit heretofore provided for toward defraying the costs of the election. If there be any excess of such deposit remaining after all such costs have been defrayed, the board shall return the balance thereof remaining to the petitioners. If the deposit shall prove insufficient to defray all such costs, the petitioners shall pay over sufficient funds to cover any deficit therein within seven days after they have been notified by the board of such deficit.

(l) The results of the referendum shall be considered by the supervisors in determining whether it is administratively and economically feasible to create the district. The supervisors shall not approve the petition unless a majority of the voters in the referendum, and also a majority in number of the signers of the petition, voted in favor of the creation of the district, and (such requirement being met) shall approve the petition if, in their judgment, the district appears to hold promise of administrative and economic feasibility.

(m) After the completion of the referendum the supervisors shall enter a final

order approving or disapproving the petition, and shall record such order in their official minutes. The supervisors shall by personal service or registered mail serve a copy of the final order upon every person who attended the hearings and signed a roster provided for that purpose, and shall publish notice of such order once a week for two successive weeks. Any order of approval shall declare the district to be duly organized; shall specifically define the boundaries of the district, and shall be certified by the supervisors together with a certified copy of the petition for establishment of the district, to the State Soil and Water Conservation Committee, the State Board and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket. The boundary definition contained in said order shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land, and said boundaries may be defined by any of the methods permitted in G. S. 139-17 (3) for description of boundaries. If the final order makes no change in the area proposed to be organized in the petition, a reference to a map or description of said area contained in the petition shall be a sufficient boundary definition for purposes of the order. If a petition is disapproved, subsequent petitions covering the same or substantially the same territory may be filed after six months have elapsed from the date of the order of disapproval, and new proceedings held thereon.

(n) (1) Corporations and associations owning property located within a proposed district shall be entitled to register and vote in referenda held pursuant to this section through representatives designated by them. Persons owning property as trustees, guardians, executors, administrators, or in other fiduciary capacities, (hereinafter collectively referred to as "fiduciaries"), such property being located within a proposed district, shall also be entitled to register and vote in such referenda.

(2) In lieu of meeting the requirements of subsection (e) of this section a fiduciary or a voting representative of a corporation or association shall state his name and place of residence; shall describe as accurately as possible the land, on behalf of which he seeks to register, that lies within the boundaries of the proposed district; shall show satisfactory evidence of his authority to register on behalf of such corporation or association, or of his fiduciary status; and shall state, as the case may be, his interest as a fiduciary or the interest of the corporation or association, in such land.

(3) Fiduciaries shall be subject to the same oaths as required of other prospective voters under subsections (e) and (g) of this section. The oaths to be taken by the voting representatives of a corporation or association shall be as follows:

Under subsection (e)—

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Carolina not inconsistent therewith, and that I am duly designated voting representative of the (here name corporation or association) which is the owner of land lying within the boundary of the proposed (here give name of proposed district) watershed improvement district. So help me, God."

Under subsection (g)—

"You do solemnly swear (or affirm) that you are a citizen of the United States, that your name is (here insert name given), that in such name you were duly registered as a designated voting representative of the (here name corporation or association) to vote upon the proposed (here insert name of proposed district) watershed improvement district, and that such (corporation) (association) is the owner of lands that lie

within the boundaries of the proposed district. So help you, God." (1959, c. 781, s. 8; 1961, c. 746, s. 4; 1963, c. 918, s. 2.)

Editor's Note.—The 1961 amendment inserted the fourth and fifth sentences of subsection (m).

The 1963 amendment inserted in the third sentence of subsection (m) the words "together with a certified copy of the petition for establishment of the district."

§ 139-19. Establishment of watershed improvement district situated in more than one soil conservation district.—If a proposed watershed improvement district is situated in more than one soil conservation district, copies of the petition shall be presented to the supervisors of all the soil conservation districts in which any part of such proposed watershed improvement district is situated, and the supervisors of all such soil conservation districts shall act jointly as a board of supervisors with respect to all matters concerning such watershed improvement district, including its creation. Such watershed improvement district shall be organized in like manner and shall have the same powers and duties as a watershed improvement district situated entirely in one soil conservation district. (1959, c. 781, s. 8.)

§ 139-19.1. Supervisors of multi-county soil and water conservation district may delegate powers.—The supervisors of any multi-county soil and water conservation district may delegate to a county soil conservation committee of the district any of their powers, duties or functions respecting any watershed improvement district or proposed watershed improvement district lying wholly within the boundaries of the county represented by said committee. (1961, c. 746, s. 5.)

§ 139-20. Inclusion of additional area.—Petitions for including additional land within a duly created and existing watershed improvement district may be filed with the supervisors of the soil conservation district and in such cases the provisions hereof in respect to the creation of watershed improvement districts shall be observed. (1959, c. 781, s. 8.)

§ 139-20.1. Validation of creation of certain districts.—All actions had and taken prior to March 1, 1963, by supervisors of soil conservation districts, boards of county commissioners, boards of election, registrars, or other officials in the course of attempting to form and create watershed improvement districts, are hereby ratified, approved, validated and confirmed, as if accomplished in full and complete compliance with the law, and any watershed improvement district with respect to which formation may have been attempted and completed prior to March 1, 1963, is hereby declared to be lawfully formed, created, and in all respects constituted a legal and valid watershed improvement district. (1963, c. 918, s. 1.)

§ 139-21. Board of trustees; selection and tenure.—(a) Each watershed improvement district shall be governed by a board of trustees to be composed of three members, all of whom shall be residents of the district, and shall be selected in the manner provided in this section.

(b) Within thirty days after they have entered a final order under G. S. 139-18 declaring the organization of a watershed improvement district, the soil conservation district supervisors shall appoint an interim board of trustees for the watershed improvement district to serve until their successors are elected and qualified. Such interim board shall have all of the powers and duties of, and be subject to all of the provisions of this chapter respecting, the board of trustees whose election is provided for in this section.

(c) At the next general election occurring not less than one hundred and eighty days after the appointment of said interim board, there shall be elected three members of the board of trustees of the watershed improvement district. At each succeeding general election one member of said board shall be elected.

Nominations in all cases shall be by written petition signed by any twenty-five

owners of land lying within said district, or one-third of such owners if their total number be less than seventy-five. Such petitions shall be presented, not later than one hundred and twenty days before the date of the general election, to the supervisors of the soil conservation district or districts within which the watershed improvement district lies. It shall be the duty of the said supervisors to examine said petitions and determine their validity. Not later than ninety days before the date of the general election the said supervisors shall certify to the boards of election of each county wherein any part of the watershed improvement district lies the names of the candidates thus nominated, together with a request that these candidates be presented to the voters at the next general election.

All qualified voters residing within the watershed improvement district shall be eligible to register and vote for said trustees. For such election the board of elections of each such county, at county expense, shall provide polling places in said district and in their respective counties, and shall provide for a registrar or registrars and judges of election at each said polling place. In their discretion the said board or boards of elections may designate the general election polling places and election officials as polling places and election officials for such election (for registrations as well as for elections). The said board or boards of elections shall provide for the printing and distribution of ballots in the same way they provide ballots for county and precinct offices. Said ballots shall be printed separately, shall contain the names of all nominees certified to the board of elections, and shall carry the facsimile signature of the chairman of the county board of elections. The ballots shall indicate the title and term of the office being voted on, shall contain an instruction as to the number of candidates to be voted for, and shall state that if the voter tears or defaces or wrongly marks a ballot he may return it and get another. Write-in votes shall be treated as provided for write-in votes in the general election under subdivision three of G. S. 163-175. The said board or boards of elections shall certify the results of the elections to the supervisors of the soil conservation district or districts within which the watershed improvement district lies.

The board of elections of each county wherein any part of the watershed improvement district lies shall provide for a new registration of all qualified voters residing in said district and in their respective counties. Said board or boards shall give notice thereof once a week for two consecutive weeks by advertisement in a newspaper of general circulation published in the district and in their respective counties or, if there is no such newspaper so published, then in a newspaper of general circulation in the district and in their respective counties. The first of such notices shall be published at least thirty days in advance of the first day for such registration. Such notices shall specify the dates, times and places for registration and for challenges to be received. Each registrar shall be furnished with a separate registration book for such watershed improvement district registration. The period for registration and the times when the registrars shall attend the polling places with the registration books shall be the same as those provided for the general election in G. S. 163-31. Challenges may be made and shall be heard and decided at the polling places, and at the times and in the manner provided for the general election in G. S. 163-78 to 163-80.

(d) Of the trustees first elected, the one receiving the largest number of votes shall serve a term of six years, the one receiving the second largest number of votes shall serve a term of four years, and the one receiving the third largest number of votes shall serve a term of two years. Their successors in every case shall serve terms of six years.

(e) Members elected to the board of trustees shall qualify and enter upon the duties of their offices on the first Monday of December next succeeding their election. Appointed members shall qualify and enter upon the duties of the offices not later than the second Monday next succeeding their appointment. All members shall take the oath of office prescribed by the State Constitution before the clerk of the

superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths.

(f) Vacancies in the membership of the board of trustees occurring otherwise than by expiration of term shall be filled by appointment to the unexpired term by the soil conservation district supervisors. (1959, c. 781, s. 8; 1963, c. 1026, s. 1.)

Editor's Note.—The 1963 amendment deleted from the second sentence of the second paragraph of subsection (c) the requirement that the petitions be notarized.

§ 139-22. Organization and compensation of board.—(a) The interim board of trustees at its first meeting shall select a chairman, vice-chairman and secretary-treasurer to serve until their successors are selected. The elected board at its first meeting shall select corresponding officers to serve two year terms. All official acts done by the board shall be entered in a book of minutes to be kept by the secretary-treasurer. A majority of the membership of the board shall constitute a quorum. The board shall meet in regular session at least quarterly and may meet specially upon the call of the chairman or any two members, and upon at least three days notice of the time, place and purpose of the meeting.

(b) A trustee shall receive a per diem allowance of seven dollars ($7.00) and necessary expenses while engaged in the discharge of his official duties as a member of the governing board of the district. The claim of any trustee for per diem and expenses for any duty except attendance upon a meeting of the board, shall be paid only after approval of the board. (1959, c. 781, s. 8; 1963, c. 1026, s. 2.)

Editor's Note.—The 1963 amendment rewrote subsection (b), which formerly limited members of the board of trustees to a per diem allowance and necessary expenses for attendance upon meetings of the board.

§ 139-23. Officers, agents and employees; surety bonds; annual audit.—The trustees may employ such officers, agents, consultants, and other employees as they may require; shall determine their qualifications, duties and compensation; shall provide for the execution of surety bonds for the secretary-treasurer and such other officers, agents and employees as shall be entrusted with funds or property of the watershed improvement district; and shall provide for the making and publication of an annual audit of the accounts of receipts and disbursements of the watershed improvement district. (1959, c. 781, s. 8.)

§ 139-24. Status and general powers of district; power to levy assessment.—A watershed improvement district organized under the provisions of this article shall constitute a political subdivision of this State, and a public body corporate and politic, exercising public powers, and such watershed improvement district shall have all of the powers of the soil conservation district or districts in which the watershed improvement district is situated, and in addition thereto shall have the authority to levy and the county tax collector or collectors shall collect an assessment as hereinafter provided, to be used for the purposes for which the watershed improvement district was created and for the operation and maintenance thereof. (1959, c. 781, s. 8.)

Local Modification.—Davie, Iredell: 1961, c. 794, s. 1; McDowell: 1963, c. 637; Polk, Rowan, Wake, Yadkin: 1961, c. 794, s. 1.

§ 139-25. Benefit assessments to defray district expenses; classification of land according to benefits.—(a) The expenses of a watershed improvement district under this chapter shall be assessed in the manner hereafter provided against lands specially benefited by the activities of the district.

(b) As soon as practicable after the organization of a district and the formulation of plans for construction of works of improvement, the trustees shall examine and classify the lands in the district (and from time to time may reclassify them) according to the relative benefits they will receive from the activities of the district.

The lands may be classified into as many as five classes, marked "Class A", "Class B", etc. In making such classifications the trustees shall consider the fertility of the soil, the proximity of the land to the watercourse (or, in the case of drainage benefits, its proximity to the ditch or a natural outlet), the degree of wetness on the land, the location of the land relative to existing or proposed works of improvement of the district, its susceptibility to damage from floods or erosion, and other factors evidencing anticipated benefits or lack thereof to particular lands.

The holdings of any one landowner need not necessarily be all in one class, but the number of acres in each class shall be ascertained and listed, though its boundary need not be marked on the ground, but shall be shown on a separate map of the district designated "Classification Map".

The total number of acres owned by one person in each class and the number of acres benefited shall be determined. The total number of acres benefited in each class in the entire district shall be set forth in tabulated form. The scale of assessment upon the several classes of land shall be determined by the trustees.

(c) Following completion of such classification the trustees shall publish at least once a week for two successive weeks a notice of the time and place for a public hearing to hear the objections of all interested persons to the classification. In addition, the trustees shall, with respect to any land on which the scale of assessment calls for a benefit assessment, address and mail a copy of the notice of classification to the owner, and at the address, as shown on the tax records of the county in which the lands are located. As to the owner of land classified and scaled for no benefit assessments, notice other than publication shall not be required. The certificate of the person designated to mail the notices that such notices were mailed, giving the mailing date, shall be conclusive in the absence of fraud. The hearing shall be held not earlier than ten days from the first publication of the notice or the certified mailing date of the notices whichever occurred last. The notice shall refer to the district by name, describe generally the property included in the classification, set forth the scale of assessment upon the various classes of land, state where and when the classification will be available for inspection, and state that all objections must be made in writing, signed in person or by attorney, and filed with the secretary-treasurer of the district at or before the time of the hearing, and that any objections not so made shall be waived. At the hearing or some other time to which it may be adjourned the trustees shall consider objections made in compliance with the above requirements. If any objection is made and not sustained by the trustees, their action thereupon shall be the final adjudication of the issues presented, subject to appeal pursuant to subsection (d) of G. S. 139-26.

(d) The proceedings for a reclassification shall be in all respects as in the case of the original classification. (1959, c. 781, s. 8; 1963, c. 1025, s. 1.)

Editor's Note.—The 1963 amendment rewrote the second and third sentences of subsection (c).

§ 139-26. Estimate of expenses; filing and confirmation of initial assessment roll; subsequent assessments.—(a) The trustees shall estimate: The total or amortized portion of capital costs, including incidental expenses and debt service charges, of the contemplated works of improvement to be completed, for which the district shall be obligated during the assessment period; and the amount of all other expenses of the district, including the expenses of administering the district and maintaining the works of improvement. Initially such estimate will include all such costs and expenses which have accrued or will accrue prior to the beginning of the first fiscal year of the district in which assessments are turned over to the county authorities for collection, and that will accrue during the first and the two succeeding fiscal years. (The fiscal year of the district shall begin on July 1 and end on June 30.) The trustees shall thereupon make an assessment of the sum of the estimate calculated pursuant to the above. For that purpose the trustees shall make out an assessment roll in which shall be entered the names of the landowners assessed

so far as the same can be ascertained and the amounts assessed against them respectively, with a brief description of the parcels or tracts of land assessed. The assessment roll shall indicate the amount of assessment installments which shall be paid by landowners electing to pay the assessment in installments.

(b) Immediately after such assessment roll has been completed the trustees shall publish at least once a week for two consecutive weeks a notice of the completion of the assessment roll. Such notice shall describe the proposed improvement in general terms, state where and when the assessment roll will be available for inspection, and specify the time and place for a meeting of the trustees to hear objections to the assessments. In addition, the trustees shall, with respect to land against which an assessment has been made, mail a copy of the notice to the owner, and at the address, as shown on the tax records. The certificates of the person designated to mail the notices that such notices were mailed, giving the mailing date, shall be conclusive in the absence of fraud. The meeting shall be held not earlier than ten days from the first publication of the notice or the certified mailing date of the notices whichever occurred last.

(c) At such meeting the trustees shall hear the objections of all interested persons who appear and offer proof in relation thereto. The trustees shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on said roll, either by confirming the prima facie assessment against any or all tracts or parcels described therein, or by canceling, increasing or reducing the same according to the special benefits which the trustees decide each tract or parcel has received or will receive on account of the activities of the district during the period of the assessment. If any property subject to assessment has been omitted from the roll or if the prima facie assessment has not been made against it, the trustees may place on the roll an apportionment against such property. The trustees may thereupon confirm the roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits. Whenever the trustees shall confirm an assessment roll the secretary-treasurer shall enter in the minute books of the district the date, hour and minute of such confirmation, and he shall immediately cause the assessment roll to be filed with the tax collector of the county wherein the land is located and from that time the assessment shall constitute a lien on the real property against which the same is assessed. Subsequent assessments levied in accordance with this article shall be a lien against real property from the date of filing of said assessment.

(d) If the owner of, or any person interested in, any land assessed or classified is dissatisfied with the amount of the assessment under this section or with the classification under G. S. 139-25, he may give written notice to the secretary-treasurer of the district within ten days after confirmation of the assessment roll or after the last day of the classification hearing, respectively, that he takes an appeal to the State Board. Within twenty days after such confirmation or after the last day of the classification hearing, respectively, he must file with the State Board and the secretary-treasurer of the district a brief statement of the grounds for his dissatisfaction with the ruling of the trustees. The State Board shall set a date for a hearing not more than ninety days from the date of the filing of the statement. At said hearing, evidence shall be taken by the State Board from the district and the landowner, both of whom shall have the right to be represented by counsel. After hearing the evidence, the State Board may affirm, overrule or modify the ruling of the trustees and may tax the cost of the hearing against the losing party. Either party may appeal from the ruling of the State Board to the superior court of the county wherein the land is located for trial de novo. The appeal from the trustees or the State Board shall not delay or stop the operation of the district or any of its works of improvement. The State Board in order to fulfill the duties herein granted shall have the powers given it under G. S. 139-35 (e). The State Board may delegate to one of its members or to a deputy the function of holding any or all hearings which it is required to hold under the provisions of this subsection.

(e) The trustees may correct, cancel or remit any assessment, and may remit, cancel or adjust the interest or penalties thereon. The trustees have the power, when in their judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto to set aside the whole of the assessment made by them, and thereupon to make a reassessment. The trustees' power of correction, cancellation, remission or adjustment of any particular benefit assessment or of the interest or penalty thereon, or of setting aside a general assessment, shall not limit or abridge the duty and responsibility hereby imposed upon the trustees to preserve the fiscal integrity of the district, and to provide by reassessment or otherwise, for the repayment of all principal, interest and other debt service charges on assessment bonds, notices, or other evidence of indebtedness issued by the district to pay for works of improvement or any other expenses of the district. The proceedings shall be in all respects as in the case of the original assessment, and the reassessment shall have the same force as if it had originally been properly made. In the event of a reassessment the trustees may, if necessary, postpone the dates for payment of assessments and installments and for performance of other acts required to be performed on or before designated dates.

(f) No change of ownership of any property or interest therein after the last day of the classification hearing shall in any manner affect subsequent proceedings, and the works of improvement may be completed and assessments made therefor as if there had been no change of ownership.

(g) The following provisions of the General Statutes concerning municipal special assessments with modifications as specified, shall apply to assessments by watershed improvements districts:

G. S. 160-95 to 160-97, which relate to assessments in case of tenants for life or years;

G. S. 160-98, which relates to liens in favor of cotenants or joint tenants paying assessments;

G. S. 160-101, which relates to apportionment of assessments where property has been or is about to be subdivided (except that for "governing body," read "trustees".)

(h) Subsequent to the initial assessment the trustees may annually, biennially, or triennially, at their discretion, levy additional assessments to meet: The total, or amortized portion, of capital costs, including debt service charges consisting of principal, interest, and other charges on borrowed funds to be paid during the assessment period, and further including cost and expenses incidental to the construction of contemplated additional works of improvement to be completed during the assessment period; and all other expenses of the district, including the expenses of administering the district, maintaining all works of improvement, and interest on borrowed funds, that will accrue during the ensuing fiscal year, biennium or triennium, as the case may be.

The trustees shall prepare estimates, make out the assessment roll, hold hearings and in all other respects proceed as in the case of the initial assessment, except that:

(1) The estimate shall be prepared on or before May 20th preceding the fiscal year during which the assessment (or the first installment thereof) shall come due, but failure to comply with this requirement shall not affect the validity of subsequent proceedings;

(2) The period covered by the estimate of "all other expenses" shall be the succeeding fiscal year, biennium or triennium, as the case may be; and

(3) The assessment installments, if any, to be indicated on the assessment roll shall be those to be paid during each year of the fiscal biennium or triennium, as the case may be, by landowners electing to pay in installments.

(i) The assessment rate on any assessment roll shall not exceed a maximum

annual rate of seven dollars ($7.00) per acre. (1959, c. 781, s. 8; 1963, c. 1025, s. 2; c. 1151, s. 2; c. 1228, ss. 1-4.)

Editor's Note.—The first 1963 amendment deleted the former third and fourth sentences of subsection (b) and inserted in lieu thereof the present third sentence.

The second 1963 amendment increased the maximum assessment rate formerly provided by subsection (a) from $5.00 to $7.00 per acre.

The third 1963 amendment rewrote subsection (a), inserted the present third sentence in subsection (e), rewrote the first paragraph of subsection (h) to add the provisions as the total or amortized portion of capital costs and charges on borrowed funds, and added subsection (i).

§ **139-27. Collection and payment of assessments; expenditure of proceeds thereof and of other district funds.**—(a) (1) The landowner against whom an assessment is made shall have the option of paying the entire assessment, if he so elects and gives written notice accordingly to the secretary-treasurer of the district within fifteen (15) days after the confirmation of the assessment roll and upon his failure to so notify the district, he shall be deemed to have elected to pay the assessment in annual installments. Any assessment shall be due on the first Monday of August next following after the receipts for the first annual installment are mailed pursuant to subsection (c) of this section but may be paid in multiple annual installments, in amounts and spread over periods determined by the assessment roll, with interest as herein provided. Any annual installment of any assessment, plus accrued interest on the entire assessment, shall be due and payable on the first Monday of August. Any assessment shall bear interest from due date until paid, at the rate of one third of one per cent (⅓ of 1%) per month, or fraction thereof, as calculated and illustrated in the table in subsection (i) of this section. Failure or neglect of the property owner to pay any annual installment with accrued interest when the same becomes due and payable shall be just and sufficient cause for enforcing the immediate payment of all remaining unpaid installments and accrued interest on the entire assessment. The entire assessment may be paid at any time by payment of the principal and all interest accrued to that date.

(2) It is the intent and purpose of this subsection that any assessment (initial, subsequent or annual) may as determined by the assessment roll be paid and collected in multiple annual installments in such installment amounts and spread over such installment periods as the assessment roll may fix. As to any assessment roll which shall fix and determine multiple annual installment payments spread over periods in excess of three (3) years, the following modifications of designated subsections of this section shall apply:

a. In subsection (b) "three" shall read "multiple";
b. In subsection (c) "second and third" shall read "subsequent";
c. In subsection (d) "second and third" shall read "subsequent"; "one and two years, respectively" shall read "in subsequent years"; and the form of the order of the board of commissioners to the county tax collector shall be suitably modified;
d. In subsection (h) the form of assessment receipt shall be suitably modified for fourth and subsequent annual installments;
e. In subsection (i) the illustrative table shall be used as a guide in calculating the amounts of interest payable by a landowner electing to pay in installments, suitably modified and extended to cover the fourth and subsequent installments of any assessment.

(b) After confirmation of the assessment roll the district shall have prepared a form of receipt, with appropriate stubs attached, for the assessments due on each tract or parcel of land as recited in the assessment roll. A separate sheet shall be used for each tract or parcel assessed, and each such separate sheet shall contain

three perforated receipts attached to a single stub, with appropriate entries and blank spaces substantially as set forth in subsection (h) of this section. The receipts and stubs for land within each county wherein any part of his district lies shall be separately bound. The bound books of assessment receipts shall be endorsed "Assessments of the (here give the name of the district) Watershed Improvement District due on the first Monday of August, 19....," and the same endorsement shall be printed at the top of each assessment receipt. The necessary cost of printing and binding such books of assessment receipts and the filling in of the same shall be a proper charge against the district and shall be paid by the board of trustees.

(c) During the month of July next following the confirmation of the assessment roll the district shall mail to the landowners the receipts for the first annual installment with the blanks duly filled in. The district shall also remove from the bound books, and retain, the receipts for the second and third annual installments. On or before the twenty-fifth day of such month the appropriate bound book of stubs, with the names of the property owners and assessment and installment amounts duly filled in, shall be delivered to the board of commissioners of each county wherein any part of the district lies. On or before the first Monday of August next following the said boards of commissioners shall cause such bound books to be delivered to their respective county tax collectors, together with appended orders in substantially the following form:

Tax Collector, ... County:
This is to certify that the attached book of assessment stubs embraces watershed assessments made on certain lands in the County of ..... which are located within the boundaries of the ..... Watershed Improvement District. The affected landowners, unless otherwise indicated to the contrary, have elected to pay their assessments in installments, the first of which becomes due on the first Monday of August, 19....., and must be paid and collected within the time and in the manner required by law. (See G. S. 139-27.) If such installment is not paid on or before the first day of September, 19....., the unpaid balance of the entire assessment becomes due with interest at the rate of one-third of one per cent per month, or fraction thereof, as set forth in subsection (i) of G. S. 139-27. You will enter the dates of payments on the stubs and retain the book of stubs in a safe place for use in recording subsequent annual installments. You will make monthly settlements of your collections with the secretary-treasurer of the ..... Watershed Improvement District, and in all other respects you will discharge your duties as tax collector as required by law.

In witness whereof I have hereunto set my hand and official seal, this .....
..... day of ..... 19.....

.....
Chairman, Board of Commissioners,
..... County

(d) The procedure for the second and third annual installments shall be as set forth in this subsection. The district shall mail the receipts for such installments with blanks duly filled in to the landowners during the month of July, one and two years, respectively, after the mailing of the receipts for the first installment. On or before the twenty-fifth day of such month there shall be delivered to the boards of county commissioners a notice of the due date of the installment. On or before the first Monday of August next following the said boards of commissioners shall cause to be delivered to their respective county tax collectors orders in substantially the following form, omitting therefrom the appropriate bracketed words and phrases:

Tax Collector ..... County:
This is to certify that the [second] [third] installment of the watershed assessment of the ..... Watershed Improvement District becomes due on the first Monday of August, 19....., and must be paid and

collected within the time and in the manner required by law. (See G. S. 139-27) If such installment is not paid on or before the first day of September, 19...., the unpaid balance of the entire assessment becomes due with interest at the rate of one-third of one percent per month, or fraction thereof, as set forth in subsection (i) of G. S. 139-27. You will enter the dates of payments on the stubs [and retain the book of stubs in a safe place for use in recording the third annual installment] [and thereafter retain or dispose of the book of stubs in the manner provided by law]. You will make monthly settlements of your collections with the secretary-treasurer of the ..... Watershed Improvement District, and in all other respects you will discharge your duties as tax collector as required by law.

In witness whereof I have hereunto set my hand and official seal, this ..... day of ....., 19.....

.....
Chairman, Board of Commissioners
..... County

(e) All watershed assessments shall be collected by the county tax collector in the same manner as county taxes, except as otherwise herein provided, and such collections shall be enforced in the manner provided by G. S. 105-414 and subsections (f)-(v) of G. S. 105-391; provided however, that there shall be no right to proceed against personal property in enforcing such collections. The tax collector shall be required on the first day of each month to make settlements with the secretary-treasurer of the watershed improvement district of all collections of watershed assessments for the preceding month, and to deposit all moneys so collected in an account maintained in the name of the district at an official depository designated by the district. Such account shall also be used for the deposit of all other funds of the district. Expenditures from such account may be made with the approval of the trustees of the district on requisition from the chairman and the secretary-treasurer of the district. The fee allowed the tax collector for collecting the watershed assessments shall be two percent of the amount collected, except that, where the tax collector is on a salary basis, such fee shall be paid into the general fund of the county.

If the tax collector shall willfully fail or neglect to comply with any requirement of law concerning collection or deposit of watershed assessments, he shall be guilty of a misdemeanor, and upon conviction shall be subject to fine and imprisonment, in the discretion of the court. He shall likewise be liable to a civil action for all damages which may accrue either to the trustees of the district or the holders of its bonds, to either or both of whom a right of action is hereby given.

(f) No statute of limitation, whether fixed by law especially referred to in this chapter or otherwise, shall bar the right of the district to enforce any remedy provided by law for the collection of unpaid assessments, save from and after ten years from default in the payment thereof, or, if payable in installments, ten years from the default in the payment of any installment. No penalties prescribed for failure to pay taxes shall apply to watershed assessments, but they shall bear interest as herein provided only.

(g) All proceedings for watershed assessments under the provisions of this article shall be regarded as proceedings in rem (and no mistake or omission as to the name of the owner or person interested in any tract or parcel of land affected thereby shall be regarded a substantial mistake or omission).

(h) Form of Assessment Receipts with Stub.—

Landowner ..... Owner's Address	Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of August, 19.....

Amount of Entire Assessment	Landowner ..... Unpaid Balance of Entire Assessment ..... Amount of 1st Annual Installment due .....
Date Paid	If installment is not paid by Sept. 1, 19...., unpaid balance of entire assessment with interest at ⅓ of one percent per month, or fraction thereof, becomes due. Received by ..... (Signature) Tax Collector .....County
Amount of Each Annual Installment	PAYABLE TO TAX COLLECTOR, ... COUNTY, NORTH CAROLINA. Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of August, 19.....
Date 1st Ann'l Installment Paid	Landowner ..... Unpaid Balance of Entire Assessment ..... Amount of 2nd Annual Installment due .....
Date 2nd Ann'l Installment Paid	If installment is not paid by Sept. 1, 19...., unpaid balance of entire assessment with interest at ⅓ of one percent per month, or fraction thereof, becomes due. Received by ..... (Signature) Tax Collector .....County PAYABLE TO TAX COLLECTOR, ... COUNTY, NORTH CAROLINA.
Date 3rd Ann'l Installment Paid	Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of August, 19..... Landowner ..... Amount of 3rd Annual Installment due ..... If installment is not paid by September 1, 19...., it accumulates interest at the rate of ⅓ of one percent per month, or fraction thereof. Received by ..... (Signature) Tax Collector .....County PAYABLE TO TAX COLLECTOR, ... COUNTY, NORTH CAROLINA.

(i) Table Illustrating Amounts of Interest Due on Unpaid Assessment.—Explanatory Note: This table uses as an illustration a district whose initial assessment roll was confirmed on April 1, 1960. Most of the entries would apply to a subsequent assessment as well as an initial assessment. The table shows the amounts of interest payable at various dates by a landowner who elected to pay in installments.

Date of Payment	Amount Due .....
On and after April 1, 1960 and on or before September 1, 1960	First installment (or entire assessment) may be paid without interest
After Sept. 1, 1960 and on or before Oct. 1, 1960	If first installment was not paid on time, entire assessment becomes due with interest at ⅓ of one percent of such entire assessment

After Oct. 1, 1960 and on or before Nov. 1, 1960	If first installment was not paid on time, entire assessment is due with interest at ⅔ of one percent of such entire assessment
On or before Sept. 1, 1961	If first installment was paid on time, second installment (or entire unpaid balance) may be paid with interest at 4 percent of unpaid balance of entire assessment
After Sept. 1, 1961 and on or before Oct. 1, 1961	If second installment was not paid on time, unpaid balance of entire assessment becomes due with interest at 4⅓ percent of such unpaid balance
After Oct. 1, 1961 and on or before Nov. 1, 1961	If second installment was not paid on time, unpaid balance of entire assessment is due with interest at 4⅔ percent of such unpaid balance
On or before Sept. 1, 1962	If first and second installments were paid on time, third installment may be paid with interest at 8 percent of unpaid balance of entire assessment
After Sept. 1, 1962 and on or before Oct. 1, 1962	If third installment was not paid on time, unpaid balance of entire assessment becomes due with interest at 8⅓ percent of such unpaid balance
After Oct. 1, 1962	To the balance due on Oct. 1, 1962, add interest at ⅓ of one percent of such balance per month, or fraction thereof, until paid.

(1959, c. 781, s. 8; 1963, c. 1228, s. 5.)

Editor's Note.—Prior to the 1963 amendment, which rewrote subsection (a), the landowner had the option of paying the initial assessment in cash or, on given notice, in three annual installments, with a similar option as to subsequent biennial or triennial assessments.

§ 139-27.1. Debts may be incurred to be repaid over more than three years.—The other provisions of this article generally, and particularly the provisions of G. S. 139-26 and 139-27, pertaining to initial and subsequent annual, biennial or triennial assessments or reassessments, shall not be construed to limit the authority of the district, and a watershed improvement district shall be authorized to issue notes, bonds, and other evidences of indebtedness, to be repaid over a period greater than three (3) years and shall have the power, duty and responsibility to provide through benefit assessments all sums which may be necessary to pay in full the principal, interest and other debt service charges of all bonds or other obligations of the district. (1963, c. 1228, s. 6.)

§ 139-28. Fiscal powers of governing body; may hold referendum on question of incurring indebtedness and issuing bonds.—The trustees of a watershed district shall have power, with or without a referendum, to incur indebtedness on behalf of the district to defray any part of the expenses and costs of the district, and may pledge to the repayment thereof funds to be derived from benefit assessments, grants, gifts, or other sources of revenue.

The indebtedness of the district may be evidenced by bonds, bond anticipation notes, benefit assessment anticipation notes or revenue anticipation notes. No debt shall be contracted for a term of more than twenty (20) years.

The trustees, if they so elect, may request the board or boards of election of each county wherein any part of the district lies to call a referendum on the question of

whether the district shall incur debt or issue bonds for one or more of the purposes for which it was created. (1959, c. 781, s. 8; 1963, c. 1228, s. 7.)

Editor's Note.—Prior to the 1963 amendment, which rewrote this section, the power to incur indebtedness and issue bonds was subject to the conditions and limitations of this article and to the approval of the Local Government Commission, and a referendum was required if repayment was not limited to the proceeds of benefit assessments.

§ **139-29. Conduct of referendum.**—Such referendum may be held at the same time as the initial or a subsequent election for officers of the district. Such referendum shall be conducted in the manner provided for the conduct of elections for officers by the last two paragraphs of subsection (c) of G. S. 139-21; except that—in place of the provisions thereof requiring that the ballots contain the names of nominees, the title and term of office, and the instruction as to the number of candidates to be voted upon—the ballots shall contain a question and a voting instruction in the form certified to the board or boards of election by the trustees of the district. The form of the said question and instruction, with appropriate insertions and deletions, shall be substantially as follows:

Shall the ..... Watershed Improvement District (incur an indebtedness to ..... in the amount of .....) (issue bonds in the amount of .....) for the purpose of ....?

vote "Yes" or "No".

(1959, c. 781, s. 8.)

§ **139-30. Resolution authorizing district to incur indebtedness or issue bonds.**—If such referendum is held and a majority of the votes cast are in favor of incurring the indebtedness or issuing the bonds, the trustees of the district shall enter on the records of the district a resolution authorizing the district to incur the indebtedness or issue the bonds for one or more of the purposes for which the district was created. (1959, c. 781, s. 8; 1963, c. 1228, s. 8.)

Editor's Note.—Prior to the 1963 amendment the section provided for an order by the Local Government Commission authorizing the trustees to incur the indebtedness or issue bonds if the vote favored it.

§ **139-31:** Repealed by Session Laws 1963, c. 1228, s. 9.

§ **139-32. Annual assessments to repay indebtedness or bonds and debt service charges.**—The trustees of the watershed improvement district shall, if necessary for the payment of the principal, interest and other debt service charges on such indebtedness or bonds, and to amortize the repayment of such indebtedness or bonds, levy annual assessments on all the real estate in the watershed improvement district, which may be subject to assessment under the provisions of this article, to pay such principal, interest and other debt service charges, and to amortize such indebtedness or bonds. Such additional assessments shall constitute a lien, be apportioned, levied, assessed and collected in the manner provided for assessments generally in G. S. 139-25, 139-26, and 139-27. (1959, c. 781, s. 8; 1963, c. 1228, s. 10.)

Editor's Note.—Prior to the 1963 amendment this section provided for an annual assessment to pay interest and to amortize the indebtedness or bonds in such manner as might be approved by the Local Government Commission.

§ **139-33. Powers granted additional to the powers of soil conservation districts; soil conservation districts to continue to exercise their powers.**—The powers herein granted to watershed improvement districts shall be additional to those of the soil conservation district in which the watershed improvement district is situated; and such soil conservation district or districts shall be authorized, notwithstanding the creation of the watershed improvement district, to continue to exercise their powers within the watershed improvement district. (1959, c. 781, s. 8.)

§ **139-34. Power to incur debts and accept gifts, etc.**—A watershed improvement district shall have the power, in the manner hereinabove set forth, to incur

debts and repay the same over such period of time and at such rate or rates of interest, not exceeding six per centum (6%) per annum, as the lender or lenders agree to; and to accept, receive, and expend gifts, grants or loans from whatever source received. (1959, c. 781, s. 8.)

§ 139-35. Supervision by State Board.—(a) The State Board, to the extent herein provided, shall have supervisory responsibility over the programs provided for in this article.

(b) Each watershed improvement district (to the extent that moneys are made available therefor by the State of North Carolina or any of its agencies or political subdivisions, by any municipality, or otherwise) shall:

(1) By means of suitable measuring and recording devices and facilities and at intervals prescribed by the Board, record the inflow of water into and release of water from such reservoirs of the district as may be designated by the Board; and

(2) Make periodic reports of such records as required by the Board.

(c) The State Board shall be the State agency to which watershed work plans developed under Public Law 566 (83rd Congress, as amended) for contemplated works of improvement shall be submitted for review and approval or disapproval. All other work plans for contemplated works of improvement pursuant to this chapter shall likewise be submitted to the Board for review and for approval or disapproval. The Board shall approve such work plans if, in its judgment, the work plans

(1) Provided for proper and safe construction of proposed works of improvement;

(2) Show that the construction and operation of the proposed works of improvement (in conjunction with other such works and related structures of the district and the watershed) will not appreciably diminish the flow of useful water that would otherwise be available to existing downstream water users during critical periods; and

(3) Are otherwise in compliance with law.

No work of improvement may be constructed or established without the approval of work plans by the Board pursuant to this subsection. The construction or establishment of any such work of improvement without such approval, or without conforming to a work plan approved by the Board, may be enjoined. The Board may institute an action for such injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in any such action shall be as provided in article 37, chapter 1 of the General Statutes.

(d) In conjunction with any work plans submitted to the Board under subsection (c) of this section, a watershed improvement district shall submit in such form as the Board may prescribe a plan of its proposed method of operations for works of improvement covered by the work plans and for related structures. With the approval of the Board, the district may amend its initial plan of operations from time to time. Board approval of the initial plan of operations shall not be required.

(e) If the Board has reason to believe that a watershed improvement district is not operating any work of improvement or related structure in accordance with its plan of operations as amended, the Board on its own motion or upon complaint may order a hearing to be held thereon upon not less than thirty days' written notification to the district and complainant, if any, by personal service or registered mail. Notice of such hearing shall be published at least once a week for two successive weeks. In connection with any such hearing the Board shall be empowered to administer oaths; to take testimony; and, in the same manner as the superior court, to order the taking of depositions, issue subpoenas, and to compel the attendance of witnesses and production of documents. If the Board determines from evidence of record that the district is not operating any work of improvement or related structure in accordance with its plan of operations, as amended, the Board may issue an order directing the district to comply therewith or to take other appropriate corrective

action. Upon failure by a district to comply with any such order, the Board may institute an action for injunctive relief in the superior court of any county wherein such noncompliance occurs, and the procedure in any such action shall be as provided in article 37, chapter 1, of the General Statutes.

(f) As used in this section the term "critical periods" means monthly periods, or other periods designated by the Board when (in the area affected) below average stream flows coincide with above average utilization of water; provided, that where insufficient data are available to permit reliable determinations concerning these matters, the Board may adopt as the "critical period" for any particular area the period June 15—September 15. (1959, c. 781, s. 8.)

Editor's Note.—The Board of Water Commissioners has been succeeded by the Board of Water Resources. See § 143-353 et seq.

§ **139-36. Dissolution of watershed improvement district.**—A watershed improvement district, after all outstanding debts or obligations have been satisfied, if any, may be dissolved upon:

(1) Petition filed with the supervisors of the soil conservation district or districts wherein the watershed improvement district lies, setting forth the change of circumstances which causes such district to be no longer of any benefit, and signed by any 100 owners of land lying within the limits of the watershed improvement district, or a majority of such owners if their total number be less than 200;

(2) Public hearings held, as provided in § 139-18; and

(3) An order of the supervisors of the soil conservation district or districts approving the action sought.

If the foregoing requirements are met, the supervisors shall declare the watershed improvement district to be dissolved. Such declaration of dissolution shall be recorded in their official minutes, and the same certified to the State Soil Conservation Committee, the State Board, and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket of such clerk. (1959, c. 781, s. 8.)

§ **139-37. Participation by cities, counties, industries and others.**—(a) Any industry, or private water user, the State of North Carolina, the United States or any of its agencies, any county, municipality or any other political subdivision may participate in watershed improvement district works or projects upon mutually agreeable terms relating to such matters as the construction, financing, maintenance and operation thereof.

(b) Any county or municipality may contribute funds toward the construction, maintenance and operation of watershed improvement district works or projects, to the extent that such works or projects:

(1) Provide a source (respectively) of county or municipal water supply; or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity; or

(2) Protect against or alleviate the effects of flood-water or sediment damages affecting, or provide drainage benefits for, (respectively) county or municipally owned property or the property (respectively) of county or municipal inhabitants located outside the boundaries of such district but within the respective boundaries of such county or municipality.

County and municipal expenditures for the aforesaid purposes are declared to be necessary expenses; and county expenditures therefor are declared to be for special purposes, for which the special approval of the General Assembly is hereby given. (1959, c. 781, s. 8.)

Article 3.

Watershed Improvements Programs; Expenditure by Counties.

§ **139-39. Alternative method of financing watershed improvement programs by special county tax.**—The board of county commissioners in any county is

authorized to call a special election to determine whether it be the will of the qualified voters of the county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as a "Watershed Improvement Tax", the funds therefrom, if the levy be authorized by the voters of said county, to be used for the prevention of floodwater and sediment damages, and for furthering the conservation, utilization and disposal of water and the development of water resources, within the county. (1959, c. 781, s. 10.)

Local Modification.—Mitchell: 1963, c. 156; Surry: 1963, c. 442; Yadkin: 1961, c. 1033; Polk: 1963, c. 996; Stokes: 1963, c. 433.

§ 139-40. Conduct of election.—(a) There shall be no new registration of voters for such an election. The registration books shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than thirty days before and not more than forty days before, the close of the registration books, stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections.

(b) The form of the question shall be substantially the words "For Watershed Improvement Tax of Not More Than .... Cents Per One Hundred Dollar ($100) Valuation," and "Against Watershed Improvement Tax of Not More Than .... Cents Per One Hundred Dollar ($100) Valuation," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voter may make a mark "X" to designate the voter's choice for or against such tax. The board of county commissioners shall designate the amount of the maximum annual rate of such tax to be levied, which amount may be less than but may not exceed twenty-five cents (25¢) on the one hundred dollar ($100) valuation of property in the county, and said amount shall be stated on the ballot in the question to be voted upon. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Watershed Improvement Tax Election".

(c) The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State as provided for local elections.

(d) If a majority of those voting in such election favor the levying of such a tax, the board of commissioners of such county is authorized to levy a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars ($100) of assessed value of real and personal property taxable in said county, not to exceed the maximum rate of tax approved by the voters in such election, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 781, s. 10; 1961, c. 32.)

Local Modification.—Mitchell: 1963, c. 1033; Polk: 1963, c. 996; Stokes: 1963, c. 156; Surry: 1963, c. 442; Yadkin: 1961, c. 433.

Editor's Note.—The 1961 amendment deleted the first sentence of subsection (b) and inserted in lieu thereof the present first two sentences. It also rewrote subsection (d).

§ 139-41. Powers of county commissioners.—(a) If the majority of the qualified voters voting in such election favor the levying of such tax, then and in that

extent, the board of county commissioners shall have all powers of soil conservation districts as set forth in subdivisions (1), (2), (3), (5), (6), (7), (8), and (10) of G. S. 139-8 (subject to the limitations set forth in subdivision (12) of such section) concerning flood prevention, development of water resources, floodwater and sediment damages, and conservation, utilization and disposal of water. It is the intention of the General Assembly that such powers shall normally be exercised within all or parts of one or more single watersheds, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases; provided, however, it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(b) The board of county commissioners may itself exercise such powers or, for that purpose, may create a Watershed Improvement Commission to be composed of three members appointed by the board. The terms of office of the members of the Commission shall be six years, with the exception of the first two years of existence of the Commission, in which one member shall be appointed to serve for a period of two years, one for a period of four years, and one for a period of six years; thereafter all members shall be appointed for six years, and shall serve until their successors have been appointed and qualified. Vacancies in the membership of the Commission occurring otherwise than by expiration of term shall be filled by appointment to the unexpired term by the board of county commissioners. The Commission shall hold its first meeting within thirty days after its appointment as provided for in this article, and the beginning date of all terms of office of commissioners shall be the date on which the Commission holds its first meeting. The provisions of G. S. 139-22 and 139-23 concerning the organization and compensation of the elected board of trustees of a watershed improvement district, and concerning the powers and duties of such trustees respecting personnel, surety bonds and audits, shall apply to the Commission. The Commission shall provide the board of county commissioners thirty days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within sixty days after the expiration of the fiscal year ending on June 30.

(c) The board of county commissioners may create a single Watershed Improvement Commission for the entire county or may create separate commissions for individual projects or watersheds.

(d) Counties which carry out watershed improvement programs under this article shall be subject to supervision by the State Board pursuant to G. S. 139-35 to the same extent as are watershed improvement districts, and, for this purpose the words "districts" and "watershed improvement districts", wherever they occur in such section, shall be read as referring to counties.

(e) Any industry or private water user, the State of North Carolina, the United States or any of its agencies, any municipality, any other county, or any other political subdivision may participate in county watershed improvement programs hereunder in the same manner and to the same extent as provided by G. S. 139-37 with respect to participation in watershed improvement district programs. (1959, c. 781, s. 10.)

Local Modification.—Davie: 1961, c. 794, s. 1½; Forsyth: 1963, c. 761, s. 4; Guilford: 1963, c. 734; Iredell: 1961, c. 794, s. 1½; 1963, c. 955; McDowell: 1963, c. 637; Polk, Rowan: 1961, c. 794, s. 1½; Stokes: 1963, cc. 155, 401; Wake: 1961, c. 794, s. 1½; Yadkin: 1961, c. 794, s. 1½; 1963, c. 401.

§ 139-42. Article intended as supplementary.—This article is intended to provide an alternative method of financing and operating watershed improvement programs, supplementary to the method set forth in article 2 of this chapter. (1959, c. 781, s. 10.)

§ 139-43. Transfer and continuation of programs.—A watershed improvement program initiated under this article may be discontinued as a county program and thereafter transferred to or renewed as a watershed district program under

article 2, upon compliance with the provisions of said article 2 for initiating district programs; and a watershed improvement district program initiated under article 2 may be discontinued as a district program and thereafter transferred to or renewed as a county program under this article, upon compliance with the provisions of this article for initiating county programs. (1959, c. 781, s. 10.)

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1.

North Carolina Museum of Art.

§ 140-1. Agency of State; functions.—The North Carolina Museum of Art is an agency of the State of North Carolina. The functions of the North Carolina Museum of Art shall be to acquire, preserve, and exhibit works of art for the education and enjoyment of the people of the State, and to conduct programs of education, research, and publication designed to encourage an interest in and an appreciation of art on the part of the people of the State. (1961, c. 731.)

Cross Reference.—As to appraisal of works of art, see North Carolina State Art Society v. Bridges, 235 N. C. 125, 69 S. E. (2d) 1 (1952).

Editor's Note.—The 1961 act, effective July 1, 1961, inserted the present article in lieu of former articles 1 and 1A, designated "State Art Society" and "Acquisition and Preservation of Works of Art," respectively. Repealed article 1 was derived from Public Acts 1929, c. 314 and Session Laws 1943, c. 752, and repealed article 1A was derived from Session Laws 1947, c. 1097; 1951, c. 1168 and 1953, c. 696. Public Acts 1929, c. 314, had been amended by Session Laws 1961, c. 547, s. 3.

§ 140-2. Board of trustees; membership; appointment and terms; officers; meetings; powers and duties.—(a) The board of trustees of the North Carolina Museum of Art shall consist of the Governor, the Superintendent of Public Instruction or a person designated by him, four members elected by the board of directors of the North Carolina State Art Society, Incorporated, and eight members appointed by the Governor. All fourteen members shall be entitled to vote. Of the initial appointments to the board of trustees, four shall be for terms of three years and four shall be for terms of six years. Of the initial elections to the board of trustees by the board of directors of the North Carolina State Art Society, Incorporated, two shall be for terms of three years and two shall be for terms of six years. Thereafter, all regular appointments or elections shall be for terms of six years. All members shall serve until their successors are appointed or elected and qualified. All initial terms shall begin July 1, 1961. The Governor shall appoint to fill for the unexpired term any vacancy occurring in the appointive membership of the board of trustees. The board of directors of the North Carolina State Art Society, Incorporated, shall

elect to fill for the unexpired term any vacancy occurring in the positions filled by that board. A member of the board of trustees shall not be deemed to be a public officer, or to be holding office within the meaning of article XIV, section 7, of the Constitution of North Carolina, but a member shall be deemed a commissioner for a special purpose.

(b) The chairman of the board of trustees shall be designated annually by the Governor from among the appointive members of the board. The Director of the North Carolina Museum of Art shall be secretary to the board. The board may elect from its membership such other officers as it may deem necessary.

(c) The board of trustees shall meet at least quarterly at such times and places as the board may determine. Special meetings of the board of trustees may be called by the Director of the North Carolina Museum of Art upon order of the chairman or upon request of four or more members of the board.

(d) The board of trustees shall be the governing body of the North Carolina Museum of Art, and shall have the following powers and duties:

(1) To adopt bylaws for its own government.

(2) To adopt policies, rules, and regulations for the conduct of the North Carolina Museum of Art.

(3) To elect the Director of the North Carolina Museum of Art and to prescribe his powers and duties, consistent with the provisions of this article.

(4) To establish such advisory boards and committees as the board of trustees may deem advisable.

(5) On behalf and in the name of the North Carolina Museum of Art, to inspect, appraise, obtain attributions and evaluations of, purchase, acquire, exchange, transport, exhibit, lend, store, and receive upon consignment or as loans, statuary, paintings, and other works of art of any and every kind and description which are worthy of acquisition, preservation, and exhibition.

(6) To be responsible for the care, custody, storage, and preservation of all works of art acquired by the North Carolina Museum of Art, or received by it upon consignment or loan.

(7) On behalf and in the name of the North Carolina Museum of Art, to acquire by gift or will, absolutely or in trust, from individuals, corporations, the federal government, or from any other source, money or other property which may be retained, sold, or otherwise used to promote the purposes of the North Carolina Museum of Art. The net proceeds of the sale of all property acquired under the provisions of this paragraph shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund."

(8) To exchange works of art owned by the North Carolina Museum of Art for other works of art which, in the opinion of the board of trustees, would improve the quality, value, or representative character of the art collection of the Museum.

(9) To sell any work of art owned by the North Carolina Museum of Art if the board of trustees finds that it is in the best interest of the Museum to do so, unless such sale would be contrary to the terms of acquisition. The net proceeds of each such sale, after deduction of the expenses attributable to that sale, shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund," and shall be used only for the purchase of other works of art. No work of art owned by the North Carolina Museum of Art may be pledged or mortgaged.

(10) To make a biennial report to the Governor and the General Assembly on the activities of the board of trustees and of the North Carolina Museum of Art. (1961, c. 731.)

§ 140-3. Director of Museum of Art; election and service; salary; powers and duties.—(a) The board of trustees of the North Carolina Museum of Art shall elect the Director of the North Carolina Museum of Art, who shall serve at the pleasure of the board.

(b) The salary of the Director shall be fixed by the Governor on recommendation of the board of trustees, and shall be approved by the Advisory Budget Commission.

(c) The Director shall have the following powers and duties:

(1) Under the supervision of the board of trustees, to direct and administer the North Carolina Museum of Art in accordance with the policies, rules, and regulations adopted by the board of trustees.

(2) To employ such persons as may be necessary to perform the functions of the Museum, subject to the provisions of chapter 143, article 2, of the General Statutes.

(3) To serve as secretary to the board of trustees.

(4) To serve as director of collections of the Museum. (1961, c. 731.)

§ 140-4. Gifts maintained as special fund.—All gifts of money to the North Carolina Museum of Art shall be paid into the State treasury and maintained as a fund to be designated "The North Carolina Museum of Art Special Fund." (1961, c. 731.)

§ 140-5. Gifts exempt from taxation.—All gifts made to the North Carolina Museum of Art shall be exempt from every form of taxation including, but not by way of limitation, ad valorem, intangible, gift, inheritance, and income taxation. (1961, c. 731.)

§ 140-5.1. Transfer of right, title and interest of State Art Society to Museum of Art.—All right, title, and interest of the North Carolina State Art Society, Incorporated, in and to the works of art, library, equipment, records relating to the assets of the Museum, unexpended appropriations, executory contracts, and all other properties housed in or appurtenant to the North Carolina Museum of Art, including the funds constituting the "State Art Society Special Fund," are hereby transferred to and vested in the North Carolina Museum of Art, effective July 1, 1961, to be held by the Museum for the use and benefit of the people of the State upon such terms, restrictions, and trusts as those respective properties are now held by the North Carolina State Art Society, Incorporated. The board of directors of the North Carolina State Art Society, Incorporated, shall, prior to July 1, 1961, by resolution direct the appropriate officers of the board of directors to execute a proper instrument confirming in the North Carolina Museum of Art all right, title, and interest of the North Carolina State Art Society, Incorporated, in and to the works of art, library, equipment, records relating to the assets of the Museum, unexpended appropriations, executory contracts, and all other properties housed in or appurtenant to the North Carolina Museum of Art, including the funds constituting the "State Art Society Special Fund."

In case of uncertainty as to whether any particular item or class of property is included within the provisions of this section, the matter shall be determined by the Governor. (1961, c. 731.)

Article 2.

State Symphony Society.

§ 140-6. Trustees for North Carolina Symphony Society.—The governing body of the North Carolina Symphony Society, Incorporated, shall be a board of trustees consisting of not less than sixteen members, of which the Governor of the State and the Superintendent of Public Instruction shall be ex officio members, and four other members shall be named by the Governor. The remaining number of trustees shall be chosen by the members of the North Carolina Symphony Society,

Incorporated, in such manner and at such times as that body shall determine. Of the four members first named by the Governor, two shall be appointed for terms of two years each and two for terms of four years each, and subsequent appointments shall be made for terms of four years each. (1943, c. 755, ss. 1, 2; 1947, c. 1049, ss. 1-3.)

§ 140-7. Adoption of bylaws; amendments.—The said board of trustees, when organized under the terms of this article, shall have authority to adopt bylaws for the Society and said bylaws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of trustees. (1943, c. 755, s. 3; 1947, c. 1049, s. 2.)

§ 140-8. Annual audit by State Auditor.—It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina Symphony Society, Incorporated, and make a report thereof to the General Assembly at each of its regular sessions, and the said Society shall be under the patronage and the control of the State. (1943, c. 755, s. 4.)

§ 140-9. Allocations from contingency and emergency fund; expenditures.—The Governor and Council of State are hereby authorized to allot such sums as they may deem appropriate, from the contingency and emergency fund, to the North Carolina Symphony Society, to aid in carrying on the activities of the said Society. All expenditures made by said Society shall be subject to the provisions of G. S. 143-1 to 143-34, inclusive. (1943, c. 755, s. 5; 1955, c. 1309.)

§ 140-10. Counties and municipalities authorized to make contributions.—The governing body of any county or incorporated municipality is hereby authorized and empowered to appropriate and make voluntary contributions out of nontax funds to the North Carolina Symphony Society. (1953, c. 1212.)

Article 3.

State Art Society.

§ 140-11. State patronage; board of directors, composition, number, appointment and terms of office.—The North Carolina State Art Society, Incorporated, shall continue to be under the patronage of the State. The governing body of the North Carolina State Art Society, Incorporated, shall be a board of directors consisting of sixteen members, of whom the Governor of the State, the Superintendent of Public Instruction, the Treasurer of the State of North Carolina and the chairman of the art committee of the North Carolina Federation of Women's Clubs shall be ex officio members, and four others shall be named by the Governor of the State. The remaining eight directors shall be chosen by the members of the North Carolina State Art Society, Incorporated, in such manner and for such terms as that body shall determine. The four directors named by the Governor shall serve for terms of four years each. (1961, c. 1152.)

Editor's Note.—The 1961 act inserting this article became effective July 1, 1961.

§ 140-12. Department of Administration authorized to provide space for Art Society.—Subject to the approval of the Governor and the Advisory Budget Commission, the Department of Administration is authorized and empowered to set apart, for the administration of the affairs of the State Art Society, Incorporated, space in any of the public buildings in the city of Raleigh which may be so used without interference with the conduct of the business of the State. (1961, c. 1152.)

§ 140-13. Annual audit by State Auditor; report to General Assembly.—It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina State Art Society, Incorporated, and to make report thereof to the General Assembly at each of its regular sessions. (1961, c. 1152.)

§ 140-14. Promotion of public appreciation of art; organization of art exhibits; lectures on art; developing effective support of Museum of Art; encouraging the acquisition of works of art, etc.—The North Carolina State Art Society, Incorporated, is authorized to formulate programs to promote the public appreciation of art and the role that art has played in the development of civilization; to organize State and regional art exhibits, including works by contemporary North Carolina artists; to disseminate information on art through lectures to schools, civic clubs and public audiences; to invite outstanding art scholars to address North Carolina centers of culture; to develop an effective public support of the North Carolina Museum of Art; to provide public schools and libraries with reproductions of masterpieces in the State Art Museum; to encourage the citizens of the State to acquire works of art by North Carolina artists for the embellishment of their homes and public buildings; and to do all other things deemed necessary to advance the objectives of the Society. (1961, c. 1152.)

§ 140-15. Exemption from taxes.—All gifts made to the North Carolina State Art Society, Incorporated, shall be exempt from State gift and inheritance taxes, and objects of art held by the Society shall be exempt from ad valorem taxes. (1961, c. 1152.)

Chapter 140A.

State Awards System.

§ 140A-1. Annual awards established; form and design.—The State of North Carolina hereby establishes annual awards, not to exceed six in number, each bearing the name of the recipient, with an appropriate inscription reciting the reason for the award, which form and design shall be approved by the Governor and Council of State. (1961, c. 1143, s. 1.)

§ 140A-2. Fields of recognition; periods covered.—These recognitions shall be known as the North Carolina Awards for Literature, Science, the Fine Arts and Public Service, and shall be conferred upon citizens of North Carolina for the most notable attainments in these respective fields during the current year, terminating four months before the date of award, though such distinctions can be exceptionally conferred, with the approval of the Governor and the Council of State, for eminence achieved during years prior to the award. (1961, c. 1143, s. 2.)

§ 140A-3. Annual award to native living outside State.—One award shall annually be made to a native-born North Carolinian, living outside of North Carolina, for pre-eminent accomplishment in one of the above fields of creative endeavor. (1961, c. 1143, s. 3.)

§ 140A-4. Awards Commission; creation; powers and duties.—A commission of five persons, known as the North Carolina Awards Commission, shall be named by the Governor and shall serve without compensation; its duty shall be to formulate and administer the program governing the North Carolina awards and to exercise such powers, as are conferred by this chapter, with the approval of the Governor and Council of State. (1961, c. 1143, s. 4.)

§ 140A-5. Selection of recipients for awards.—The recipients of the awards shall be chosen by a committee named by the North Carolina Awards Commission, for each category of achievement, but no award shall be made in any field unless the committee of awards deems the recognized accomplishment to be outstanding in merit, value, and distinction. (1961, c. 1143, s. 5.)

§ 140A-6. Administration expense.—The expense of administering this chapter shall be paid out of the Contingency and Emergency Fund subject to the approval of the Governor and Council of State. (1961, c. 1143, s. 6.)

Chapter 141.

State Boundaries.

§ 141-1. Governor to cause boundaries to be established and protected.—The Governor of North Carolina is hereby authorized to appoint two competent commissioners and a surveyor and a sufficient number of chainbearers, on the part of the State of North Carolina, to act with the commissioners or surveyors appointed or to be appointed by any of the contiguous states of Virginia, Tennessee, South Carolina, and Georgia, to return and re-mark, by some permanent monuments at convenient intervals, not greater than five miles, the boundary lines between this State and any of the said states.

The Governor is also authorized, whenever in his judgment it shall be deemed necessary to protect or establish the boundary lines between this State and any other state, to institute and prosecute in the name of the State of North Carolina any and all such actions, suits, or proceedings at law or in equity, and to direct the Attorney General or such other person as he may designate to conduct and prosecute such actions, suits, or proceedings. (1881, c. 347, s. 1; Code, s. 2289; 1889, c. 475, s. 1; Rev., s. 5315; 1909, c. 51, s. 1; C. S., s. 7396.)

Line Between North Carolina and Tennessee.—Under the Acts of 1821 of the States of North Carolina and Tennessee confirming the boundary line between the two States "as run and marked" by the joint commission, when it is clearly shown where the line between two known points but a few miles apart was run and marked by the commission, such line must be accepted by the courts, in a suit between private persons, as the true and ancient boundary, even though it now appears that a different line between such points might more accurately conform to a general call in the act of cession for "the extreme height" of a certain mountain for a distance of 100 miles. Stevenson v. Fain, 116 F. 147 (1902).

§ 141-2. Payment of expenses of establishing boundaries.—When the line has been re-run and re-marked as above provided between this State and any of the contiguous states, or such portion of said lines as shall be mutually agreed by the commissioners, the Governor is authorized to issue his warrant upon the State Treasurer for such portion of the expenses as shall fall to the share of this State. (1881, c. 347, s. 2; Code, s. 2290; 1889, c. 475, s. 2; Rev., s. 5316; C. S., s. 7397.)

§ 141-3. Appointment of arbitrators.—If any disagreement shall arise between the commissioners, the Governor of this State is hereby authorized to appoint arbitrators to act with similar officers to be appointed by the other states in the settlement of the exact boundary. (1881, c. 347, s. 3; Code, s. 2291; 1889, c. 475, s. 3; Rev., s. 5317; C. S., s. 7398.)

§ 141-4. Disagreement of arbitrators reported to General Assembly.—In case of any serious disagreement and inability on the part of the said arbitrators to agree upon said boundary, such fact shall be reported by the Governor to the next General Assembly for their action. (1881, c. 347, s. 4; Code, s. 2292; 1889, c. 475, s. 4; Rev., s. 5318; C. S., s. 7399.)

§ 141-5. Approval of survey.—When the commissioners shall have completed the survey, or so much as shall be necessary, they shall report the same to the Governor, who shall lay the same before the Council of State; and when the Governor and the Council of State shall have approved the same the Governor shall issue his proclamation, declaring said lines to be the true boundary line or

lines, and the same shall be the true boundary line or lines between this and the states above referred to. (1881, c. 347, s. 5; Code, s. 2293; 1889, c. 475, s. 5; Rev., s. 5319; C. S., s. 7400.)

§ 141-6. Eastern boundary of State; jurisdiction over territory within littoral waters and lands under same.—(a) The Constitution of the State of North Carolina, adopted in 1868, having provided in article I, § 31, that the "limits and boundaries of the State shall be and remain as they now are," and the eastern limit and boundary of the State of North Carolina on the Atlantic seaboard having always been, since the Treaty of Peace with Great Britain in 1783 and the Declaration of Independence of July 4th, 1776, one marine league eastward from the Atlantic seashore, measured from the extreme low water mark, the eastern boundary of the State of North Carolina is hereby declared to be fixed as it has always been at one marine league eastward from the seashore of the Atlantic Ocean bordering the State of North Carolina, measured from the extreme low water mark of the Atlantic Ocean seashore aforesaid.

(b) The State of North Carolina shall continue as it always has to exercise jurisdiction over the territory within the littoral waters and ownership of the lands under the same within the boundaries of the State, subject only to the jurisdiction of the federal government over navigation within such territorial waters.

(c) The Governor and the Attorney General are hereby directed to take all such action as may be found appropriate to defend the jurisdiction of the State over its littoral waters and the ownership of the lands beneath the same. (1947, c. 1031, ss. 1-3.)

Editor's Note.—The reference to the Constitution in the first sentence of this section evidently should read "article I, § 34" instead of "article I, § 31."

Chapter 142.

State Debt.

ARTICLE 1.

General Provisions.

§ 142-1. How bonds executed; interest coupons attached; where payable; minimum amount.—All bonds or certificates of debt of the State, hereafter to be

issued as originals, or as substitutes for such as may be surrendered for transfer, by virtue of any act now or to be hereafter passed, shall be signed by the Governor, and countersigned by the State Treasurer, and sealed with the great seal of the State, and shall be made payable to bearer unless registered as hereinafter provided; and the principal shall be made payable by the State at a day named in the bond or certificate. Interest coupons shall be attached to the bonds or certificates unless they be bonds or certificates registered as to both principal and interest, and the bonds, certificates and coupons shall be made payable either at a bank in the city of New York to be designated by the State Treasurer, or at the office of the State Treasurer in Raleigh, as may be designated by the Treasurer, or shall be made payable at the option of the holder, either at such bank in New York or at the office of the State Treasurer: Provided, that no original bond or certificate of debt of the State shall be sold for a sum less than par value; nor shall any such bond or certificate, issuing in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the State treasury. (1848, c. 89, s. 22; 1852, c. 9; 1852, c. 10, s. 10; R. C., c. 90, s. 3; Code, s. 3563; Rev., s. 5020; C. S., s. 7401; Ex. Sess. 1921, c. 66, ss. 1, 2.)

Cited in Galloway v. Jenkins, 63 N. C. 147 (1869).

§ **142-2. Title of act and year of enactment recited in bonds.**—In every bond or certificate of debt issued by the State, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference shall be made thereto by the number of the chapter, and the year of the legislative session. (1850, c. 90, s. 6; R. C., c. 90, s. 6; Code, s. 3566; Rev., s. 5023; C. S., s. 7402.)

§ **142-3. Record of bonds kept by State Treasurer.**—The State Treasurer shall enter in a book to be kept for that purpose a memorandum of every bond or certificate of debt of the State, issued or to be issued under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued. (1852, c. 10, s. 2; R. C., c. 90, s. 4; Code, s. 3564; Rev., s. 5021; C. S., s. 7403.)

§ **142-4. Books for registration and transfer.**—The State Treasurer shall keep in his office a register or registers for the registration and transfer of all bonds and certificates of the State heretofore or hereafter issued, in which he may register any bond or certificate at the time of its issue or at the request of the holder. When any bond or certificate shall have been registered as hereinafter provided, the State Treasurer shall enter in a manner to be of easy and ready reference, a description of said bond, or certificates giving the number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person in whose name the same is then to be registered and whether in his individual capacity or in a fiduciary relation, and if the latter, for whose benefit the same is to be registered. (1848, c. 37, s. 5; 1850, c. 58, s. 4; 1852, c. 11; R. C., c. 90, s. 2; Code, s. 3562; Rev., s. 5019; C. S., s. 7404; Ex. Sess. 1921, c. 66, s. 3.)

§ **142-5. Registration as to principal.**—Upon the presentation at the office of the State Treasurer of any bond or certificate that has heretofore been or may hereafter be issued by the State, or upon the first issuance of any bond or certificate, the same may be registered as to principal in the name of the holder upon such register, such registration to be noted on the reverse of the bond or certificate by the State Treasurer. The principal of any bond or certificate so registered shall be payable only to the registered payee or his legal representative, and such bond or certificate shall be transferable to another holder or back to bearer only upon presentation of the State Treasurer with a written assignment acknowledged or approved in a form satisfactory to the Treasurer. The name of the registered

assignee shall be written in said register and upon any bond or certificate so transferred. A bond or certificate so transferred to bearer shall be subject to future registration and transfer as before. (1883, c. 25; Code, s. 3568; 1887, c. 287; Rev., s. 5025; C. S., s. 7405; Ex. Sess. 1921, c. 66, s. 4.)

§ **142-6. Registration as to principal and interest.**—If, upon the registration of any such bond or certificate, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by the Treasurer, and he shall sign a statement endorsed upon such bond or certificate of the cancellation of all unmatured coupons and of the fact that such bond has been converted into a fully registered bond, and shall make like entry in the said register. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein, to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in the said register. (1856, c. 16; 1883, c. 25, s. 2; Code, s. 3569; 1887, c. 287, s. 2; Rev., s. 5026; C. S., s. 7406; Ex. Sess. 1921, c. 66, s. 5.)

§ **142-7. No charge for registration.**—There shall be no charge for the registration of any bond or certificate whether registered at the time of issuance thereof or subsequently registered, and no charge for the transfer of registered bonds and certificates shall be made. (1887, c. 287, ss. 4, 5; Rev., s. 5027; C. S., s. 7407; Ex. Sess. 1921, c. 66, s. 6; 1925, c. 49.)

§ **142-8. Application of §§ 142-1 to 142-9.**—Sections 142-1 to 142-9, both inclusive, as amended by chapter 66 of the Public Laws of the extra session of 1921, shall be applicable to all bonds or certificates of the State heretofore issued and now outstanding, and to all bonds or certificates of the State that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. (Code, s. 3570; 1887, c. 287, s. 3; Rev., s. 5028; C. S., s. 7408; Ex. Sess. 1921, c. 66, s. 7.)

§ **142-9. Duties performed by other officers.**—If the Council of State shall at any time find that either the Governor or the State Treasurer is unable by reason of absence, disability, or otherwise, to sign any bonds or certificates, the Lieutenant-Governor may sign the same in lieu of the Governor, and they may be signed in lieu of the Treasurer by any member of the Council of State designated by it. (1864-5, c. 24; Code, s. 3567; Rev., s. 5024; C. S., s. 7409; Ex. Sess. 1921, c. 66, s. 8.)

§ **142-10. Chief clerk may issue when Treasurer unable to act.**—Whenever it shall appear by formal finding of the Governor and Council of State, within seven days before any bonds or notes of the State or any interest thereon shall fall due, that it is advisable to issue notice of the State to provide for the renewal or payment of such bonds, notes or interest and that the State Treasurer is unable for any reason to negotiate or to issue such notes, it shall be the duty of the chief clerk of the State treasury, if the issuance of such notice shall have been authorized by law, upon certification to him of such finding, and in the name of the State Treasurer, to make all necessary negotiations and to sign and deliver such notes for value and to attach thereto the seal of the State Treasurer. (1927, c. 12.)

§ **142-11. When bonds deemed duly executed.**—State bonds duly authorized by law and approved by the Governor and Council of State shall be regarded as duly executed by proper officers if signed and sealed while in office by the officer or officers then authorized to sign and seal the same, notwithstanding one or more of such officers shall not be in office at the time of actual delivery of such bonds. (1925, c. 2.)

§ **142-12. State bonds exempt from taxation.**—The original bonds or certificates of debt of the State, which have been issued since the first day of January,

one thousand eight hundred and fifty-three, or which may hereafter be issued under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation. (1852, c. 10, s. 4; R. C., c. 90, s. 5; Code, s. 3565; Rev., s. 5022; C. S., s. 7410.)

§ **142-13. List of surrendered bonds kept; bonds and coupons destroyed.**—The Treasurer shall provide a substantially bound book for the purpose, in which he shall make a correct descriptive list of all bonds of the State surrendered, which list shall embrace the number, date and amount of each, and the purpose for which the same was issued, when this can be ascertained; and after such list shall be made, such surrendered bonds, being ascertained to be present, shall be consumed by fire in the presence of the Governor, the Treasurer, the Auditor, the Attorney General, the Secretary of State and Superintendent of Public Instruction, who shall each certify under his hand respectively in such book that he saw such described bonds so consumed and destroyed. The Treasurer shall also provide a certificate setting forth the amount and kind of coupons which have been paid in the past year or biennium, which said coupons shall be consumed by fire in the same way and manner as is provided for the cremation of bonds referred to herein. (1879, c. 98, s. 8; Code, s. 3578; Rev., s. 5035; C. S., s. 7415; 1941, c. 28.)

Editor's Note.—The 1941 amendment substituted "descriptive" for "description" near the beginning of the first sentence, deleted a provision that the list contain the names of the persons surrendering the bonds, and added the provision relating to coupons.

§ **142-14. Issuance of temporary bonds.**—Whenever the State Treasurer shall be authorized by law to issue bonds or notes of the State, and all acts, conditions and things required by law to happen, exist and be performed, before the delivery thereof for value, shall have happened, shall exist and shall have been performed, except the printing, lithographing or engraving of the definitive bonds or notes authorized and the execution thereof, the State Treasurer is authorized, by and with the consent of the Governor and Council of State, to issue and deliver for value temporary bonds or notes, with or without coupons, which may be printed or lithographed in any denomination or denominations which may be a multiple of one thousand dollars, and shall be signed and sealed as shall be provided for the signing and sealing of such definitive bonds or notes, and shall be substantially of the tenor of such definitive bonds or notes except as herein otherwise provided and except that such temporary bonds or notes shall contain such provisions as the Treasurer may elect as to the conditions of payment of the semiannual interest thereon. Every such temporary bond or note shall bear upon its face the words "Temporary Bond (or Note) Exchangeable for Definitive Bond." Upon the completion and execution of the definitive bonds or notes, such temporary bonds or notes shall be exchangeable without charge therefor to the holder of such temporary bonds or notes for definitive bonds or notes of an equal amount of principal. Such exchange shall be made by the Treasurer or by a bank or trust company in North Carolina or elsewhere appointed by him as agent which shall have a capital and surplus of not less than the amount of the definitive bonds or notes to be so exchanged, and in making such exchange the Treasurer shall detach from the definitive bonds or notes all coupons which represent interest theretofore paid upon the temporary bonds or notes to be exchanged therefor, and shall cancel all such coupons; and upon such exchange such temporary bonds or notes and the coupons attached thereto, if any, shall be forthwith canceled by the Treasurer of such agent. Until so exchanged, temporary bonds and notes issued under the authority hereof shall in all respects be entitled to all the rights and privileges of the definitive securities. (1925, c. 43.)

§ **142-15. Reimbursement of Treasurer for interest.**—Whenever it shall become necessary for the State Treasurer to borrow money to provide the mainte-

nance fund for any State institution, the said Treasurer is authorized to deduct from the sum appropriated for maintenance of said institution the amount of interest the Treasurer shall have to pay for the use of said fund. This section shall apply to all future laws creating a maintenance fund for any State institution, unless said laws shall specifically state otherwise. (1923, c. 210; C. S., s. 7466(a).)

ARTICLE 2.

Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

§ **142-16. Governor and Council of State may borrow on note.**—The Governor and Council of State may authorize and empower the State Treasurer in the intervals between sessions of the General Assembly, to borrow money on short term notes to meet any emergency arising from the destruction of the State's property, whether used by department or institution, or from some unforeseen calamity not amounting to its destruction. (1927, c. 49, s. 1.)

§ **142-17. Recital of facts entered on minutes; directions to Treasurer; limit of amount.**—The Council of State, when such emergency arises during such interval, shall recite upon its minutes the facts out of which it does arise, and thereupon direct the State Treasurer to borrow from time to time money needed to meet such emergency or calamity, not exceeding, however in the whole, five hundred thousand ($500,000) dollars in the aggregate in the period between the adjournment of the present session of the General Assembly and the convening of the General Assembly in regular session in one thousand nine hundred and twenty-nine and not exceeding five hundred thousand ($500,000) dollars in the aggregate in any succeeding interval between regular sessions of the General Assembly, and to execute in behalf of the State of North Carolina notes for said money so borrowed to run not exceeding two years, and to bear interest not exceeding five per cent per annum, payable semiannually. Said notes shall be in such forms as the State Treasurer may determine, and the obligations for the interest thereupon after maturity shall be receivable in payment of taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. The said notes shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1927, c. 49, s. 2.)

§ **142-18. Report to General Assembly.**—At each, the next regular or extra session of the General Assembly, the Governor and Council of State shall report to it the proceedings of the Governor and Council of State in borrowing money under this article, setting out fully the facts upon which they held that the emergency existed which authorized such borrowing. (1927, c. 49, s. 3.)

§ **142-19. Power given to Director of Budget to authorize State Treasurer to borrow money.**—The Director of the Budget by and with the consent of the Governor and Council of State shall have authority to authorize and direct the State Treasurer to borrow, in the name of the State and pledge the credit of the State for the payment thereof, in anticipation of the collection of taxes, such sums as may be necessary to make the payment on appropriations to the various institutions, departments and agencies of the State as even as possible so as to preserve the best interest of the State in the conduct of the various institutions, departments and agencies of the State during each fiscal year. (1927, c. 195.)

Article 3.

Refunding Bonds.

§ **142-20. Title of article.**—This article shall be known and may be cited as the "State Refunding Bond Act." (1935, c. 445, s. 1.)

§ **142-21. Refunding bonds authorized for State.**—The State Treasurer is hereby authorized, by and with the consent of the Governor and Council of State, to issue at any one time or from time to time bonds of the State for the purpose of refunding any or all bonds of the State then outstanding, but no such refunding bonds shall be issued except when such refunding may be accomplished at a saving to the State of North Carolina by securing a lower rate of interest than the interest rate on the bonds to be refunded. (1935, c. 445, s. 2.)

§ **142-22. Date and rate of interest; maturity.**—Such refunding bonds shall bear such date or dates and such rate or rates of interest, not exceeding six per cent per annum, payable semiannually, and shall mature at such time or times, not more than forty years from date, as may be fixed by the Governor and Council of State. (1935, c. 445, s. 3.)

§ **142-23. Execution; interest coupons; registration; form and denomination.**—Such refunding bonds shall be signed by the Governor and the State Treasurer, and sealed with the great seal of the State, and shall carry interest coupons which shall bear the signature of the State Treasurer, or a facsimile thereof, and such bonds shall be subject to registration as is now or may hereafter be provided by law for State bonds, and the form and denomination thereof shall be such as the State Treasurer may determine in conformity with this article. (1935, c. 445, s. 4.)

§ **142-24. Sale of bonds.**—Subject to determination by the Governor and Council of State as to the manner in which such bonds shall be offered for sale, whether by publishing notices in certain newspapers and financial journals or by mailing notices or by inviting bids by correspondence or otherwise, the State Treasurer is authorized to sell such bonds at one time or from time to time at the best price obtainable, but in no case for less than par and accrued interest. (1935, c. 445, s. 5.)

§ **142-25. Proceeds directed to separate fund; use limited.**—The proceeds of such bonds shall be placed by the State Treasurer in a separate fund and used solely for the purpose specified in § 142-21. (1935, c. 445, s. 6.)

§ **142-26. State's credit and taxing power pledged.**—The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal and interest of the bonds herein authorized. (1935, c. 445, s. 7.)

§ **142-27. Coupons receivable for debts due State.**—The coupons of said bonds after maturity shall be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. (1935, c. 445, s. 8.)

§ **142-28. Exemption from taxation.**—All of such bonds and coupons shall be exempt from all State, county and municipal taxation or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest on such bonds shall not be subject to taxation as for income, nor shall such bonds or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1935, c. 445, s. 9.)

§ **142-29. Investment in bonds made lawful for fiduciaries.**—It shall be lawful for all executors, administrators, guardians and fiduciaries generally, and all sinking fund commissions, to invest any moneys in their hands in such bonds. (1935, c. 445, s. 10.)

ARTICLE 4.

Sinking Fund Commission.

§ **142-30. Title of article.**—This article shall be known as "The Sinking Fund Commission Act." (1925, c. 62, s. 1.)

§ **142-31. Creation; duties.**—A State Sinking Fund Commission is hereby created, the members of which shall be the Governor, State Treasurer and Auditor, who shall serve without additional compensation. It shall be the duty of the Commission to see that the provisions of all sinking fund laws are complied with and to provide for the custody, investment and application of all sinking funds. The Commission and its members may call upon the Attorney General for legal advice as to their duties, powers and responsibilities hereunder. (1925, c. 62, s. 2.)

§ **142-32. To adopt rules; organization.**—The Commission shall adopt rules for its organization and government and the conduct of its affairs. Its chairman shall be the Governor and its secretary the Auditor. All clerks and employees in the office of the Governor, Auditor and Treasurer may be called upon to assist the Commission. (1925, c. 62, s. 3.)

§ **142-33. Treasurer of Commission; liability.**—The State Treasurer shall be ex officio treasurer of the Commission and the custodian of the sinking fund and the investments thereof. He and the sureties upon his official bond as State Treasurer shall be liable for any breach of faithful performance of his duties under this article as well as his duties as State Treasurer, and his official bond shall be made to comply with this requirement. (1925, c. 62, s. 4.)

§ **142-34. Investment of sinking funds.**—Moneys in the sinking funds herein shall not be loaned to any department of the State, but shall be invested by the Commission in:

(1) Bonds of the United States or bonds or securities fully guaranteed both as to principal and interest by the United States.

(2) Bonds or notes of the State of North Carolina, and in the obligations of any quasi-public corporation in which the State of North Carolina owns not less than fifty-one per cent of its capital stock.

(3) Bonds of any other state whose full faith and credit are pledged to the payment of the principal and interest thereof.

(4) Bonds of any county in North Carolina, any city or town in North Carolina and any school district in North Carolina, provided such bonds are general obligations of the subdivision or municipality issuing the same and provided that there is no limitation of the rate of taxation for the payment of principal and interest of the bonds. (1925, c. 62, s. 5; 1931, c. 415; 1935, c. 146; 1937, c. 82; 1941, c. 17, s. 1.)

Cross Reference.—As to investment in bonds guaranteed by the United States, see § 53-44.

Editor's Note.—The 1935 amendment added the last clause to subdivision (2), and the 1941 amendment made subdivision (1) applicable to securities guaranteed by the United States.

§ **142-35. Purchase of securities.**—No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. No securities shall be purchased except bonds of the United States, or bonds or securities fully guaranteed both as to principal and interest by the United States, or bonds or notes of the State of North Carolina, unless the vendor shall deliver with the securities an opinion of an attorney at law, believed by the Commission to be competent and to be recognized by investment dealers as an authority upon the law of public securities, to the effect that the securities purchased are valid and binding obligations of the issuing governmental agency or unit, unless the Commission shall be satisfied that such opinion can be readily obtained when required, it being the intention of this requirement to assure the Commission that such securities are valid

and that they will not be unsalable by the Commission because of doubts as to the validity thereof. The Commission is empowered to appoint one or more of its members for the purpose of making purchases and sales of securities. (1925, c. 62, s. 6; 1941, c. 17.)

Editor's Note.—The 1941 amendment rewrote this section.

§ **142-36. Interest of securities held as part of sinking fund.**—The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. Bonds and notes of the State of North Carolina purchased for any sinking fund shall not be canceled before maturity, but shall be kept alive, and the interest and principal thereof shall be paid into the sinking fund for which the same are held. (1925, c. 62, s. 7.)

§ **142-37. Registration of securities; custody thereof.**—Where practicable, securities purchased for sinking funds shall be registered as to the principal thereof in the name of "The State of North Carolina for the sinking fund for" (here briefly identify the sinking fund) and may be released from such registration by the signature of the State Treasurer, but the Treasurer shall not make such release unless and until the securities to be so released shall have been sold by the Commission or until the Commission shall have ordered such release. The Treasurer may in his discretion keep all securities purchased for sinking funds in the vault in the revenue building or rent safety deposit boxes in responsible banks. (1925, c. 62, s. 8; 1947, c. 152.)

Editor's Note.—The 1947 amendment rewrote the second sentence.

§ **142-38. Expenses of Commission.**—The necessary expense of the Commission for the rental of a safety deposit box, publication of advertisements, postage, insurance upon securities in transit, etc., not exceeding one-twentieth of one per cent of the amount in all sinking funds at the end of any fiscal year, shall be a charge upon the general fund. (1925, c. 62, s. 9.)

§ **142-39. Report of Commission.**—The Commission shall make a report in writing to the General Assembly not later than the tenth day of each regular and extraordinary session thereof, stating the nature and amount of all receipts and disbursements of each sinking fund since the last preceding report, and the amount contained in each fund, and giving an itemized statement of all investments of each fund as to name of security, purpose of issuance, date of maturity and interest rate, which report shall be spread upon the journals of the Senate and House of Representatives. (1925, c. 62, s. 10.)

§ **142-40. Embezzlement by member of Commission.**—If any member of the Commission shall embezzle or otherwise willfully and corruptly use or misapply any funds or securities in any sinking fund for any purpose other than that for which the same are held, such member shall be guilty of a felony, and shall be fined not more than ten thousand dollars, or imprisoned in the State's Prison not more than twenty years, or both, at the discretion of the court. (1925, c. 62, s. 11.)

§ **142-41. False entry by secretary or treasurer.**—If the secretary or treasurer of the Commission shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as such officer, or shall wittingly or falsely form, or cause to be formed, any statement of the condition of any sinking fund, or any statement required by this article to be made, with intent in any of said instances to defraud the State, or any person or persons, such secretary or treasurer, as the case may be, shall be guilty of a misdemeanor and fined at the discretion of the court not exceeding three thousand dollars, and imprisoned for not exceeding three years. (1925, c. 62, s. 12.)

§ 142-42. Interest of member in securities; removal.—If any member of the Commission shall have any pecuniary interest, either directly or indirectly, proximately or remotely, in any securities purchased or sold by the Commission, or shall act as agent for any investor or dealer for any securities to be purchased or sold by the Commission, or shall receive directly or indirectly any gift, emolument, reward, or promise of reward for his influence in recommending or procuring any such purchase or sale, he shall forthwith be removed from his position, and shall upon conviction be guilty of a misdemeanor, and fined not less than fifty dollars nor more than five hundred dollars, and be imprisoned, in the discretion of the court. (1925, c. 62, s. 13.)

§ 142-43. Report of sufficiency of sinking fund.—When the funds or securities in any sinking fund shall be found by the Sinking Fund Commission to be sufficient with interest accretions reasonably to be expected for the retirement at maturity of all bonds for which such sinking fund is held, and when the Commission shall file a statement of such finding in the office of the Auditor and in the office of the State Treasurer, further payments into such sinking fund shall be suspended and shall not again be made unless such fund should thereafter become insufficient for any reason. (1925, c. 62, s. 18.)

ARTICLE 5.

Sinking Funds for Highway Bonds.

§ 142-44. Highway bonds; annual payments.—For the retirement of the principal of nineteen million five hundred thousand dollars highway serial bonds heretofore issued under chapter two, Public Laws of 1921, regular session, a sinking fund is created, into which fund the State Treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of one hundred thousand dollars. (1923, c. 188, s. 2; C. S., s. 7472(s); 1925, c. 62, s. 15.)

Cross References.—As to transfer of sinking fund created by this section to general fund bond sinking funds, see § 142-53. As to repeal of this article insofar as it conflicts with article 7 of this chapter, see note under § 142-50.

Editor's Note.—The 1925 amendment substituted "fiscal year ending June 30, 1924" for "year."

§ 142-45. Highway bonds not issued; annual payments.—For the retirement of the principal of bonds issued for highway purposes, chapter two, Public Laws of 1921, regular session, over and above the nineteen million five hundred thousand dollars heretofore issued, a sinking fund is hereby created into which fund the State Treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of four hundred thousand dollars. (1923, c. 188, s. 3; C. S., s. 7472(t); 1925, c. 62, s. 16.)

Editor's Note.—The 1925 amendment substituted "fiscal year ending June 30, 1924" for "year."

§ 142-46. Source of funds.—All of the highway bond sinking fund payments to be made under §§ 142-44 and 142-45, aggregating five hundred thousand dollars ($500,000) annually, shall be made from the revenues collected under the provisions of said chapter two, Public Laws of 1921, if such revenues are sufficient therefor after setting aside therefrom the moneys provided by said chapter two for the maintenance of the State Highway Commission and the expenses of collecting highway revenues, and after setting aside moneys necessary for the payment of maturing principal of and interest upon highway bonds of the State: Provided, however, that no holder of any highway bonds of the State shall be prejudiced by this amendment or by any act amendatory of this section passed subsequent to the issuance of such bonds, and any such bondholder shall be entitled to all rights to which he would be

entitled if no such amendment had been made. (1923, c. 188, s. 4; C. S., s. 7472(u); 1925, c. 45, s. 4; c. 133, s. 4.)

Editor's Note.—By virtue of G. S. 136-1.1., "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

ARTICLE 5A.

Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

§ 142-47. Exchange of securities.—The State Sinking Fund Commission is hereby authorized to exchange any bonds of the State which shall at any time be held as an investment of moneys in any sinking fund under its control for like principal amounts of bonds of the State which shall then be held as an investment of moneys in any other sinking fund under its control, and in each such exchange each such sinking fund shall be charged with the market value of the bonds received by it, plus the accrued interest thereon, and shall be credited with the market value of the bonds exchanged therefor, plus the accrued interest thereon. Any difference in the amounts of such charges and such credits shall be adjusted by making the appropriate transfer of moneys from one sinking fund to the other sinking fund. The market value of each bond so exchanged shall be determined by the Commission, and such determination shall be based, as far as practicable, upon the current offering prices of bankers and dealers, taking into account the interest rates borne by the bonds and their maturities. (1943, c. 321, s. 1.)

§ 142-48. Investment of sinking funds.—The State Sinking Fund Commission shall invest the moneys in the sinking funds created by §§ 142-44 and 142-45 in highway bonds of the State unless the Commission shall determine that it would be more practicable, at the time of such investment, to invest such moneys in other bonds of the State or in other securities eligible for such investment. (1943, c. 321, s. 2.)

§ 142-49. Cancellation of highway bonds in sinking funds; increase of payments to funds.—If requested so to do by the Governor and Council of State, the State Sinking Fund Commission may at any time cancel any highway bonds of the State which are held in the sinking fund created by § 142-44 and which are a part of the bonds for the payment of which said sinking fund was so created, and to cancel any highway bonds of the State which are held in the sinking fund created by § 142-45 and which are a part of the bonds for the payment of which said sinking fund was so created.

Upon the cancellation of any highway bonds of the State which are held in the sinking fund created by § 142-44, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from one hundred thousand dollars to one hundred and fifty thousand dollars. Upon the cancellation of any highway bonds of the State which are held in the sinking fund created by § 142-45, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from four hundred thousand dollars to six hundred thousand dollars. (1943, c. 321, ss. 3-5.)

Cross Reference.—For list of highway bonds acts, see chapter 136, art. 8.

ARTICLE 6.

Citations to Bond and Note Acts.

1. Bonds to fund bonds issued pursuant to any act of the General Assembly passed prior to May 20, 1861, exclusive of bonds issued for the construction of the North Carolina Railroad; bonds issued pursuant to 1865, c. 3; bonds issued pur-

suant to 1867, c. 56; bonds issued pursuant to an act ratified March 10, 1866, entitled "An Act to Provide for the Payment of the State Debt Contracted before the War;" bonds issued pursuant to an act ratified August 10, 1868, entitled "An Act to Provide for Funding the Matured Interest on the Public Debt;" or any registered certificates belonging to the Board of Education pursuant to an act of the General Assembly of 1867. Consolidated Statutes, ss. 7411-7414, 7416-7432; 1879, c. 98, s. 1; 1901, c. 126; 1909, c. 399; 1913, c. 131; 1919, c. 314.

2. Bonds for the care of the insane, and to pay the deficit in the account of the State Hospital at Morganton. Consolidated Statutes, ss. 7433-7436; 1909, c. 510.

3. Bonds for payment of State bonds issued pursuant to 1903, c. 750 and 1905, c. 543, and to pay the holders of bonds of the issue upon which the South Dakota judgment was rendered. Consolidated Statutes, ss. 7440-7444; 1909, c. 718; 1911, c. 73.

4. Bonds for State building. Consolidated Statutes, ss. 7437-7439; 1911, c. 66.

5. Bonds to relieve the deficit of the State treasury and to improve the new State building. Consolidated Statutes, ss. 7448-7452; 1913, c. 102.

6. Bonds for central heating plant. Consolidated Statutes, ss. 7445-7447; 1913, c. 143.

7. Bonds for construction and improvement of Caswell Training School at Kinston. Consolidated Statutes, ss. 5905-5912; 1911, c. 89, ss. 9, 10, 11; 1917, c. 269.

8. Bonds for permanently enlarging the State's educational and charitable institutions. Consolidated Statutes, ss. 7459-7463; 1917, c. 154; Joint Resolution No. 40, 1917; 1919, c. 44; 1919, c. 314.

9. Bonds for payment of North Carolina railroad bonds. Consolidated Statutes, ss. 7453-7458; 1919, c. 1; 1919, c. 11.

10. Notes in anticipation of the sale of bonds for permanent enlargement of certain State institutions. Consolidated Statutes, ss. 7464-7466, 7467-7472; 1919, c. 328.

11. Bonds to pay the notes authorized by 1921, c. 43. Consolidated Statutes, ss. 7472(z)-7472(ii); 1921, c. 107.

12. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(a)-7472(i); 1921, c. 165; Ex. Sess. 1921, c. 82.

13. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1921, c. 147.

14. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. Consolidated Statutes, ss. 5688-5694; 1923, c. 136, ss. 278-284; 1925, c. 201.

15. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(j)-7472(q); 1923, cc. 162, 164; 1925, c. 192; 1927, c. 147; 1929, c. 295; 1935, c. 439; 1937, c. 296; 1937, c. 392; Ex. Sess. 1938, c. 1.

16. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1925. 1925, c. 112.

17. Notes for funding prison debt. 1925, c. 132.

18. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1927, c. 199.

19. Bonds for Industrial Farm Colony for Women. 1927, c. 219, ss. 14-24; 1931, c. 128.

20. Bonds to acquire and develop State prison farm. 1927, c. 152; 1931, c. 110.

21. Bonds for payment of notes and obligations issued pursuant to 1927, c. 49. 1931, c. 28.

22. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1931, and to place the fiscal operations of the State for the biennium 1931-1933 upon a budgetary basis. 1931, c. 371, s. 2.

23. Funding Bond Act of 1933. 1933, c. 330.
24. Bonds for N. C. State stadium. 1933, c. 291; 1935, c. 62.
25. Notes to pay appropriations for 1935 and 1937. 1935, c. 129.
26. Notes for the purchase, by the State Textbook Purchase and Rental Commission, of textbooks and supplies for the pupils of the public schools of the State. 1935, c. 422, s. 6.
27. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. 1935, c. 201, ss. 1-8.
28. Bonds for the purchase, by the State Textbook Commission, of textbooks and supplies for the pupils of the public schools of the State. 1937, c. 169, ss. 7-10.
29. Bonds to reimburse for emergency advances. 1937, c. 193 (biennium 1937-1939).
30. Board of health bonds for revenue producing undertakings. 1937, c. 324.
31. New state office building bonds. 1937, c. 364.
32. Notes to pay appropriations for the biennium ending June 30, 1941. 1939, c. 77.
33. Validation of proceedings of the University of North Carolina relating to the issuance and payment of certain revenue bonds of the University authorized by 1935, c. 479, 1936, c. 2, and 1937, c. 323. 1939, c. 289.
34. North Carolina State College Athletic Stadium Loan Act. 1939, c. 399.
35. Bonds for the construction of an Eastern North Carolina Sanatorium for the Treatment of Tuberculosis. 1939, c. 325, ss. 7, 8, 9; 1941, c. 86, ss. 2, 2A.
36. Bonds to reimburse the State treasury for advances made therefrom for permanent improvements at certain State institutions and for purchasing books. 1939, c. 67.
37. Notes to pay appropriations for biennium ending June 30, 1943. 1941, c. 41.
38. Bonds to reimburse funds for emergency advances. 1941, c. 81.
39. Bonds for improvements at North Carolina State College of Agriculture and Engineering. 1941, c. 94.
40. Bonds to refund the outstanding athletic stadium bonds issued by the North Carolina State College of Agriculture and Engineering of the University of North Carolina, and bonds for the liquidation of the outstanding indebtedness of the athletic department of said institution. 1941, c. 169. See also c. 240.
41. Bonds or notes for the protection of the State's interest in the Atlantic and North Carolina Railroad. 1941, c. 170.
42. Bonds and notes for construction of a building and improvements at North Carolina State College of Agriculture and Engineering. 1941, c. 240.
43. Notes to pay appropriations for biennium ending June 30, 1945. 1943, c. 320.
44. Bonds for loan to Atlantic and North Carolina Railroad for rehabilitation of properties. 1943, c. 412.
45. Bonds for loan to Atlantic and North Carolina Railroad for refunding certain indebtedness. 1943, c. 443.
46. State Ports Bond Act of 1949. 1949, c. 820.
47. School plant construction and repair bonds. 1949, cc. 1020, 1249 (s. 22½), 1295.
48. State Mental Institutions Bond Act of 1953. 1953, c. 1148.
49. State Permanent Improvement Bond Act of 1953. 1953, c. 1149.
50. Bonds for dormitories at University of North Carolina and certain colleges. 1955, c. 1289.
51. State Capital Improvement Bond Act of 1957. 1957, c. 935.
52. Capital Improvement State Voted Bond Improvement Act of 1959. 1959, c. 1038.
53. State Capital Improvement Act of 1959. 1959, c. 1039.
54. State Capital Improvement Legislative Bond Act of 1961. 1961, c. 951.

55. State Capital Improvement Voted Bond Act of 1961. 1961, c. 1037.
56. Stadium Revenue Bond Act. 1963, c. 686.
57. State Capital Improvement Legislative Bond Act of 1963. 1963, c. 838.
58. Bonds to provide funds for public school facilities in the counties of the State. 1963, c. 1079.

Cross Reference.—As to refunding bonds issued under Session Laws 1955, c. 1289, see § 116-195.

Article 7.

General Fund Bond Sinking Fund.

§ 142-50. Title of article.—This article shall be known as "the State General Fund Bond Sinking Fund Act of 1945." (1945, c. 3, s. 1.)

Laws Repealed.—Section 2 of the act inserting this article provides: "All laws and clauses of laws in conflict with this act, and in particular chapter six of the Session Laws of one thousand nine hundred and forty-three, the State Post-War Reserve Fund Act, insofar as it conflicts with the appropriations herein made, and chapter one hundred and eighty-eight of one thousand nine hundred and twenty-three, chapter one hundred and ninety-two of one thousand nine hundred and twenty-five, chapters one hundred and forty-seven, one hundred and fifty-two and two hundred and nineteen of one thousand nine hundred and twenty-seven, insofar as contributions are required to be made to these sinking funds for the redemption of general fund bonds covered by these acts, which bonds are provided for under the general fund bond sinking fund established by this act, are hereby repealed."

§ 142-51. Creation of Fund.—There is hereby created a State General Fund Bond Sinking Fund for the purpose of retiring all outstanding general fund bonds and interest as they mature from time to time. (1945, c. 3, s. 1.)

§ 142-52. Amount placed in Fund.—There is appropriated from the general fund of the State the sum of fifty-one million, five hundred eighty-five thousand and seventy-nine dollars ($51,585,079.00), which funds shall be taken from the general fund surplus, as may now exist or as may accrue by June thirtieth, one thousand nine hundred and forty-five, as far as possible and any additional amount necessary to provide the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars ($51,585,079.00) shall be taken from the State Post-War Reserve Fund established under §§ 143-191 to 143-194, and the amount necessary for this purpose is hereby appropriated from the State Post-War Reserve Fund, which sum so appropriated shall be transferred to "the State General Fund Bond Sinking Fund" and shall be used exclusively for the purpose of retiring the principal and interest on outstanding general fund bonds authorized by and issued under the authority of the following acts of the legislature, to wit:

Title of Issue	Chapter	Year
State hospital	510	1909
Refunding	399	1909
Administration	66	1911
School for feeble-minded	87	1911
Refunding	73	1911
Improvement	102	1913
Funding	107	1921
Educational and charitable	165	1921
Educational and charitable	162	1923
Educational and charitable	192	1925
Educational and charitable	147	1927
Great Smoky Mountains Park (Serial)	48	1927
Farm Colony for Women	219	1927
The State prison farm	152	1927
World War veterans loan	97	1927

Title of Issue	Chapter	Year
World War veterans loan	298	1929
General fund bonds (Debit balance)	330	1933
Educational and charitable	296	1937
State office building	365	1937
Permanent improvement	1	1938
Permanent improvement and school books	67	1939
Permanent improvement	240	1941
Permanent improvement	81	1941
Permanent improvement	86	1941

(1945, c. 3, s. 1; 1949, c. 655.)

Editor's Note.—The 1949 amendment inserted in the list of bond issues the references to World War veterans loan.

§ 142-53. Merger of general fund bond sinking funds previously created.—The general fund bond sinking funds heretofore created under authority of chapter one hundred and eighty-eight of the Public Laws of 1923, chapter one hundred and ninety-two of the Public Laws of 1925, chapter one hundred and forty-seven of the Public Laws of 1927, chapter one hundred and fifty-two of the Public Laws of 1927, and chapter two hundred and nineteen of the Public Laws of 1927 for the purpose of retiring certain long term general fund bonds are hereby combined with, transferred to and made a part of "the State General Fund Bond Sinking Fund of 1945," and together with the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars ($51,585,079.00) appropriated by this law shall be used to retire the general fund bonds and interest as they may mature from time to time. (1945, c. 3, s. 1.)

Editor's Note.—Acts 1923, ch. 188, referred to in this section, was codified as §§ 142-44 through 142-46.

§ 142-54. Provisions of Sinking Fund Commission Act applicable.—The moneys paid into "the State General Fund Bond Sinking Fund of 1945" herein provided for, shall in all respects, be subject to the requirements, limitations and provisions of chapter sixty-two of the Public Laws of 1925, and as amended, and known as "the Sinking Fund Commission Act." (1945, c. 3, s. 1.)

Editor's Note.—The 1925 act referred to in this section was codified as §§ 142-30 through 142-45.

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

Article 2.

State Personnel Department.

ARTICLE 1.

Executive Budget Act.

§ 143-1. Scope and definitions.—This article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be construed to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Department of Administration and to be performed by it, but it shall mean when used otherwise any State agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any State

funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the State, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Department of Administration" for "Budget Bureau" in the third sentence.

§ 143-2. Purposes.—It is the purpose of this article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this article is to include within the powers of the Budget Bureau all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Budget Bureau in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise.

Notwithstanding the general language in this article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G. S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, s. 2.)

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

Editor's Note.—The first 1955 amendment, added the last paragraph. The second 1955 amendment made changes in the second paragraph.

The 1957 amendment deleted from the second paragraph certain provisions relating to the Governor's connection with the Budget Bureau and relating to the budget officer known as the "Assistant to the Director." The amendment substituted "Director of the Budget" for "Budget Bureau" in the third paragraph, and substituted "Department of Administration" for "Budget Bureau" in the fourth paragraph. It also struck out the former reference to the "Assistant Director of the Budget" in the fourth paragraph.

As Director of the Budget, the Governor has large powers in supervising the expenditures of State funds and in determining what appropriations shall be made by the General Assembly. The idea that our governments, federal, State and local, should be run in a business-like fashion is gaining prevalence and the budget system in government is an attempt to carry out the wishes of the people that government shall be administered economically and efficiently. 4 N. C. Law Rev. 17.

§ 143-3. Examination of officers and agencies; disbursements.—The Director shall have power to examine under oath any officer or any head, any clerk or em-

ployee, of any department, institution, bureau, division, board, commission, corporation, association, or any agency; to cause the attendance of all such persons, requiring such persons to furnish any and all information desired relating to the affairs of such agency; to compel the production of books, papers, accounts, or other documents in the possession or under the control of such person so required to attend. The Director or his authorized representative shall have the right and the power to examine any State institution or agency, board, bureau, division, commission, corporation, person, and to inspect its property, and inquire into the method of operation and management.

The Director shall have power to have the books and accounts of any of such agencies or persons audited; to supervise generally the accounting and auditing systems thereof now in force, and to inaugurate such changes in respect thereto which may be necessary, in his opinion, to exhibit and to furnish complete and correct information as to its financial condition, including the budget accounts of such departments, bureaus or associations within the terms of this article. The cost of making all audits and effecting all necessary changes in the system of accounting shall be paid from the regular maintenance appropriation made by the General Assembly for such bureaus, departments, divisions, institutions, commissions, persons or agencies that may be thus audited.

It shall be the duty of the Director to recommend to the General Assembly at each session such changes in the organization, management and general conduct of the various departments, institutions and other agencies of the State, and included within the terms of this article, as in his judgment will promote the more efficient and economical operation and management thereof.

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn by the State Auditor and the State Treasurer, shall bear two signatures of such officers as will be designated by the Director of the Budget. (1925, c. 89, s. 3; 1929, c. 100, s. 3, c. 337, s. 4.)

§ 143-3.1. Transfer of functions.—Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of pre-audit of State agency expenditures, issuance of warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Director of the Budget. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Department of Administration, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Department of Administration. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Department of Administration the unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Director of the Budget under the provisions of this section. (1955, c. 578, s. 2; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Department of Administration" and "Director of the Budget" for "Budget Bureau."

§ 143-3.2. Issuance of warrants upon State Treasurer.—Upon the transfer of functions from the Auditor's office to the Director of the Budget, as provided in § 143-3.1, the Director of the Budget shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer; and to carry out this responsibility the Director shall designate a State Disbursing Officer whose duties shall be performed as a function of the Department of Ad-

ministration. All warrants upon the State Treasurer shall be signed by the State Disbursing Officer, who before issuing same shall determine the legality of payment and the correctness of the accounts; provided that the State Auditor and the State Treasurer shall have the exclusive authority to issue all warrants for the operation of their respective department and such warrants shall be paid by the State Treasurer from the appropriations provided therefor; and provided further, that when considered expedient, due to its size or location, a State agency may upon approval of the Director of the Budget make expenditures through a disbursing account with the State Treasurer. All deposits in such disbursing accounts shall be by the State Disbursing Officer's warrant, and a copy of each voucher making withdrawals from such disbursing accounts, together with such supporting data as may be required by the Director of the Budget, shall be forwarded to the Department of Administration monthly or otherwise as may be required by the Director of the Budget; provided, however, that a central payroll unit operating under the Department of Administration may make deposits and withdrawals directly to and from a disbursing account which shall constitute a revolving fund for servicing payrolls passed through such central payroll unit. The State Disbursing Officer is authorized to use a facsimile signature machine in affixing his signature to warrants. The Director of the Budget shall secure insurance and/or a bond in an amount of not less than twenty-five thousand dollars ($25,000) to protect the State of North Carolina against any misuse or unauthorized use of the facsimile signature machine by any person. It is further required that the State Disbursing Officer shall be placed under an official bond in a penal sum to be fixed by the Governor and Advisory Budget Commission at not less than fifty thousand dollars ($50,000). Such official bond shall be a bond with corporate surety and furnished by a company admitted to do business in the State, and the premiums will be paid by the State out of the appropriations to the Department of Administration. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1961, c. 1194.)

Editor's Note.—The 1957 amendment substituted "Department of Administration" and "Director of the Budget" for "Budget Bureau." The 1961 amendment added the proviso at the end of the third sentence.

§ **143-4. Advisory Budget Commission.**—The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, and two other persons to be appointed by the Governor, shall constitute the Advisory Budget Commission, whose duties shall be such as are hereinafter defined.

The members of the Advisory Budget Commission shall receive as full compensation for their services ten dollars per day for each day which they shall serve and their expenses. The Advisory Budget Commission shall be called in conference in January and July of each year, upon ten days' notice by the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

Vacancies on the Commission shall be filled by the Governor: Provided, any vacancy caused by the death, resignation, or other removal from office of any member of the Commission by virtue of his office as a member of the General Assembly shall be filled by the Governor upon the recommendation of the presiding officer of that branch of the General Assembly in which such member holds office.

The Advisory Budget Commission alone shall be responsible for recommending to the General Assembly proposed biennial budgets for the requirements of the State Auditor and the State Treasurer, and for such purposes the Advisory Budget Commission shall require the State Auditor and State Treasurer to maintain records and to submit budget requests and periodic reports on their respective departments in the same manner and form as do other State agencies, and may further direct that such requests and reports be filed for safekeeping in the office of the Department of Administration.

Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a competent certified public ac-

countant who is in no way otherwise affiliated with the State or with any agency thereof to conduct a thorough and complete audit of the receipts and expenditures of the State Auditor's office during the immediate fiscal year just ended, and to report to the Advisory Budget Commission on such audit not later than the following October first. A sufficient number of copies of such audit shall be provided so that at least one copy is filed with the Governor's Office, one copy with the Department of Administration and at least two copies filed with the Secretary of State.

In all matters where action on the part of the Advisory Budget Commission is required by this article, four (4) members of said Commission shall constitute a quorum for performing the duties or acts required by said Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768; 1955, c. 578, s. 3; 1957, c. 269, s. 2.)

Editor's Note.—The 1931 amendment added the third paragraph, and the 1951 amendment added the last paragraph.

The 1955 amendment inserted the fourth and fifth paragraphs and changed the number constituting a quorum in the last paragraph from three to four.

The 1957 amendment substituted "Department of Administration" for "Budget Bureau" in the fourth and fifth paragraphs. It also struck out "or Assistant to the Director" formerly appearing after "Director" in the second sentence of the second paragraph.

§ **143-5. Appropriation rules.**—All moneys heretofore and hereafter appropriated shall be deemed and held to be within the terms of this article and subject to its provisions unless it shall be otherwise provided in the act appropriating the same; and no money shall be disbursed from the State treasury except as herein provided. (1925, c. 89, s. 5; 1929, c. 100, s. 5.)

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

§ **143-6. Information from departments and agencies asking State aid.**—On or before the first day of September biennially, in the even numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

Since it is not practicable to require the members of the judicial system who preside over courts to attend and furnish such information, upon request of the Director, the Attorney General shall furnish such information, data and estimates and expenditures as may be desired in reference to the Judicial Department of this State.

Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request. The Department of Administration shall then prepare preliminary studies and cost estimates for the use of the requesting department, bureau, division, officer, board, commission, institution, or other State agency or undertaking in presenting its request to the Director of the Budget. (1925, c. 89, s. 6; 1929, c. 100, s. 6; 1957, c. 584, s. 4.)

Editor's Note.—The 1957 amendment added the third paragraph. Section 9 of the amendatory act provides that "nothing in this act shall be construed as repealing in any manner G. S. 146-1."

§ **143-7. Itemized statements and forms.**—The statements and estimates required under § 143-6 shall be itemized in accordance with the budget classification

adopted by the Director, and upon forms prescribed by him, and shall be approved and certified by the respective heads or responsible officer of each department, bureau, board, commission, institution, or agency submitting same. Official estimate blanks which shall be used in making these reports shall be furnished by the Director of the Budget. (1925, c. 89, s. 7; 1929, c. 100, s. 7; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Director of the Budget" for "Budget Bureau" at the end of the section.

§ 143-8. Statements of State Disbursing Officer as to legislative expenditures.—On or before the first day of September, biennially, in the even numbered years, the State Disbursing Officer shall furnish the Director a detailed statement of expenditures of the General Assembly for the current fiscal biennium, and an estimate of its financial needs, itemized in accordance with the budget classification adopted by the Director and approved and certified by the presiding officer of each House for each year of the ensuing biennium, beginning with the first day of July thereafter; and a detailed statement of expenditures of the judiciary and any other institution or commission that may be requested by the Director for each year of the current fiscal biennium, and upon such request by the Director an estimate of its financial needs as provided by law, itemized in accordance with the budget classification adopted by the Director for each year of the ensuing biennium, beginning with the first day of July thereafter. The State Disbursing Officer shall transmit to the Director with these estimates an explanation of all increases or decreases. These estimates and accompanying explanations shall be included in the budget by the Director with such recommendations as the Director may desire to make in reference thereto. (1925, c. 89, s. 8; 1929, c. 100, s. 8; 1961, c. 1181, s. 1.)

Editor's Note.—The 1961 amendment substituted "State Disbursing Officer" for "State Auditor."

§ 143-9. Information to be furnished upon request.—The departments, bureaus, divisions, officers, commissions, institutions, or other State agencies or undertakings of the State, upon request, shall furnish the Director, in such form and at such time as he may direct, any information desired by him in relation to their respective activities or fiscal affairs. The State Auditor shall also furnish the Director any special, periodic, or other financial statements as the Director may request. (1925, c. 89, s. 10; 1929, c. 100, s. 9.)

§ 143-10. Preparation of budget and public hearing.—The members of the Commission shall, at the request of the Director, attend such public hearing and other meeting as may be held in the preparation of the budget. Said Commission shall act at all times in an advisory capacity to the Director on matters relating to the plan of proposed expenditures of the State Government and the means of financing the same.

The Director, together with the Commission, shall provide for public hearings on any and all estimates to be included in the budget, which shall be held during the months of October and/or November and/or such other times as the Director may fix in the even numbered years, and may require the attendance at these hearings of the heads or responsible representatives of all State departments, bureaus, divisions, officers, boards, commissions, institutions, or other State agencies or undertakings, and such other persons, corporations and associations, using or receiving or asking for any State funds. (1925, c. 89, s. 11; 1929, c. 100, s. 10.)

§ 143-11. Survey of departments.—On or before the fifteenth day of December, biennially in the even numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend funds as hereinbe-

fore defined, in the interest of economy and efficiency, and a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment and shall cause to be incorporated therein such statement of disagreement and the particulars thereof, as the Commission or any of its members shall deem proper to submit as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receive or may receive for use and expenditure any State funds as hereinbefore defined, in accordance with the classification adopted by the Director, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June thirtieth.

(3) A statement of special funds.

(4) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two appropriation years.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix. (1925, c. 89, s. 12; 1929, c. 100, s. 11.)

§ 143-11.1. Photographs to aid in determining needs of institutions requesting permanent improvements.—When the Advisory Budget Commission makes its biennial inspection of the facilities of the State and receives requests from the State institutions in the preparation of the report of the Advisory Budget Commission, the Director of the Budget may secure the services of a qualified photographer to accompany the Advisory Budget Commission on such tour of inspection and to take such photographers as the members of the Advisory Budget Commission may deem advisable in order to assist the Advisory Budget Commission and the members of the General Assembly in obtaining a clear conception of the needs of the various institutions requesting permanent improvements. The Director of

the Budget may furnish sufficient copies of such photographs to the General Assembly at the time it is considering requests for appropriations from such institutions to enable each member of the General Assembly to have ready access to such photographs.

For the purpose of securing the service provided in this section, the Director of the Budget is authorized to obtain the services of any regular photographer in the employment of the State and if no such photographer is available the Director of the Budget may secure the services of a professional photographer and the expense of such service shall be borne from the regular funds of the Budget Bureau, and if necessary, additional funds may be secured from the Contingency and Emergency Fund. (1953, c. 982; 1957, c. 269, s. 2.)

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

Editor's Note.—The 1957 amendment deleted "Assistant" formerly appearing before "Director" at four places in the section.

§ **143-12. Bills containing proposed appropriations.**—The Director, by and with the advice of the Commission, shall cause to be prepared and submitted to the General Assembly the following bills:

(1) A bill containing all proposed appropriations of the budget for each year in the ensuing biennium, which shall be known as the "Budget Appropriation Bill."

(2) A bill containing the views of the Director of the Budget with respect to revenue for the ensuing biennium, which shall be known as the "Budget Revenue Bill," which will in the opinion of the Director and the Commission provide an amount of revenue for the ensuing biennium, sufficient to meet the appropriations contained in the Budget Appropriation Bill.

(3) A bill containing proposed methods and machinery for the collection of taxes and the listing of property for taxation, in the several counties of the State, and municipalities, which shall be known as the "Budget Machinery Bill," and such bill shall contain the judgment and the result of all the latest, most improved methods of listing and collection of taxes, for counties and municipalities, according to the best information obtainable by the Commission and the Director, with a view to the ease and simplification of the methods of the listing of property for such taxation and for the collection of the same, having in view the necessity of counties and municipalities to collect the highest percentage possible of taxes levied at the minimum cost.

To the end that all expenses of the State may be brought and kept within the budget, the Budget Appropriation Bill shall contain a specific sum as a contingent or emergency appropriation. The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Director of the Budget, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

If the Director and the Commission shall not agree as to the Appropriation, Revenue and Machinery Bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and shall cause to be submitted

therewith such statements of disagreement, and the particulars thereof, as the Commission, or any of its members, shall find proper to submit as representing their own views. (1925, c. 89, s. 13; 1929, c. 100, ss. 12, 13, 14; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Director of the Budget" for "Budget Bureau" in subdivision (2) and in the next to last paragraph.

§ 143-13. Printing copies of budget report and bills and rules for the introduction of the same.—The Director shall cause to be printed one thousand copies each of the budget report, the Budget Appropriation Bill, the Budget Revenue Bill, and the Budget Machinery Bill. The Governor shall present copies thereof to the General Assembly, together with the biennial message, except incoming Governors may, at the first session of the General Assembly in their respective terms, submit the same after the biennial message has been presented to the General Assembly. The Budget Appropriation Bill shall be introduced by the chairman of the Committee on appropriations in each house of the General Assembly, and the Budget Revenue Bill and the Budget Machinery Bill shall be introduced by the chairman of the finance committees in each branch of the General Assembly: Provided, that for the years in which the Governor is elected, the Director shall deliver the budget report and the Budget Appropriation Bill and the Budget Revenue Bill and the Budget Machinery Bill to the Governor-elect, on or before the fifteenth day of December, and the said budget report, Appropriation, Revenue and Machinery Bills, shall be presented by the Governor to the General Assembly with such recommendations in the way of amendments, or other modifications, together with such criticism as he may determine. The provisions herein contained as to the introduction of the bills mentioned in this section shall be considered and treated as a rule of procedure in the Senate and House of Representatives until otherwise expressly provided for by a rule in either, or both, of said branches of the General Assembly. (1925, c. 89, s. 14; 1929, c. 100, s. 15.)

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill.—The appropriations committees of the House of Representatives and the Senate and subcommittees thereof shall sit jointly in open sessions while considering the budget and such consideration shall embrace the entire budget plan, including appropriations for all purposes, revenue, borrowings and other means of financing expenditures. Such joint meetings shall begin within five days after the budget has been presented to the General Assembly by the Governor. This joint committee shall have power to examine under oath any officer or head of any department or any clerk or employee thereof; and to compel the production of papers, books of account, and other documents in the possession or under the control of such officer or head of department. This joint committee may also cause the attendance of heads or responsible representatives of a department, institution, division, board, commission, and agency of the State, to furnish such information and answer such questions as the joint committee shall require. To these sessions of the joint committee or subcommittees shall be admitted, with the right to be heard, all taxpayers or other persons interested in the estimates under consideration. The Director or a designated representative shall have the right to sit at these public hearings and to be heard on all matters coming before the joint committee or subcommittees thereof. The said joint committee or any subcommittee thereof shall have full power and authority to punish for disobedience of its writs or orders requiring persons to attend such hearings and to answer under oath such questions as may be put to them by such committee or anyone acting in its behalf; such punishment shall be as is now, or may hereafter be prescribed for direct contempt, but with the right of such offender to appeal from the judgment of such committee to the Superior Court of Wake County, upon the giving of such bond as may be required by such committee. In so far as this section prescribes the method and manner of hearings before such committees this section shall be considered and have the force of a rule of each branch of the General Assembly until and unless a

change has been made by an express rule of such branch thereof. (1925, c. 89, s. 15; 1929, c. 100, s. 16; 1953, c. 501; 1955, c. 5.)

Editor's Note.—The 1953 amendment added at the end of the section a proviso which was repealed by the 1955 amendment.

§ 143-15. Reduction and increase of items by General Assembly.—The provisions of this article shall continue to be the legislative policy with reference to the making of appropriations and shall be treated as rules of both branches of the General Assembly until and unless the same may be changed by the General Assembly either by express enactment or by rules adopted by either branch of the General Assembly.

The General Assembly may reduce or strike out such item in the Budget Appropriation Bill as it may deem to be the interest of the public service, but neither House shall consider further or special appropriations until the Budget Appropriation Bill shall have been enacted in whole or in part or rejected, unless the Governor shall submit and recommend an emergency appropriation bill or emergency appropriation bills, which may be amended in the manner set out herein, and such emergency appropriation bill, or bills, when enacted, shall continue in force only until the Budget Appropriation Bill shall become effective, unless otherwise provided by the General Assembly.

The General Assembly may also increase any appropriation set out in the Budget Appropriation Bill and may provide additional appropriations for other purposes if additional revenue or revenues, equal to the amount of such additional appropriations and increases, are provided for by corresponding amendment to the Budget Revenue Bill. No bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for a single object therein described and shall provide an adequate source of revenue for defraying such appropriation, or unless it appears from the budget report or the Budget Revenue Bill that there is sufficient revenue available therefor. The appropriation, or appropriations, in such bills shall be in accordance with the classification used in the budget. (1925, c. 89, s. 16; 1929, c. 100, s. 17.)

§ 143-16. Article governs all departmental, agency, etc., appropriations.—Every State department, bureau, division, officer, board, commission, institution, State agency, or undertaking, shall operate under an appropriation made in accordance with the provisions of this article; and no State department, bureau, division, officer, board, commission, institution, or other State agency or undertaking shall expend any money, except in pursuance of such appropriation and the rules, requirement and regulations made pursuant to this article. (1925, c. 89, s. 17; 1929, c. 100, s. 18.)

§ 143-17. Requisition for allotment.—Before an appropriation of any spending agency shall become available, such agency shall submit to the Director, not less than twenty days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Auditor who in the course of his audits shall check for compliance with such allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director of the Budget in writing: Provided, that quarterly allotments made to the Auditor's office and the Treasurer's office shall be in such amounts as may be designated by the Advisory Budget Commission, and shall be made available in accordance with procedures

determined by the Advisory Budget Commission. (1925, c. 89, s. 18; 1929, c. 100, s. 19; 1955, c. 578, s. 4.)

Editor's Note.—The 1955 amendment made changes in the last two sentences and added the proviso.

§ **143-18. Unincumbered balances to revert to treasury; capital appropriations excepted.**—All unincumbered balances of maintenance appropriations shall revert to the State treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of the biennial fiscal period; except that capital expenditures for the purchase of land or the erection of buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made. (1925, c. 18, s. 19; 1929, c. 100, s. 20.)

§ **143-19. Help for Director.**—The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this article; and shall fix the compensation of all persons employed under this article; which shall be paid by the State Treasurer upon the warrant of the State Disbursing Officer. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this article, shall be reported to the General Assembly by the Director, and all payments made under this article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Department of Administration. (1925, c. 89, s. 20; 1929, c. 100, s. 21; 1957, c. 269, s. 2; 1961, c. 1181, s. 2.)

Editor's Note.—The 1957 amendment substituted "Department of Administration" for "Budget Bureau" at the end of the section.

The 1961 amendment substituted "State Disbursing Officer" for "State Auditor" at the end of the first sentence.

§ **143-20. Accounting records and audits.**—The Director shall be responsible for keeping a record of the appropriations, allotments, expenditures, and revenues of each State department, institution, board, commission, officer, or other agency in any manner handling State funds. These records shall be kept in summary form, or in as much detail as the Director may deem advisable. Audits of the records of the State Auditor and the State Treasurer for the periods preceding the transfer of pre-audit and related functions from the Auditor's office to the Director of the Budget may be accomplished by the Department of Administration at the direction of the Director of the Budget. (1925, c. 89, s. 22; 1929, c. 100, s. 22; 1955, c. 578, s. 5; 1957, c. 269, s. 2.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1957 amendment substituted "Director of the Budget" and "Department of Administration" for "Budget Bureau" in the last sentence.

§ **143-21. Issuance of subpoenas.**—The Director shall have and is hereby given full power and authority to issue the writ of subpoena for any and all persons who may be desired as witnesses concerning any matters being inquired into by the Director or the Commission, and such writs when signed by the Director shall run anywhere in this State and be served by any civil process officer without fees or compensation. Any failure to serve writs promptly and with due diligence, shall subject such officer to the usual penalties and liabilities and punishment as are now provided in the cases of like kind applying to sheriffs, and any persons who shall fail to obey said writ shall be subject to punishment for contempt in the discretion of the court and to be fined as witnesses summoned to attend the superior court, and such remedies shall be enforced against such offending witnesses upon motion and notice filed in the Superior Court of Wake County by the Attorney General under the direction of the Director. Any and all persons who shall be subpoenaed and required to appear before the Director or the Commission as witnesses concern-

ing any matters being inquired into shall be compellable and required to testify, but such persons shall be immune from prosecution and shall be forever pardoned for violation of law about which such person is so required to testify. (1925, c. 89, s. 25; 1929, c. 100, s. 23; 1953, c. 675, s. 18.)

Editor's Note.—The 1953 amendment sustituted "or" for "of" after "Director" in the first sentence.

§ 143-22. Surveys, studies and examinations of departments and institutions.—The Director is hereby given full power and authority to make such surveys, studies, examinations of departments, institutions and agencies of this State, as well as its problems, so as to determine whether there may be an overlapping in the performance of the duties of the several departments and institutions and agencies of the State, and for the purpose of determining whether the proper system of modern accounting is had in such departments, institutions, commissions and agencies and to require and direct the installation of the same whenever, in his opinion, it is necessary and proper in order to acquire and to secure a perfect correlated and control system in the accounting of all departments, institutions, commissions, divisions, and State agencies including every department or agency handling or expending State funds, and to make surveys, examinations and inquiries into the matter of the various activities of the State, and to survey, appraise, examine and inspect and determine the true condition of all property of the State, and what may be necessary to protect it against fire hazard, deterioration, and to conserve its use for State purposes, and to make and issue and to enforce all necessary, needful or convenient rules and regulations for the enforcement of this article. All auditing systems or uses prescribed, or to be prescribed hereunder, shall be administered by the Auditor. (1925, c. 89, s. 26; 1929, c. 100, s. 23.)

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items.—All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the purposes and/or objects enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budget of any department, institution or other spending agency, may be made at the request in writing of the head of such department, institution or other spending agency by the Director of the Budget. (1929, c. 100, s. 24.)

§ 143-23.1. Maintenance funds for the State Auditor and State Treasurer.—All appropriations now or hereafter made for the support of the functions and responsibilities of the State Auditor and the State Treasurer are for the purposes and objects enumerated in the itemized requirements of such activities recommended to the General Assembly by the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budgets of the State Auditor and the State Treasurer may be authorized by the Advisory Budget Commission in accordance with procedures established by the Commission. (1955, c. 578, s. 6.)

§ 143-24. Borrowing of money by State Treasurer.—The Director of the Budget, by and with the consent of the Governor and Council of State, shall have authority to authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum or sums as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State institutions, departments, bureaus, and agencies during each fiscal year. (1929, c. 100, s. 25.)

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.—All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and by and with the advice and consent of a majority of the Advisory Budget Commission to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Commissioner of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata, including appropriations for the State Auditor and the State Treasurer, when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this article as to prevent any such overdraft or deficit. (1929, c. 100, s. 26; 1955, c. 578, s. 7.)

Editor's Note.—The 1955 amendment inserted in the next to last sentence "including appropriations for the State Auditor and the State Treasurer."

§ 143-26. Director to have discretion as to manner of paying annual appropriations.—Unless otherwise provided, it shall be discretionary with the Director of the Budget whether any annual appropriation shall be paid in monthly, quarterly or semiannual installments or in a single payment. (1897, c. 368; Rev., s. 5372; C. S., s. 7683; 1925, c. 275, s. 9; 1929, c. 100, s. 27.)

§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.—All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them, are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs of maintenance of such institutions, departments, and agencies. (1929, c. 100, s. 28.)

§ 143-27.1. Allocation of funds appropriated for area vocational training schools.—Funds appropriated to the Budget Bureau for area vocational training schools shall be allocated and disbursed for training programs under terms and conditions as may be prescribed by the Director of the Budget upon approval of the Advisory Budget Commission. (1957, c. 1385.)

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

§ 143-28. All State agencies under provisions of this article.—It is the intent and purpose of this article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State,

shall be subject to and under the control of every provision of this article. Any power expressed in this article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this article shall be liberally construed. Provided, that notwithstanding the general language in this article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G. S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget, and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 28; 1929, c. 100, s. 29; 1955, c. 578, s. 8; 1957, c. 269, s. 2.)

Editor's Note.—The 1955 amendment added the last sentence.

The 1957 amendment substituted "Department of Administration" for "Budget Bureau" and deleted "or the Assistant Director of the Budget" formerly appearing after "Budget" near the end of the section.

§ **143-29. Delegation of power by Director.**—Any power or duty herein conferred on the Governor as Director may be exercised and performed by such person or persons as may be designated or appointed by him from time to time in writing. (1925, c. 89, s. 29; 1929, c. 100, s. 30.)

§ **143-30. Budget of State institutions.**—The several institutions of the State, boards, departments, commissions, agencies, persons or corporations, included with the terms hereof to which appropriations are made now or hereafter for permanent improvements or for maintenance, shall, before any of such appropriations, whether for permanent improvements or for maintenance, are available or paid to them or any one of them, budget their requirements and present the same to the Director of the Budget on or before the first day of June of each odd numbered year hereafter. There shall be a separate budget presented for permanent improvements and for maintenance. Each of said budgets shall contain the requirements of said institutions, boards, commissions, and agencies, persons and corporations, and undertakings, as hereinbefore defined, for the succeeding two years. Each institution, board, department, commission, agency, person or corporation, in the preparation of such budget, shall follow as nearly as may be the itemized recommendations of the Director of the Budget and Advisory Budget Commission and/or as amended by the General Assembly. The forms, except when modified and changed by authority of the Director of the Budget, shall be the forms used in presenting the requests. (1925, c. 230, s. 2; 1929, c. 100, s. 32.)

§ **143-31. Building and permanent improvement funds spent in accordance with budget.**—All buildings and other permanent improvements, which shall be erected and/or constructed, shall be erected and/or constructed, and carried on and the money spent therefor in strict accordance with the budget requests of such institution, board, commission, agency, person, or corporation filed with the Director of the Budget. The expenditure of appropriations for maintenance shall be in strict accordance with the budget recommendations for such institution, board, commission, agency, person or corporation and/or as amended or changed by the General Assembly. It shall be the duty of the Director of the Budget to see that all money appropriated for either permanent improvements or maintenance shall be expended in strict accordance with the budget recommendations and/or as amended by the General Assembly, for each department, institution, board, commission, agency, person or corporation. If the Director of the Budget shall ascertain that any department, institution, board, commission, agency, person or corporation has used any of the moneys appropriated to it for any purpose other than that for which it was

appropriated and budgeted, as herein required, and not in strict accordance with the terms of this article, the Director of the Budget shall have the power and he is hereby authorized to notify such institution, board, commission, agency, person or corporation that no further sums from any appropriation made to it will be available to such department, institution, board, commission, agency, person or corporation until and after the persons responsible for the diversion of the said funds shall have replaced the same, and the Director of the Budget shall have the power and he is hereby authorized to notify the State Disbursing Officer not to approve or issue any further warrants for such department, institution, board, commission, agency, person or corporation for any unexpended appropriation and the State Disbursing Officer is hereby prohibited from approving or issuing any further warrants for such department, institution, board, commission, agency, person or corporation until he shall have been otherwise directed by the Director of the Budget. (1925, c. 230, s. 3; 1929, c. 100, s. 33; 1961, c. 1181, s. 3.)

Editor's Note.—The 1961 amendment substituted "State Disbursing Officer" for "Auditor" and "Auditor of the State" in the latter part of the section.

§ 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.—It shall be the duty and responsibility of the Director of the Budget to determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectual features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Division of Property Control of the Department of Administration to be favorable to the letting of construction contracts. (1953, c. 1090; 1963, c. 423.)

Editor's Note.—The 1963 amendment added the part of the last sentence relating to consideration of economic conditions of the construction industry by the Division of Property Control.

§ 143-31.2. Appropriation, allotment, and expenditure of funds for historic and archeological property.—No funds of the State of North Carolina shall be appropriated, allotted, or expended for the acquisition, preservation, restoration, or operation of historic or archeological real and personal property, and the Director of the Budget shall not allot any appropriations for a particular historic site until (i) the property or properties shall have been approved for such purpose by the Department of Archives and History according to criteria adopted by the Historic Sites Advisory Committee, (ii) the report and recommendation of the Historic Sites Advisory Committee has been received and considered by the Department of Archives and History, and (iii) the Department of Archives and History has found that there is a feasible and practical method of providing funds for the acquisition, restoration and/or operation of such property. (1963, c. 210, s. 3.)

§ 143-32. Person expending an appropriation wrongfully.—Any trustee, director, manager, building committee or other officer or person connected with any institution, or other State agency as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated and budgeted or who shall consent thereto, shall be liable to the State of North Carolina for such sum so spent and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the Attorney General for the use of the State of North Carolina, which

action may be instituted in the Superior Court of Wake County, or any other county, subject to the power of the court to remove such action for trial to any other county, as provided in § 1-83, subdivision two. (1925, c. 230, s. 4; 1929, c. 100, s. 34.)

§ 143-33. Intent.—It is an intent and purpose of this article that all departments, institutions, boards, commissions, agencies, persons or corporations to which appropriations for permanent improvements and/or maintenance are made, shall submit to the Director of the Budget their requests for the payment of such appropriations in the form of a budget, following the recommendations made by the Director of the Budget and the Advisory Budget Commission and/or as amended by the General Assembly. (1925, c. 230, s. 5; 1929, c. 100, s. 35.)

§ 143-34. Penalties and punishment for violations.—A refusal to perform any of the requirements of this article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred and fifty dollars ($250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employement by the Governor upon thirty days' notice in writing to such offender. (1929, c. 100, s. 36.)

§ 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers.—All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Disbursing Officer, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Director of the Budget. (1949, c. 718, s. 5; 1957, c. 269, s. 2; 1961, c. 1181, s. 4.)

Editor's Note.—The 1957 amendment deleted the words "Assistant to the" wherever appearing before "Director."

The 1961 amendment substituted "State Disbursing Officer" for "State Auditor" near the end of the section.

ARTICLE 2.

State Personnel Department.

§ 143-35. State Personnel Department established.—(a) Department Distinct from Department of Administration and under Supervision of Director.—There is hereby created and established a State Personnel Department (hereinafter referred to as "Department") for the State of North Carolina. The Department shall be separate and distinct from the Department of Administration and shall be under the administration and supervision of a Director appointed by the State Personnel Council. The salary of the Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve at the pleasure of the Personnel Council.

(b) State Personnel Council.—There is hereby created and established a State Personnel Council (hereinafter referred to as "Council") for the purpose of advising and assisting the State Personnel Director in preparing, formulating and promulgating rules and regulations, determining and fixing job classifications and descriptions, job specifications and minimum employment standards, standards of salaries and wages, and any and all other matters pertaining to employment under

this article. The State Personnel Council shall consist of seven members to be appointed by the Governor of North Carolina on July 1, 1961. The council shall have the power to designate the member of said Council who shall act as chairman thereof. At least two members of the Council shall be individuals of recognized standing in the field of personnel administration and who are not employees of the State subject to the provisions of this article; at least two members of the Council shall be individuals actively engaged in the management of a private business or industry; at least two members of the State Personnel Council shall also serve as members of the Merit System Council; not more than two members of the Council shall be individuals chosen from the employees of the State subject to the provisions of this article. The Council shall meet at least one time in each calendar quarter of the year, or upon call of the Governor, or of the Director, or a member of the Council, or at the request of the head of any department or agency when necessary to consider any appeal provided for hereunder. Five members of the Council shall constitute a quorum. Notice of meetings shall be given members of the Council by the Director who shall act as secretary to the Council. The members of the Council shall each receive seven dollars ($7.00) per day including necessary time spent in traveling to and from their place of residence within the State to the place of meeting while engaged in the discharge of the duties imposed hereunder, and his subsistence and traveling expenses in the same manner as other State employees. The members of the Council who are employees of the State, as provided hereunder, shall not receive any per diem for their services but such members shall receive traveling expenses and subsistence, while engaged in the discharge of their duties hereunder, at the same rate and in the same amount as provided for State employees without any deduction for loss of time from their employment.

Two of the Council members shall be appointed by the Governor to serve for a term of two years. Two members shall be appointed to serve for a term of four years. Three members shall be appointed to serve for a term of six years. The successors of said members shall be appointed for a term of six years thereafter.

Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

A member of the State Personnel Council shall not be considered a public officer, or as holding office within the meaning of article XIV, section 7, of the Constitution of this State, but such member shall be a commissioner for a special purpose. The Governor may, at any time after notice and hearing, remove any Council member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(c) Personnel Officers Representing State Departments, Agencies and Commissions.—For the purpose of aiding and assisting in the operation and administration of this article, each State department, agency or commission shall appoint, or shall designate from among its present employees, a personnel officer to represent the department, agency or commission and the head of same in carrying out the provisions of this article within such department, agency or commission. All personnel officers designated hereunder shall serve in an advisory and consulting capacity to the State Personnel Director and the Council in both intra-Department and inter-Department personnel policies and practices.

(d) Merit System Council; Responsibility of State Personnel Director; Supervisor of Merit Examinations.—The Merit System Council created under the provisions of chapter 126 of the General Statutes, and all powers and duties heretofore exercised by the Merit System Council, shall continue in effect as provided in chapter 126 of the General Statutes: Provided, however, that the State Personnel Director shall be charged with the responsibility of carrying out the regulations and policies maintained and provided by the Merit System Council and the administration of same as applicable to individuals, employees and agencies of the State now subject to chapter 126 of the General Statutes, as amended, or as

the same from time to time may be amended, but excluding and excepting from the application of this article all employees of the county welfare departments and the county, city, county-city and district health departments, and that nothing herein contained shall be construed so as to alter, abridge or deprive the Merit System Council of the authority vested in it by virtue of § 126-14. The State Personnel Director shall select and appoint, with the advice and approval of the Merit System Council, and in accordance with the Merit System regulations, a person designated as supervisor of merit examinations, who shall not be a member of the Merit System Council and who shall be charged with the performance of the duties and functions of supervisor of merit examinations as provided by chapter 126 of the General Statutes. (1949, c. 718, s. 1, c. 1174; 1953, c. 1085, s. 1; 1957, c. 269, s. 2; c. 541, s. 16; c. 1004, s. 2; 1961, c. 625.)

Editor's Note.—Session Laws 1949, c. 718, rewrote this article, inserted § 143-34.1 and amended §§ 126-2, 126-3 and 126-16. Section 6 of the said chapter provides: "Nothing herein shall be construed as authorizing the fixing of classifications and descriptions, job specifications and employment standards, standards of salaries or wages, or necessary number of positions, or otherwise which cause the total funds required by any department, agency, bureau, or commission to exceed the funds appropriated for salaries and wages in that agency for either year of the biennium."

Session Laws 1949, c. 1174, changed the compensation of a member of the Council from ten to seven dollars a day.

The former article, which was entitled "Division of Personnel under the Budget Bureau," was codified from Public Laws 1931, c. 277, as amended by Public Laws 1933, c. 46. The 1931 act abolished the Salary and Wage Commission established under Public Laws 1925, c. 125.

The 1953 amendment rewrote subsection (b).

The first 1957 amendment substituted "Department of Administration" for "Budget Bureau" in subsection (a). The second 1957 amendment rewrote the third sentence of subsection (a). The third 1957 amendment inserted the words "two members of the State Personnel Council shall also serve as members of the Merit System Council" in subsection (b).

The 1961 amendment, effective July 1, 1961, rewrote subsection (b), increasing the membership of the Council from five to seven members.

§ 143-36. Duties and powers of Director and Council as to State employees. —The State Personnel Director shall, after consultation with the heads of State agencies affected, and with their cooperation, survey the duties and responsibilities of positions and the qualifications required therefor, for the purpose of classifying the positions and establishing standard salary scales for State employees. Each class shall consist of one or more positions substantially different from other positions as to duties and responsibilities. The positions in a class shall be so similar as to duties and responsibilities that all can have the same descriptive title, the same qualifications, requirements, and the same salary scale.

After such surveys, and after consultation with the heads of State agencies affected, and with the approval of the State Personnel Council, the State Personnel Director shall establish a specification for each class of State positions setting forth a descriptive title, the duties and responsibilities characteristic of positions in the class, and the minimum qualifications required for entrance to positions in the class, shall allocate the positions to such classes, and shall establish for each class a standard salary scale with minimum, intermediate, and maximum salary rates. The salary rates shall reflect the relative difficulty and responsibility of the work in the classes and shall be equitable within the limit of available funds.

When the personnel survey and investigation is completed with respect to a particular State department, bureau, agency or commission, the State Personnel Director shall file a report with the Governor and with the head of such department, bureau, agency or commission, setting out the classification of each State position, and the salaries and wages to be paid to each of the employees in said State department, bureau, agency or commission, and the scale of increments to be granted at least once each year to each State employee whose services have met the standard of efficiency as established by the State Personnel Director and approved by the Council and Governor: Provided, however, in establishing the standard of efficiency

for the purpose of annual increments, the regulations shall provide that all State employees whose services merit retention in service shall, as hereinafter set forth, be granted annual increments up to but not exceeding the intermediate salary step nearest to the middle of the salary range established for the respective classification and/or position, and those State employees whose services meet higher standards, as formulated and fixed by the State Personnel Director and Council, shall, as hereinafter set forth, be given annual increments up to but not exceeding the maximum of the salary range for the respective classification and/or position.

Notwithstanding any other provisions of this section, the State Personnel Director, with the approval of the Council and the Governor, shall be empowered to prescribe uniform provisions for a system of salary increases, together with amounts, time and manner of payment, over and above any maximum hereinbefore authorized with respect to standard salary scales, which increases shall be paid State employees on a basis of a combination of longevity of service and of merit in the performance of duties; provided, however, such increases shall not be taken into account in applying or construing any other portion of this article relating to annual salary increments. (1949, c. 718, s. 1; 1957, c. 1349, s. 1; 1961, c. 536.)

Editor's Note.—The 1957 amendment rewrote this section. The 1961 amendment, effective July 1, 1961, added the last paragraph.

§ 143-37. Contents of report to become fixed standard; effective date.—When said report with respect to any such department, bureau, agency or commission has been completed and filed with and approved by the Governor, and also filed with the head of such department, bureau, agency or commission, the findings in said report shall then become the fixed standard for the classification of positions and the duties to be performed, and/or the positions to be filled, the salaries and/or wages to be paid, and the increments to be granted to all employees in the department, bureau, agency or commission, to which said report relates, and it shall thereupon be the duty of the head of such department, bureau, agency or commission, on the first day of the next month, beginning not less than thirty days subsequent to the date of the reception of said report by him, to put the same into effect, and thereupon with respect to such department, bureau, agency or commission, the classification of positions, the duties to be performed and/or the positions to be filled, the salaries and wages to be paid, and the increments to be granted, all as specified in said report, shall become the only allowable standard for and with respect to such department, bureau, agency or commission. (1949, c. 718, s. 1; 1957, c. 1349, s. 2.)

Editor's Note.—The 1957 amendment deleted references to "the number of allowable positions and employees."

§ 143-38. Reconsideration of survey and report; changes therein.—It shall be the duty of the State Personnel Director upon request of the head of any State department, bureau, agency or commission, and also from time to time without such request, to reconsider the survey and report hereinbefore provided for, and with the approval of the Council and the Governor, to make changes therein in accordance with such findings within the limits of available appropriations; and upon report by him to the head of any department, bureau, agency or commission, and to the Governor setting out such findings and changes, it shall be the duty of the head of such department, bureau, agency or commission, to put such findings and changes into effect on the first day of the next month, beginning not less than thirty days after the date of receipt by him of such report: Provided, however, the State Personnel Director shall have the authority to make necessary individual adjustments within the framework of the approved salary and classification plan. (1949, c. 718, s. 1; 1957, c. 1349, s. 3.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 143-39. Payment of increments considered State personnel policy; increments to be considered in request for appropriations.—All salary ranges for State employees not exempted from this article shall contain a fixed and uniform scale of increments between the minimum and maximum salary rate as fixed and determined according to the provisions of § 143-36 of this article. It shall be considered a part of the personnel policy of this State that these increments or increases in pay shall be granted in accordance with standards and regulations fixed, determined and established by the State Personnel Director and the Council as authorized and provided under the provisions of § 143-36 of this article. The head of each department, bureau, agency or commission, when making his request for the ensuing biennium shall take into account the annual and other increments based on efficiency standards as established, or as may be established, under the provisions of this article, for the employees of his department, bureau, agency or commission, and such head shall anticipate the amounts which shall be required during the biennium for the purpose of paying such increments, and shall include such amounts in his appropriations request, but in no case shall the amount estimated for increments based on efficiency standards exceed two-thirds the sum which would be required to grant efficiency increments to all the personnel of the agency then receiving, or who would receive during the first year of the biennium, the intermediate salary nearest the middle of the salary range established for the respective classification and/or position; provided, however, with the consent of the Personnel Council, State departments, bureaus, agencies or commissions with twenty-five (25) or less employees may exceed the two-thirds restrictions herein set up. (1949, c. 718, s. 1.)

§ 143-40. Director and Council to fix holidays, vacations, hours, sick leave and other matters pertaining to State employment.—The State Personnel Director, upon the advice and approval of the Council, shall fix, determine and establish the hours of labor in each State department, bureau, agency or commission, and is authorized and empowered to make all necessary rules and regulations with respect to holidays, vacations, sick leave or any other type of leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor, all of which shall be subject to the approval of the Governor: Provided, however, that the amount of annual leave granted as a matter of right to each regular State employee shall not be less than one and one-fourth days per calendar month cumulative to at least thirty days, and that sick leave granted to each State employee shall not be less than ten days for each calendar year, cumulative from year to year. Provided, further, that no regular employee of any department, bureau, agency or commission of the State government who is subject to the supervision of the State Personnel Department shall be employed for more than an annual average of forty-eight (48) hours per week. (1949, c. 718, s. 1; 1953, c. 675, s. 19; 1963, c. 1177.)

Editor's Note.—The 1953 amendment substituted "cumulative" for "accumulative" in the first proviso. The 1963 amendment added the second proviso at the end of this section.

§ 143-41. Director to determine qualifications of applicants for positions.—The State Personnel Director, with the advice and approval of the Council and Governor, shall adopt rules and regulations to the end that applicants for positions in the various State departments, bureaus, agencies, and commissions covered by this article may file applications for State employment with the Director, and it shall be the duty of the Director to examine into the qualifications of each applicant within a reasonable period of time after the application is filed, and the Director shall notify each applicant of the results of such examination in writing and shall certify and shall keep a list of persons so qualified. Said list shall be open to the inspection of the heads of the various departments, bureaus, agencies and commissions of the State, and such heads may from time to time fill positions from such lists. When any position covered by this article has remained unfilled for a period of ten days,

it shall be the duty of the department, bureau, agency or commission in which the unfilled position exists to notify the Director of the fact, and the Director shall list the unfilled position, so long as it shall remain unfilled, on the list which he shall keep posted in his office where it shall be available on demand to any person seeking employment in various State agencies, departments, bureaus or commissions. The list of certified applicants and list of unfilled positions shall be presented to the Council for its information at each regular meeting of the Council. (1949, c. 718, s. 1.)

Quoted in Pinnix v. Toomey, 242 N. C. 358, 87 S. E. (2d) 893 (1955).

§ 143-42. Appeal provided in case of disagreement.—In the event there shall be a disagreement between the State Personnel Director and the head of any other department, bureau, agency or commission of the State or between the State Personnel Director and any employee subject to this article because of any ruling of the Director upon any question involving such other department, bureau, agency or commission, or any of its positions, employees, or other matter within the scope and purview of this article, then the matters in dispute shall be heard by the Council. Any employee or agency head may appeal from the decision of the Council and the matter shall be heard by the Governor and the decision or action of the Governor thereon shall be final. (1949, c. 718, s. 1.)

§ 143-43. Offices of State Personnel Department; Department to employ clerical and necessary assistants.—The Board of Public Buildings and Grounds shall provide the State Personnel Department with adequate offices in the city of Raleigh, North Carolina. The State Personnel Director shall be charged with the supervision and administration of all activities subject to the jurisdiction and control of the State Personnel Department and, subject to the approval of the Council and Governor, said Director is hereby authorized to employ clerical and such other assistants as may be deemed necessary and adequate in order to carry out the purpose and intent of this article. For the purpose of establishing and fixing proper and adequate standards, classifications, job descriptions, specifications and salaries for technical, professional and skilled employees and for any other purposes pertinent to this article, the Director may, in co-operation with the head of any other State department, bureau, agency or commission, make use of the data, studies and services of any such department, bureau, agency or commission or the technical, professional or special knowledge or services of any employees of such department, bureau, agency or commission. (1949, c. 718, s. 1.)

§ 143-44. Director to determine the qualifications of State employees selected by heads of departments; persons employed on effective date deemed qualified.—All persons employed in any department, bureau, agency or commission of the State government on the effective date of this article shall be deemed qualified for the positions they hold or occupy, provided no person who has held any position for a period of less than six months on the effective date of this article shall be deemed qualified until he shall have completed six months of satisfactory service in such position or shall before that time have been examined and found qualified by the Director in accordance with the rules and regulations of the Council.

The selection and appointment of all personnel of all of the departments, bureaus, agencies or commissions of the State, shall, as heretofore, be exercised by the head of the department, bureau, agency or commission as to which the employment is to be performed, but, from and after the effective date of this article, such employment shall be subject to the approval of the State Personnel Director, as to whether such employees so selected meet the standards of qualifications established under this article, and, if such person so selected is found duly qualified according to such standards, the Personnel Director shall approve the employment if otherwise authorized and permissible under this article. Any employee of the State or any

person seeking employment who has been found by the Director not to be qualified for the position applied for may appeal the decision of the Director to the Council at its next regular meeting after he has received notice of disqualification. (1949, c. 718, s. 1.)

§ 143-45. Director to certify copies of reports to State Auditor and Director of the Budget.—The State Personnel Director shall transmit to the State Auditor and the Director of the Budget copies of his report or reports, or any changes in same, with respect to the various departments, bureaus, agencies and commissions, and the salaries and wages, including increments, for such positions and employees in the several departments, bureaus, agencies and commissions and the same shall be paid out of the appropriation for such purposes and in accordance with the schedule set out in said report or reports or any duly established changes made therein: Provided, however, that when the Director of Personnel shall have approved any employment or salary increase in any department, bureau or agency of the State government, the certification for payment by the Director of the Budget, as required by § 143-341, shall not be construed as conferring upon or vesting in the Director of the Budget any authority or control over the employment of personnel, salaries, wages, hours of labor, vacations, sick leave, classifications, standards, regulations and reports, matters, things, administration and functions committed and vested in this article to the jurisdiction and control of the State Personnel Director and Council as set forth in this article. (1949, c. 718, s. 1; 1957, c. 269, s. 2.)

Editor's Note.—The 1957 amendment substituted "Director of the Budget" for "Budget Bureau" near the beginning of the first sentence and deleted the words "Assistant to the" formerly appearing before "Director" in the proviso.

§ 143-46. Exemptions; persons and employees not subject to this article.—The provisions of this article shall not apply to certain persons and employees as follows: Persons employed solely on an hourly basis except as to fixing compensation; public school superintendents; principals and teachers and other public school employees; instructional and research staff of the educational institutions of the State; employees of the State Farmers' Market at Raleigh; Business Managers of the University of North Carolina, Consolidated, the University of North Carolina, the State College of Agriculture and Engineering, the Woman's College, East Carolina College, and the Appalachian State Teachers College; professional staff of hospitals, asylums, reformatories and correctional institutions of the State; members of boards, bureaus, agencies, commissions, councils and advisory councils, compensated on a per diem basis; constitutional officers of the State and except as to salaries, their chief administrative assistant; officials and employees whose salaries are fixed by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State, or Advisory Budget Commission, by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by the Governor subject to the approval of a definitely named officer, agent, bureau, agency or commission of the State by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by statute or by virtue of a specific statutory method other than by the method provived by this article explicitly pertaining to such officials and/or employees. In all cases of doubt or where any question arises as to whether or not any person, official or employee is subject to the provisions of this article, the doubt, controversy or question shall be investigated and decided by the State Personnel Director with the approval of the Council and such decision shall be final. Where the approval of any appointment, employment and/or salary is required by statute to be made by the Budget Bureau or assistant to the Director of the Budget (by whatever title or name), all such authority and power of approval, in whatever manner or form exercised, is hereby transferred to and vested in the State Personnel Director, and all

such statutes shall be deemed to be amended to such extent. (1949, c. 718, s. 1; 1957, c. 1447; 1961, c. 833, s. 23.1; 1963, c. 958.)

Editor's Note.—The 1957 amendment inserted, after "educational institutions of the State" the words and punctuation "Business Managers of the University of North Carolina, Consolidated, the University of North Carolina, the State College of Agriculture and Engineering, the Woman's College, East Carolina College, and the Appalachian State Teachers College."

The 1961 amendment, effective July 1, 1961, inserted before "Business Managers" in the first sentence "employees of the State Farmers' Market at Raleigh."

The 1963 amendment inserted "except as to fixing compensation" near the beginning of this section. The amendatory act states that it is "the intent and purpose of this act to make article 2 of chapter 143 of the General Statutes applicable to persons employed solely on an hourly basis for the purpose of surveying and resurveying positions held by such persons and prescribing rates of compensation therefor."

§ 143-47. Classifications and salaries established prior to effective date of article to remain in force until changed.—All classifications, grades, salaries, wages, hours of work, vacation, sick leave, positions and standards heretofore established by the Division of Personnel under the Budget Bureau prior to April 1, 1949, shall remain in force and effect until the same are amended, altered, voided or replaced by the State Personnel Director and the Council acting under the authority of this article. (1949, c. 718, s. 1.)

ARTICLE 2A.

Incentive Award Program for State Employees.

§ 143-47.1. Incentive award program established; purpose.—An incentive award program for State employees is hereby established. The purpose of the program is to achieve greater efficiency and economy in State government by utilizing a system of awards to encourage State employees to participate, through suggestions, inventions, superior acomplishment, or continuous high-level performance, in the improvement of governmental efficiency and economy. (1963, c. 1047, s. 1.)

Editor's Note.—The act inserting this article became effective July 1, 1963.

§ 143-47.2. State Personnel Council to adopt rules and regulations governing program.—The State Personnel Council is empowered and directed to formulate, establish, and maintain for a period of two (2) years from July 1, 1963, plans for the operation of the incentive award program. The Council is empowered to adopt and promulgate rules and regulations, not inconsistent with this article, governing the operation of the program, including, but not limited to, the nature of the awards to be conferred, the eligibility of State employees participating in the program, the character and quality of suggestions, inventions, accomplishments and performances to be submitted, procedures for making nominations for awards and for review of nominations, methods of determining the savings resulting from the adoption of a suggestion or from other employee action, and procedures for setting the amounts of cash awards. (1963, c. 1047, s. 2.)

§ 143-47.3. State Employees' Incentive Awards Committee; appointment; terms of office; compensation and expenses; duties; approval of awards; facilities and personnel.—There is hereby created a State Employees' Incentive Awards Committee, to be appointed by the Governor, and to consist of five State officials or employees, at least one of whom shall be a representative of a State employee association. Members of the Committee shall be appointed for a term of two (2) years to begin July 1, 1963. Members of the Committee shall serve without pay, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article. The State Employees' Incentive Awards Committee is responsible for approving all awards under the incentive award program, and no award shall be conferred until it has been submitted to and approved by the Committee. All cash awards shall also be approved by the Advisory

Budget Commission. The Director of Personnel shall detail and assign for the use of the Incentive Awards Committee such facilities and personnel as the Committee shall require for the performance of its duties. (1963, c. 1047, s. 3.)

§ **143-47.4. Awards.**—(a) Meritorious Service Awards.—Meritorious service awards shall consist of certificates, or such other appropriate insignia or devices as the State Personnel Council may provide for by regulations adopted pursuant to the authority conferred in this article. Meritorious service awards may be conferred upon an individual for superior accomplishment, continuous high-level performance, or for suggestion or invention which results in improved service to the public. Group honorary awards may be made to groups of employees who, as a group, make valuable suggestions or inventions, or who achieve such high accomplishment or standard of performance as to deserve special recognition.

(b) Cash Awards.—Cash awards may be made only when the suggestion, invention, accomplishment, or performance results in a clearly demonstrable saving to the State, either in terms of actual money, materials, supplies, or equipment, or when it increases the work-capacity of employees so as to make possible more work without an increase in personnel. All cash awards shall be paid from savings resulting from the adoption of the suggestion or other employee action upon which the award is based. The amount of the cash award shall be determined and approved as herein provided, but in no case shall it exceed ten per cent (10%) of the savings resulting during the first year following the adoption of the suggestion or other employee action, or a maximum of one thousand dollars ($1,000.00), whichever is smaller. Cash awards may be made to an individual, or to a group of individuals who worked together to develop the suggestion or other action which is the basis of the award; if a cash award is made to a group of individuals, the total of the sums awarded for any one suggestion or other action shall not exceed the limits set out in this section. Cash awards are to be made solely in the discretion of the Committee, and do not accrue as a matter of right to any employee. (1963, c. 1047, s. 4.)

§ **143-47.5. Duration of program.**—The incentive award program for state employees is adopted on a two-year trial basis. All of the provisions of this article, and the plans, programs, rules and regulations adopted pursuant to this article, shall expire automatically at midnight, June 30, 1965; however, any awards which have been approved prior to the expiration date of this article, but which have not been conferred as of that date, shall be conferred as soon as practicable thereafter, but in any event not later than June 30, 1966. For the purposes of this section, a cash award shall be deemed to have been approved when the Awards Committee shall have formally resolved that the award shall be granted, contingent upon proof of savings effected, even though the amount of the savings effected has not yet been determined, and the amount of the cash award has not yet been set. The State Employees' Incentive Awards Committee shall continue to operate after the expiration date of this article solely for the purpose of making such awards as were approved but not made prior to the expiration date. The Committee shall cease to function for all purposes as of midnight, June 30, 1966, and all awards not made by that time shall be cancelled, and no rights shall accrue to any employee by reason of such cancellation. (1963, c. 1047, s. 5.)

Article 3.

Purchase and Contract Division.

§ **143-48. Purchase and Contract Division created.**—There is hereby created in the Department of Administration a division to be known as the Purchase and Contract Division. (1931, c. 261, s. 1; 1931, c. 396; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment rewrote this section.

Prior to the amendment this article related to a division in the Governor's Office known as the "Division of Purchase and Contract" which was under the supervision and control of the "Director of Purchase and Contract."

§ 143-49. Powers and duties of Director.—The Director of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this article:

(1) To canvass all sources of supply, and to contract for the purchase of all supplies, materials and equipment required by the State government, or any of its departments, institutions or agencies under competitive bidding in the manner hereinafter provided for.

(2) To establish and enforce standard specifications which shall apply to all supplies, materials and equipment, purchased or to be purchased for the use of the State government for any of its departments, institutions or agencies; there shall be included in the contract for the printing of the Session Laws of the General Assembly such specifications as to the time limit within which, or the speed with which, such Session Laws are to be printed as to insure the speediest publication practicable so as to make possible an early distribution of the Session Laws after the adjournment of the General Assembly.

(3) To purchase or contract for all telephones, telegraph, electric light power, postal and any and all other contractual services and needs of the State government, or any of its departments, institutions, or agencies; or in lieu of such purchase or contract to authorize any department, institution or agency to purchase or contract for any or all such services.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer and/or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to have supervision of inventories of all fixed property and moveable equipment, supplies and materials belonging to the State government, or any of its departments, institutions or agencies; the duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials or supplies under its control.

(5) To make provision for and to contract for all State printing, including all printing, binding, paper stock and supplies or materials in connection with the same.

(6) To permit charitable, nonprofit corporations operating charitable hospitals, under such rules, regulations and procedures as the Advisory Budget Commission shall adopt, to purchase hospital supplies and equipment under contracts negotiated and entered into by the Department of Administration for the purchase of hospital supplies and equipment for State sanatoria, hospitals and other medical institutions operated by the State or agencies of the State. (1931, c. 261, s. 2; 1951, c. 3, s. 1, c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310.)

Cross Reference.—As to settlement of affairs of inoperative boards and agencies, see §§ 143-267 through 143-272.

Editor's Note.—The first 1951 amendment added the part of subdivision (2) appearing after the semicolon, and the second 1951 amendment added subdivision (6).

The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract" and "Department of Administration" for "Division of Purchase and Contract." The amendment also deleted a provision for leasing space required by any department, institution or agency of the State government.

The 1961 amendment substituted "have supervision of" for "maintain" near the middle of subdivision (4) and added the rest of subdivision (4) beginning with the words "the duties" after the last semicolon.

§ 143-50. Certain contractual powers exercised by other departments transferred to Director.—All rights, powers, duties and authority relating to State printing, or to the purchase of supplies, materials and equipment now imposed upon and exercised by any State department, institution, or agency under the several

statutes relating thereto, are hereby transferred to the Director of Administration and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Director of Administration under the provisions of this article. (1931, c. 261, s. 3; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-51. Reports to Director required of all agencies as to needs.—It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Director of Administration when requested, and on blanks to be approved by him, tabulated estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Director of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-52. Consolidation of estimates by Director; bids; awarding of contract; rules and regulations.—The Director of Administration shall compile and consolidate all such estimates of supplies, materials and equipment needed and required by all State departments, institutions and agencies to determine the total requirements for any given commodity. If the total requirements of any given commodity will involve an expenditure in excess of two thousand dollars, sealed bids shall be solicited by advertisement in a newspaper of State-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Director of Administration, with the approval of the Advisory Budget Commission, when such other method is deemed more advantageous for the particular item to be purchased. Regardless of the amount of the expenditure, it shall be the duty of the Director of Administration to solicit bids direct by mail from reputable sources of supply. Except as otherwise provided for in this article, all contracts for the purchase of supplies, materials or equipment made under the provisions of this article shall wherever possible be based on competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied, their conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Director of Administration with the approval of the Advisory Budget Commission, which rules and regulations shall prescribe among other things the manner, time and place for proper advertisement for such bids, indicating the time and place when such bids will be received, the articles for which such bids are to be submitted and the standard specifications prescribed for such articles, the amount or number of the articles desired and for which the bids are to be made and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids received may be rejected. Each and every bid conforming to the terms of the advertisement herein provided for, together with the name of the bidder, shall be entered on the records, and all such records with the name of the successful bidder indicated thereon shall, after the award or letting of the contract, be open to public inspection. Bids shall be opened in public. A bond for the faithful performance of any contract may be required of the successful bidder in the discretion of the Director of Administration. After the contracts have been awarded, the Director of Administration shall certify to the several departments, institutions and agencies of the State government the sources of supply and the contract price of the various supplies, materials and equipment so contracted for.

The Advisory Budget Commission shall have the necessary authority to adopt rules and regulations governing the following:

(1) Designating a board of award, composed of members of the Budget Commission, or other regular employees of the State or its institutions (who shall serve without added compensation), to act with the Director in canvassing bids and awarding contracts.
(2) Fixing a quorum of the board of award and prescribing the routine and conditions to be followed in canvassing bids and awarding contracts.
(3) Prescribing routine for securing bids and awarding contracts on items that do not exceed $2,000 in value.
(4) Prescribing items and quantities to be purchased locally.
(5) Providing that where bids are unsatisfactory the Division, with the approval and consent of the Budget Commission, may reject all bids and purchase the article in the open market, but only at a lower price.
(6) Prescribing procedure to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.
(7) Adopting any other rules and regulations necessary to carry out the purpose of this article. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3.)

Editor's Note.—The 1933 amendment added the second paragraph containing subdivisions (1)-(7).

The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract" at several places in the first paragraph.

§ 143-52.1. Certification that bids were submitted without collusion.—The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification shall be punishable as in cases of perjury. (1961, c. 963.)

§ 143-53. Requisitioning for supplies by agencies; must purchase through sources certified.—After sources of supply have been established by contract under competitive bidding and certified by the Director of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition on blanks to be approved by the Director of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Director of Administration. One copy of such requisition shall be sent to the Director of Administration when the requisition is issued. (1931, c. 261, s. 6; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-54. Certain purchases excepted from provisions of article.—Unless otherwise ordered by the Director of Administration, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Director of Administration shall not be mandatory in the following cases:

(1) Technical instruments and supplies and technical books and other printed matter on technical subjects; also manuscripts, maps, books, pamphlets and periodicals for the use of the State Library or any other library in the State supported in whole or in part by State funds.
(2) Perishable articles and such as fresh vegetables, fresh fish, fresh meat, eggs and milk: Provided, that no other article shall be considered perishable within the meaning of this clause, unless so classified by the

Director of Administration with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall wherever possible be based on at least three competitive bids. Whenever an order or contract for such articles is awarded by any of the departments, institutions and agencies of the State government a copy of such order or contract, together with a record of the competitive bids upon which it was based, shall be forwarded to the Director of Administration. (1931, c. 261, s. 7; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-55. Purchase of articles in certain emergencies.—In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Director of Administration shall have power to purchase in the open market any necessary supplies, materials or equipment for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency and his transactions thereunder shall be transmitted in writing by the Director of Administration to the Advisory Budget Commission at its next meeting and shall be entered in the minutes of the Commission. (1931, c. 261, s. 8; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-56. Contracts contrary to provisions of article made void.—Whenever any department, institution or agency of the State government, required by this article and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials, or equipment through the Director of Administration shall contract for the purchase of such supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such department, institution or agency purchases any supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, the executive officer of such department, institution or agency shall be personally liable for the costs thereof, and if such supplies, materials, or equipment are so unlawfully purchased and paid for out of State moneys, the amount thereof may be recovered in the name of the State in an appropriate action instituted therefor. (1931, c. 261, s. 9; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-57. Preference given to North Carolina products and articles manufactured by State agencies; sales tax considered.—The Director of Administration shall in the purchase of and/or in the contracting for supplies, materials, equipment, and/or printing give preference as far as may be practicable to materials, supplies, equipment and/or printing manufactured or produced in North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and, Provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution: Provided further, that in canvassing and comparing bids there shall be taken into consideration any sales tax or excise tax that will accrue to the State of North Carolina which is levied now or hereafter may be levied and in no case shall a

bidder subject to such tax suffer in comparison with bids from those to whom such tax would not apply. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3.)

Editor's Note.—The 1933 amendment added the last proviso.

The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

§ 143-58. Department of Administration directed to give preference to home products.—The Department of Administration or any State agency or institution which is authorized to purchase foodstuff and other supplies for State institutions, is hereby directed in all cases where the prices, products, or other supplies are available and equal, the said purchasing agency or institution shall in all such cases, contract with and purchase from the citizens of North Carolina and as far as is reasonable and practical, taking into consideration price and quality, shall purchase and use and give preference to all of such products and supplies as are grown or produced within the State of North Carolina. (1933, c. 168; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment this section applied to the "Division of Purchase and Contract or any other constituted department."

§ 143-59. Rules and regulations covering certain purposes; sales and exchanges by Memorial Art Center.—The Director of Administration, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this article:

(1) Requiring monthly reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions or agencies in compliance with specifications.

(4) Prescribing the manner in which purchases shall be made by the Director of Administration in all emergencies as defined in § 143-55.

(5) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article.

Notwithstanding any of the provisions of this article, the Director of Administration, with the approval of the Advisory Budget Commission, may follow whatever procedure is deemed necessary to enable the State, its institutions and agencies, to take advantage of the sale of any war surplus material sold by the federal government or its disposal agencies. Provided, that the Director of The William Hayes Ackland Memorial Art Center of the University of North Carolina at Chapel Hill, or the officer in immediate charge and having supervision over said Art Center, shall have the power and authority, with the approval of the chancellor of said University, to exchange or sell by private contract or negotiation works of art of said Art Center when in his opinion the same will improve the quality, value or representative character of the art collection of said Art Center, and is in the best interest of said Art Center. No sale or exchange, however, shall be made which is contrary to the terms of acquisition, and the net proceeds of any sale, less sale expenses, shall be deposited in an appropriate and lawful fund, and shall be used only for the purchase of other works of art. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772.)

Editor's Note.—The 1945 amendment added the last paragraph.

The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

The 1961 amendment added the proviso.

§ 143-60. Standardization Committee.—It shall be the duty of the Governor to appoint a Standardization Committee to consist of seven members as follows: The Director of Administration, who shall be chairman of said Committee; an engineer from the State Highway Commission to be appointed by the Governor upon the recommendation of the chairman of the State Highway Commission; a representative of the State educational institutions to be appointed by the Governor, a representative of the State departments to be appointed by the Governor, a representative of the State charitable and correctional institutions to be appointed by the Governor, and two members of the Advisory Budget Commission to be designated by the Governor. Four members of said Committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the Committee by this article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the chairman. The Committee shall keep official minutes and such minutes shall be open to public inspection. It shall be the duty of the Standardization Committee to formulate, adopt, establish and/or modify standard specifications applying to State contracts. In the formulation, adoption and/or modification of any standard specifications, the Standardization Committee shall seek the advice, assistance and co-operation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall in so far as possible satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption each standard specification shall until revised or rescinded apply alike in terms and effect, to every State purchase of the commodity described in such specifications. In the preparation of any standard specifications the Standardization Committee shall have power to make use of any State laboratory for chemical and physical tests in the determination of quality. (1931, c. 261, s. 12; 1957, c. 65, s. 11; c. 269, s. 3.)

Editor's Note.—The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission." The second 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract" near the beginning of the first sentence.

§ 143-61. Public printer failing to perform contract; course pursued.—If any person who has contracted to do the public printing for the State shall fail to perform his contract according to the terms thereof, the Director of Administration shall procure the public printing to be done by other parties, and the Attorney General shall institute suit in the Superior Court of Wake County in the name of the State to recover of the public printer and his bond any damages for failure to perform the contract. (1899, c. 724; 1901, cc. 280, 401, 667; Rev., s. 5094; C. S., s. 7289; 1931, c. 261, s. 2; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment this section related to the former Division of Purchase and Contract.

§ 143-62. Law applicable to printing Supreme Court Reports not affected.—Nothing in this article shall be construed as amending or repealing § 7-34, relating to the printing of the Supreme Court Reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13.)

§ 143-63. Repealed by Session Laws 1957, c. 269, s. 3.

§ 143-64. Financial interest of officers in sources of supply; acceptance of bribes.—Neither the Director of Administration, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment

or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials, or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Director, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Director, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3.)

Editor's Note.—The 1957 amendment substituted "Director of Administration" for "Director of Purchase and Contract."

Article 3A.

State Agency for Surplus Property.

§ 143-64.1. Department of Administration designated State agency for surplus property.—The Department of Administration is hereby designated as the State agency for surplus property, and with respect to the acquisition of surplus property said agency shall be subject to the supervision and direction of the Director of Administration who is authorized to prescribe the duties which shall be assigned to the personnel of said Department for surplus property purposes. (1953, c. 1262, s. 1; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment this section related to the Division of Purchase and Contract and the Director thereof.

§ 143-64.2. Authority and duties of the State agency for surplus property.—(a) The State agency for surplus property is hereby authorized and empowered

(1) To acquire from the United States of America such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational purposes or public health purposes, including research;

(2) To warehouse such property; and

(3) To distribute such property to tax supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the State, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under section 101 (6) of the United States Internal Revenue Code, within the State.

(b) For the purpose of executing its authority under this article, the State agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations as may be deemed necessary; and take such other action as is deemed necessary and suitable in the administration of this article, including the enactment and promulgation of such rules and regulations as may be necessary to bring this article and its administration into conformity with any federal statutes or rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(c) The State agency for surplus property herein designated is authorized and empowered to appoint such advisory boards or committees as may be necessary to the end that this article, and the rules and regulations promulgated hereunder, may conform with federal statutes and rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(d) The State agency for surplus property is authorized and empowered to take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the State, require such reports and make

such investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing, and distribution of property received by the State agency for surplus property from the United States of America.

(e) The State agency for surplus property is authorized and empowered to act as clearing house of information for the public and private non-profit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above mentioned institutions and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions and agencies in every way possible in the consummation or acquisition or transactions hereunder.

(f) The State agency for surplus property, in the administration of this article, shall co-operate to the fullest extent consistent with the provisions of this article, with the departments or agencies of the United States of America and shall make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for, property donable or donated to the State. (1953, c. 1262, s. 2.)

§ 143-64.3. Power of Department of Administration and Director to delegate authority.—The Department of Administration and/or the Director of said Department may delegate to any employees of the State agency for surplus property such power and authority as he or they deem reasonable and proper for the effective administration of this article. The Department of Administration and/or the Director of said Department may, in his or their discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of this article. (1953, c. 1262, s. 3; 1957, c. 269, s. 3.)

Editor's Note.—Prior to the 1957 amendment this section related to the Division of Purchase and Contract and the Director thereof.

§ 143-64.4. Warehousing, transfer, etc., charges.—Any charges made or fees assessed by the State agency for surplus property for the acquisition, warehousing, distribution, or transfer of any property acquired by donation from the United States of America for educational purposes or public health purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipt, warehousing, distribution or transfer by the State agency for surplus property. (1953, c. 1262, s. 4.)

§ 143-64.5. Department of Agriculture exempted from application of article.—Notwithstanding any provisions or limitations of this article, the North Carolina Department of Agriculture is authorized and empowered to distribute food, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and the North Carolina Department of Agriculture is authorized and empowered to adopt rules and regulations in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, commodities and agricultural products. To the extent set forth above and in this section, the provisions of this article shall not apply to the North Carolina Department of Agriculture. (1953, c. 1262, s. 5.)

ARTICLE 4.

World War Veterans Loan Administration.

§§ 143-65 to 143-105: Deleted by Session Laws 1951, c. 349.

Article 5.

Check on License Forms, Tags and Certificates Used or Issued.

§ **143-106. Authority of State Auditor as to blank forms of licenses, etc.; monthly report to Auditor; spoiled and damaged forms; forms marked "void" and unnumbered forms.**—The Auditor shall have the authority to require State departments and institutions to furnish him with complete information as to all blank forms of licenses, tags, or certificates received by them. At his request, the State departments or agencies issuing and delivering licenses, tags, or certificates shall furnish the Auditor with complete copies or lists of such issuances. If there be any of such blank license forms, tags, or certificates spoiled or in any way damaged so as to be incapable of being used, all such spoiled license forms, tags, or certificates shall be kept by such department or agency subject to the audit and inspection of the Auditor. Any license forms, tags, or certificates being used by the department or agency as a printer's copy, or in any other way being used for a sample, shall be first marked "void" in bold letters on the face of the form. These voided licenses or certificates shall be presented to the Auditor or his representatives before being released. The Auditor may, at his discretion, allow the use of unnumbered license forms or certificates provided the number and amount is entered thereon by an accounting or bookkeeping machine meeting his approval. (1931, c. 398, s. 1; 1951, c. 1010, s. 2.)

Editor's Note.—The 1951 amendment rewrote former §§ 143-106 and 143-107 to appear as this section. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

§ **143-107:** Rewritten as § 143-106 by Session Laws 1951, c. 1010, s. 2.

Article 6.

Officers of State Institutions.

§ **143-108. Secretary to be elected from directors.**—The board of directors of the various State institutions shall elect one of their number as secretary, who shall act as such at all regular or special meetings of such boards. (1907, c. 883, s. 1; C. S., s. 7517.)

§ **143-109. Directors to elect officers and employees.**—All officers and employees of the various state institutions who hold elective positions shall be nominated and elected by the board of directors of the respective institutions. (1907, c. 883, s. 3; C. S., s. 7518.)

§ **143-110. Places vacated for failure to attend meetings.**—Unless otherwise specially provided by law, whenever a trustee or director of any institution supported in whole or in part by State appropriation shall fail to be present for two successive years at the regular meetings of the board, his place as trustee or director shall be deemed vacant and shall be filled as provided by law for other vacancies on such boards.

This section shall not apply to any trustee or director who holds office as such by virtue of another public office held by him and shall not apply to any trustee or director chosen by any agency or authority other than the State of North Carolina. (1927, c. 225.)

§ **143-111. Director not to be elected to position under board.**—It shall be unlawful for any board of directors, board of trustees or other governing body of any of the various State institutions (penal, charitable, or otherwise) to appoint or elect any person who may be or has been at any time within six months a member of such board of directors, board of trustees, or other governing body, to any position in the institution, which position may be under the control of such board of directors, board of trustees, or other governing body. (1909, c. 831; C. S., s. 7519.)

§ 143-112. Superintendents to be within call of board meetings.—The superintendent of each of the various State institutions shall be present on the premises of his institution and within the call of the board of directors during all regular or special meetings of the board, and shall respond to all calls of the board for any information which it may wish at his hands. (1907, c. 883, s. 1; C. S., s. 7520.)

§ 143-113. Trading by interested officials forbidden.—The directors, stewards, and superintendents of the State institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C. S., s. 7521.)

§ 143-114. Diversion of appropriations to State institutions.—It shall be unlawful for the board of trustees, board of directors, or other body controlling any State institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any State institution to which money is appropriated for its maintenance by the State to divert, use or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C. S., s. 7521(a).)

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.—Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, violating any of the provisions of § 143-114, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position, and shall be fined or imprisoned in the discretion of the court. (1921, c. 232, s. 2; C. S., s. 7521(b).)

§ 143-116. Venue for trial of offenses.—All offenses against §§ 143-114 and 143-115 shall be held to have been committed in the county of Wake and shall be tried and disposed of by the courts of said county having jurisdiction thereof. (1921, c. 232, s. 3; C. S., s. 7521(c).)

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included.—All persons admitted to Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, John Umstead Hospital, Murdoch School, O'Berry School, Caswell School at Kinston, Stonewall Jackson Training School for Boys at Concord, the State Home and Industrial School for Girls at Samarcand, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County, the School for the Deaf at Morganton, and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29; 1959, c. 1028, ss. 1-7.)

Editor's Note.—This article is an attempt to place all State charitable institutions on the same basis, with similar policies, so that the expense which the State bears will be lightened by requiring those who are able to pay to bear the expense of their care, maintenance and treatment. 4 N. C. Law Rev. 17.

The 1949 amendment struck out "the School for the Blind and Deaf at Raleigh" from the list of institutions named in this section.

The 1957 amendment inserted in the list of institutions the following: "State Hospital at Butner, Butner Training School, Goldsboro Training School."

The 1959 amendment changed the names of the State Hospital at Raleigh, State Hospital at Morganton, State Hospital at Goldsboro, State Hospital at Butner, Butner Training School, Goldsboro Training School and Caswell Training School to Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, John Umstead Hospital, Murdoch School, O'Berry School and Caswell School, respectively.

§ 143-118. Governing board to fix cost and charges.—The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, are hereby empowered with the final authority to determine and fix the actual cost of such training, treatment, care and maintenance, to be paid for by or for each inmate or patient, and the said boards of trustees or directors shall, to the best of their ability, fix such cost so as to include all the cost of such care, maintenance, treatment and training at such institutions, for each respective inmate, pupil or patient thereof, and the said sum, when so fixed, shall be the actual cost thereof: Provided, that the respective boards of directors of each of said institutions above named, in determining and fixing the actual cost of such care, maintenance and treatment to be paid for by non-indigent inmates thereof, are hereby given full and final authority to fix a general rate of charge, to be paid on a monthly basis by inmates able to pay same, or in cases where indigent inmates later are found to be non-indigent, then such cost for past care and maintenance of such inmates shall be paid in one or more payments based on the monthly rates of cost in effect for the period or periods of time during which such inmates have been confined in said institutions. The past acts of the boards of directors in fixing a monthly rate to be paid by non-indigent inmates for their care and maintenance in such institutions are hereby in every respect ratified and validated, and on all claims and causes of actions for such purpose now pending and are unsettled, or which hereafter may be made or begun for the payment of said past indebtedness for care, maintenance and treatment, the rates so fixed by said board of directors shall prevail and said collections shall be made in accordance therewith. In any action by any of said State's charitable institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, now pending or which may hereafter be instituted, a verified and itemized statement of the account, showing the period of time during which the said non-indigent inmate was confined to the institution, the monthly rate of charge as fixed by said board of directors of such institution for the period of time that the inmate was confined therein, the total amount claimed to be due thereon as predicated upon said rate of charge, and the proper credits for any payments which may have been made on said account, shall be filed with the complaint and shall constitute a prima facie case, and such State institution shall be entitled to a judgment thereon in the absence of allegation and proof on the part of the inmate's guardian, trustee, administrator, executor, or other fiduciary, that said verified and itemized statement of the superintendent or bookkeeper of said institution is not correct because of:

(1) An error in the calculation of the amount due as predicated upon said monthly rate of charge fixed by the board of directors, or

(2) An error as to the period of time during which the inmate was confined in said State institution, or

(3) An error in not properly crediting the account with any cash payment, or payments, which may have been made thereon. (1925, c. 120, s. 2; 1935, c. 186, s. 1.)

§ 143-119. Payments.—Such cost, when so fixed and determined by the respective boards of trustees or directors of each institution, shall be paid by the patient, pupil or inmate thereof, or by his parent, guardian, trustee or other person legally responsible therefor, and the payment thereof shall constitute a valid expenditure of the funds of any such pupil, patient or inmate by any fiduciary who may be in the control of such funds, and a receipt for the payment of such costs in the hands of such fiduciary shall be a valid voucher to the extent thereof in the settlement of his accounts of his trust. Immediately upon the determination of the

cost, as herein provided for, the superintendent of the institution shall notify the patient, pupil, inmate, parent, guardian, trustee, or such other person who shall be legally responsible for the payment thereof, of the monthly amount thereof, and such statement shall be rendered from month to month. The respective boards of trustees or directors of the various institutions are vested with full and complete authority to arrange with the patient, pupil, inmate, parent, guardian, trustee, or other person legally responsible for the cost, for the payment of any portion of such cost monthly or otherwise, in the event such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall not be able to pay the total cost. The head of the various institutions shall annually file with the Auditor of the State a list of all unpaid accounts. The provisions of this article directing the boards of directors of the various institutions of this State above named to ascertain which of the inmates are non-indigent and able to pay for their care, maintenance and treatment, and also directing said boards of directors to make certain periodical demands upon the guardians or other persons responsible for said inmates for the payment of said charges, and which further directs them to remove all of those inmates found able to pay but who refuse to pay, and all of the other provisions of this article relating to the manner in which said board shall collect said costs, shall be construed to be directory provisions on the part of the authorities of said institutions and not mandatory, and the failure on the part of said authorities of such institutions to perform any or all of said provisions shall not affect the right of the State institutions so named to recover in any action brought for that purpose, either during the lifetime of said inmates or after their death, in an action against their guardian if alive, or other fiduciary, or against the inmate himself, and if dead, against their personal representatives for the cost of their care, maintenance and treatment in said institutions. (1925, c. 120, s. 3; 1935, c. 186, s. 2.)

Editor's Note.—The 1935 amendment added the last sentence.

§ **143-120. Determining who is able to pay.**—From and after March 4, 1925, the respective boards of trustees or directors of each institution shall ascertain which of the various patients, pupils or inmates thereof, or which of the parents, guardians, trustees, or other persons legally responsible therefor, are financially able to pay the cost, to be fixed and determined by this article, and so soon as it shall be ascertained such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall be notified of such cost, and in general of the provisions of this article and such patient, pupil, inmate or the parent, guardian, trustee, or other person legally responsible therefor shall have the option to pay the same or to remove the patient, pupil or inmate from such institution, unless such person was committed by an order of a court of competent jurisdiction, in which event the liability for the cost as fixed by this article shall be fixed or determined and payment shall be made in accordance with the terms of this article. (1925, c. 120, s. 4.)

Where patient is indigent at time of admission to State hospital and later becomes non-indigent, under this section, the hospital is entitled to recover the actual cost of the ward's care and maintenance for the whole period the ward was an inmate of the hospital, including the time the ward was indigent as well as the time he was not indigent, and including the period both before and after demand by the hospital for the cost of his maintenance, and this is true even though this section was ratified after the admission of the ward. State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-121. Action to recover costs.**—Immediately upon the fixing of the amount of such actual cost, as herein provided, a cause of action shall accrue therefor in favor of the State for the use of the institution in which such patient, pupil or inmate is receiving training, treatment, maintenance or care, and the State for the use of such institution may sue upon such cause of action in the courts of Wake County, or in the courts of the county in which such institution is located, against said patient, pupil or inmate, or his parents, or either of them, or guardian, trustee,

committee, or other person legally responsible therefor, or in whose possession and control there may be any funds or property belonging to either the said pupil, patient or inmate, or to any person upon whom the said patient, pupil, or inmate may be legally dependent, including both parents. (1925, c. 120, s. 5.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-122. No limitation of such action.**—No statute of limitation shall apply to or constitute a defense to any cause of action asserted by any of the above-named institutions for the collection of the cost of care, treatment, training or maintenance, or any or all of these against any person liable therefor, as herein provided, and all statutes containing limitations which might apply to the same are hereby pro tanto repealed, as to all such causes of action or claims, and this section shall apply to all claims, and causes of action for like cost heretofore incurred with such institutions and now remaining unpaid. (1925, c. 120, s. 6.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-123. Power of trustees to admit indigent persons.**—This article shall not be held or construed to interfere with or to limit the authority and power of the management of the boards of trustees or directors of any of the institutions named herein, to make provision for the care, custody, treatment and maintenance of all indigent persons who may be otherwise entitled to admission in any of the said institutions, and as to indigent pupils, inmates and patients, the same provisions now contained in the several statutes relating thereto shall continue in force, but if at any time any of the said indigent patients, pupils or inmates shall succeed to or inherit, or acquire, in any manner, property, or any of the persons named above as legally responsible for the cost of care, treatment and maintenance of the pupil, inmate and patient at the above-named institutions, shall acquire property, or shall otherwise be reputed to be solvent, then each of said institutions shall have the full right and authority to collect and sue for the entire cost and maintenance of such inmate, pupil or patient, without let or hindrance on account of any statute of limitation whatsoever. (1925, c. 120, s. 7.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-124. Suit by Attorney General; venue.**—At the request of such institution, all actions and suits shall be sued upon and prosecuted by the Attorney General, and such institution shall have the right to elect as to whether it will institute such action in the courts of Wake County or in the courts of the county in which such institution is located. (1925, c. 120, s. 8.)

§ **143-125. Judgment; never barred.**—Any judgment obtained by the State for the use of any of the above-named institutions shall never be barred by any statute of limitation, but shall continue in force, and, at the request of the Attorney General or the superintendent of any of said institutions, an execution shall issue therefor at any time without requiring such institution to revive the said judgment, as is now provided by statute, but in case any judgment debtor, or any fiduciary responsible for the payment thereof, shall make affidavit and file the same with the clerk of the superior court from which such execution is issued, that payments have been made upon the said judgments, then the clerk shall recall said execution and proceed to hear and determine what is the true amount due thereon, if anything, in the same manner as is now required in motions to revive dormant judgments with the right of appeal to the judge of the superior court, as now provided in such motions, and the clerk of the superior court and the judge thereof shall have authority, in their discretion, to require security for the payment of the amount of said judgment pending such appeal. (1925, c. 120, s. 9.)

§ **143-126. Death of inmate; lien on estate.**—In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all the property, both real and personal, of the said decedent, subject only to the payment of funeral expenses and taxes to the State of North Carolina. (1925, c. 120, s. 10.)

§ **143-127. Money paid into State treasury.**—All money collected by any institution pursuant to this article shall be by such institution paid into the State treasury, and shall be by the State Treasurer credited to the account of the institution collecting and turning the same into the treasury, and shall be paid out by warrants drawn by the Auditor as in cases of appropriations made for the maintenance of such institutions and shall be used by such institution as it uses and is authorized by law to use appropriations made for maintenance. (1925, c. 120, s. 11.)

ARTICLE 8.

Public Building Contracts.

§ **143-128. Separate specifications for building contracts; responsible contractors.**—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the State, or for any county or municipality, when the entire cost of such work shall exceed twenty thousand dollars ($20,000.00), must have prepared separate specifications for each of the following branches of work to be performed:

(1) Heating and ventilating and accessories.
(2) Plumbing and gas fitting and accessories.
(3) Electrical installations.
(4) Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions, provided, however, that when heating and ventilating, and air conditioning for comfort cooling, is to be constructed using essentially the same conductive facilities or duct work, or the said systems for heating, ventilating and/or air conditioning are to be constructed as parts of the same contract, a combined bid for these two classes of work may be submitted. All contracts hereafter awarded by the State, or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work. When the estimated cost of work to be performed in any single subdivision is less than one thousand dollars ($1,000.00), the same may be included in one of the several other contracts, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State, or with any county or municipality, for the erection, construction or alteration of any building or buildings. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7.)

Local Modification.—Greene: 1953, c. 718.

Editor's Note.—The 1943 amendment added "and accessories" at the end of subdivisions (1) and (2). It also inserted subdivisions (3) and (4).

The 1945 amendment added the second

paragraph.

The 1949 amendment substituted "fifteen thousand dollars" for "ten thousand dollars" in the first paragraph and added the last sentence of the second paragraph.

The 1963 amendment made this section applicable to buildings erected, etc., for counties and municipalities, as well as for the State. It also substituted "twenty thousand dollars ($20,000.00)" for "fifteen thousand dollars ($15,000.00)" in the first paragraph and added the proviso to the first sentence of the second paragraph.

For comment on this section, see 4 N. C. Law Rev. 14.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.—No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three thousand five hundred dollars ($3,500.00) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand dollars ($2,000.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall elapse between the date of publication of notice and the date of the opening of the bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision: Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than three thousand dollars ($3,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other subdivision wherein there is no newspaper published and the estimated cost of the contract is less than three thousand dollars ($3,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door of the county in which such city, town or other subdivision is situated and at least one public place in such city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this article and no board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bid is in excess of the funds available for such purpose, such board or governing body is authorized to enter into negotiations with the lowest responsible bidder

above mentioned and may award such contract to such bidder if such bidder will agree to perform the same, without making any substantial changes in the plans and specifications, at a sum within the funds available therefor. If the contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, the said letting and make such changes in the plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor. No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation, in an amount equal to not less than five per cent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within ten days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the State, or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects: Provided, that in the case of contracts for the purchase of apparatus, supplies, materials, or equipment the board or governing body may waive the requirement for the deposit of a surety bond or securities as required herein.

The owning agency or the Budget Bureau, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, and funds of political subdivisions of the State, in contracts with such political subdivisions, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, for

the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of G. S. 143-131.

The Director of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50, c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226.)

Local Modification.—Durham and city of Durham: 1951, c. 506; Forsyth: 1955, c. 94, s. 1; Greene: 1953, c. 718; Lee (board of education): 1953, c. 228; Transylvania: 1947, c. 828 (temporary); city of Greensboro: 1949, c. 440; 1951, c. 707, ss. 1, 5; 1959, c. 1137, s. 14; city of Henderson: 1953 c. 731, s. 33; city of Kernersville: 1955, c. 67; city of Wilmington: 1951, c. 881; city of Winston-Salem: 1951, c. 224; town of Wrightsville Beach: 1955, c. 670, s. 1; Bessemer Sanitary District: 1953, c. 729, s. 1.

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

Editor's Note.—The 1945 amendment added the last two paragraphs. The 1949 amendment made changes in the seventh paragraph. The 1951 amendment inserted "requiring the estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars ($2,500.00)" in the first paragraph and rewrote the seventh paragraph.

The 1953 amendment inserted the word "performance" in the seventh paragraph.

The 1955 amendment inserted the present tenth paragraph.

The first 1957 amendment substituted in the last paragraph "Director of Administration" for "Director of the Division of Purchase and Contract."

The second 1957 amendment rewrote the present tenth paragraph.

The third 1957 amendment increased the amounts in the first paragraph from $2,500.00 and $1,000.00 to $3,500.00 and $2,000.00, respectively, and the amount in the fourth paragraph from $2,000.00 to $3,000.00. It also substituted "equipment" for "equivalent" in the fifth paragraph and added the proviso to the present ninth paragraph. Section 7 of the amendatory act provides that the limitations prescribed in this section shall apply to all governmental units in this State, except governmental units subject to lesser or greater limitations by charter provision or special act, in which case the charter provision or special act shall apply to such governmental units.

The first 1959 amendment added the proviso to the third paragraph, and the second 1959 amendment rewrote the last two paragraphs.

The 1961 amendment inserted the paragraph relating to sealed bids as the eighth paragraph.

Session Laws 1959, c. 910, ss. 1A and 1B, provide: "Nothing in this act shall be construed to authorize the Division of Purchase and Contract of the Department of Administration to make any purchases for or on behalf of any county, city or town government in this State or any other political subdivision.

"The powers granted herein are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns."

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 423.

The purpose of this section is to prevent favoritism, corruption, fraud and imposition in the awarding of public contracts by giving notice to the prospective bidders and thus assuring competition, which in turn guarantees fair play and reasonable prices in contracts involving the expenditure of a substantial amount of public money. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

The requirements of this section are mandatory, and a contract made in contravention of such requirements is ultra vires and void. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

Public Laws 1903, c. 305, does not authorize the town of Louisburg to contract for machinery for its water and sewer system and electric light plant in a sum in excess of $1,000 without submitting the same to competitive bidding after due advertisement. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

Public policy has for many years required governmental needs to be supplied pursuant to contracts with low bidders ascertained by public advertisement. North Carolina has for many years so provided by this section. Douglas Aircraft Co. v. Local Union 379, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

This section applies only to contracts

where the bidders have the right to name the price for which they are willing to furnish supplies and materials. It has no application whatever to a contract between a municipality and a public utility, where there can be no competition between bidders because the municipality or the State has the power and authority to fix the price of the service to be rendered or the commodity to be furnished. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Emergency Defined.—The meaning of the word "emergency" within the exception to this section is not susceptible of precise definition and each case must, to some extent, stand upon its own bottom, but in any event the term connotes an immediate and present condition and not one which may or may not arise in the future or one that is apt to arise or may be expected to arise. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

The terms "apparatus," "materials" and "equipment," used in this section, denote particular types of tangible personal property and could not be construed to include electric current. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

The word "supplies" in the section is used in conjunction with the term "apparatus," "materials" and "equipment," and its meaning is confined to property of like kind and nature. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Contract Made in Violation of This Section Is Void.—A contract involving more that $1,000 [now $2,000] let without advertisement as required by this section is void, and the contractor may not recover on it. Hawkins v. Dallas, 229 N. C. 561, 50 S. E. (2d) 561 (1948).

Where plaintiffs laid water lines as a business investment pursuant to an agreement with the city's director of utilities that the city would reimburse them for the moneys so expended if the lines were incorporated within the city's limits, the contract was void. Styers v. Gastonia, 252 N. C. 572, 114 S. E. (2d) 348 (1960).

But Contractor May Recover on Quantum Meruit.—Where the work under the contract has been actually done and accepted, the county, city or town is bound on a quantum meruit for the reasonable and just value of the work and labor done and materials furnished. Hawkins v. Dallas, 299 N. C. 561, 50 S. E. (2d) 561 (1948).

Judicial Review of Finding of Emergency.—The provision of this section that a municipality may let a contract for expenditures in excess of $1,000 [now $2,000] without advertisement "in cases of special emergency" constitutes an exception to the general rule, and the commissioners of a municipality may not declare an emergency where none exists and thus defeat the law, nor is such finding by the municipal board upon competent evidence conclusive on the courts, but the courts may review the evidence and determine whether an emergency as contemplated by the statute does in fact exist. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

Cited in Karpark Corp. v. Graham, 99 F. Supp. 124 (1951).

§ 143-130. Allowance for convict labor must be specified.—In cases where the board or governing body may furnish convict or other labor to the contractor, manufacturer or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.—All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five hundred dollars ($500.00) or more but less than the limits prescribed in G. S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contracts to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172.)

Local Modification.—Durham and city of Durham: 1951, c. 506; Forsyth: 1955, c. 94, s. 2; city of Greensboro: 1951, c. 707, s. 5; city of Henderson: 1953, c. 731, s. 33; city of Wilmington: 1951, c. 881; town of Wrightsville Beach: 1955, c. 670, s. 2; Bessemer Sanitary District: 1953, c. 729, s. 2.

Editor's Note.—The 1957 amendment substituted "the limits prescribed in G. S. 143-129" for "one thousand dollars ($1,000.00)"

and deleted "when practical" formerly appearing immediately after "State" near the end of what is now the first sentence.

The 1959 amendment rewrote this section.

The 1963 amendment substituted "five hundred dollars ($500.00)" for "two hundred dollars ($200.00)" in the first sentence.

§ 143-132. Minimum number of bids for public contracts.—No contracts to which § 143-120 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective line of endeavor, when the estimated cost of the project exceeds the sum of twenty thousand dollars ($20,000.00); however, this section shall not apply to contracts which are negotiated as provided for in § 143-129. Provided that if after advertisement for bids as required by G. S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State institution or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289.)

Local Modification.—Bertie and Northampton: 1953, c. 1257.

Editor's Note.—The 1951 amendment rewrote this section.

The 1959 amendment added the proviso.

The 1963 amendment substituted in the first sentence "twenty thousand dollars ($20,000.00)" for "fifteen thousand dollars ($15,000.00)."

§ 143-133. No evasion permitted.—No bill or contract shall be divided for the purpose of evading the provisions of this article. (1933, c. 400, s. 3.)

§ 143-134. Applicable to State Highway Commission and Prison Department; exceptions.—This article shall apply to the State Highway Commission and the Prison Department except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the State Highway Commission can be done more economically through use of employees of the State Highway Commission, and/or prison inmates than by letting such repair or building construction to contract, the provisions of this article shall not apply to such repair or construction. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11.)

Editor's Note.—The 1955 amendment, effective January 1, 1956, rewrote this section.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 143-134.1. Interest on final payments due to prime contractors.—On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except the construction of roads, highways, bridges and their approaches, the balance due prime contractors shall be paid in full within forty-five days after respective prime contracts of the project have been accepted by the owner, certified by the architect or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purposes for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the forty-five-day limit. No payment shall be delayed because of the failure of another

prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than forty-five days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of six per cent (6%) per annum on such unpaid balance as may be due. Funds for payment of such interest on State-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. (1959, c. 1328.)

§ 143-135. Limitation of application of article.—This article shall not apply to the State or to subdivisions of the State of North Carolina in the expenditure of public funds when the total cost of any repairs, completed project, building, or structure shall not exceed the sum of fifteen thousand dollars ($15,000.00), if the repairs, completed project, building, or structure are performed or accomplished by or through duly elected officers or agents. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6.)

Local Modification.—Ashe: 1959, c. 627; Beaufort: 1955, c. 1136; Brunswick: 1961, c. 503; Franklin: 1957, c. 288; Halifax: 1957, c. 803; McDowell and city of Marion: 1959, c. 553; Moore (temporary): 1955, c. 303; 1957, c. 779; 1959, c. 439; Pender: 1955, c. 187.

Editor's Note.—The 1949 and 1951 amendments rewrote this section.

§ 143-135.1. State buildings exempt from municipal building requirements; consideration of recommendations by municipalities.—Buildings constructed by the State of North Carolina or any agency or institution of the State under plans and specifications approved by the Budget Bureau shall not be subject to inspection by any municipal authorities and to municipal building codes and requirements. Inspection fees fixed by municipalities shall not be applicable to such construction, except where inspection is requested by the owning agency. Municipal authorities may, however, inspect any plans or specifications for any such construction and all recommendations made by them with respect thereto shall be given careful consideration by the Budget Bureau. (1951, c. 1104, s. 4.)

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

§ 143-135.2. Contracts for restoration of historic buildings with private donations.—This article shall not apply to building contracts let by a State agency for restoration of a historic building or structure where the cost of the restoration of such building or structure is provided entirely by funds donated from private sources for such purposes. (1955, c. 27.)

Article 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership.—(a) Creation; Membership; Terms.—There is hereby created a Building Code Council, which shall be composed of nine members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal building inspector, a representative of the public who is not a member of the building construction industry, and a representative of the engineering staff of a State agency charged with approval of plans of State-owned buildings. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years

each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above.

(b) Compensation.—Members of the Building Code Council other than any who are employees of the State shall receive seven dollars ($7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting, or when on official business of the Council. (1957, c. 1138.)

Editor's Note.—Session Laws 1957, c. 1138 repealed former article 9 entitled "Building Code" and substituted the present article therefor. The former article was codified from Public Laws 1933, c. 392 and Public Laws 1941, c. 280.

Cited in Jenkins v. Leftwich Electric Co., 254 N. C. 553, 119 S. E. (2d) 767 (1961).

§ 143-137. Organization of Council; rules and regulations; meetings; staff; fiscal affairs.—(a) First Meeting; Organization; Rules and Regulations.—Within thirty days after its appointment, the Building Code Council shall meet on call of the Commissioner of Insurance. The Council shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules and regulations. The Council shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such committees as the work of the Council may require.

(b) Meetings.—The Council shall meet regularly, at least once every six months, at places and dates to be determined by the Council. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Council. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum. All meetings shall be open to the public.

(c) Staff.—Personnel of the Division of Engineering of the Department of Insurance shall serve as a staff for the Council. Such staff shall have the duties of

(1) Keeping an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work performed by or for the Council, and making these records available for public inspection at all reasonable times;

(2) Handling correspondence for the Council.

(d) Fiscal Affairs of the Council.—All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All such funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Budget Bureau or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council. (1957, c. 1138.)

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

§ 143-138. North Carolina State Building Code.—(a) Preparation and Adoption.—The Building Code Council is hereby empowered to prepare and adopt, in

accordance with the provisions of this article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing in the city of Raleigh. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than fifteen days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

(b) Contents of the Code.—The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings; requirements concerning means of egress from buildings; regulations governing construction and precautions to be taken during construction; regulations as to permissible materials, loads, and stresses; regulations of chimneys, heating appliances, elevators, and other facilities connected with the buildings; regulations governing plumbing, heating, air-conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems (regulations for which electric systems may be the National Electric Code, as approved by the American Standards Association and filed with the Secretary of State); and such other reasonable rules and regulations pertaining to the construction of buildings and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building, its neighbors, and members of the public at large.

The Code may contain provisions regulating every type of building, wherever it might be situated in the State; provided, however, that such regulations shall not apply to the following types of buildings, unless the governing body of the municipality or the county wherein such buildings are located shall by vote adopt a resolution making the regulations applicable to one or more of such types of buildings:

(1) Dwellings; and outbuildings used in connection therewith;
(2) Apartment buildings used exclusively as the residence of not more than two families;
(3) Temporary buildings or sheds used exclusively for construction purposes, not exceeding twenty feet in any direction and not used for living quarters.

The governing body of any municipality or county is hereby authorized to adopt such a resolution.

Provided further, that nothing in this article shall be construed to make any building regulations applicable to farm buildings located outside the corporate limits of any municipality.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building the total cost of which is less than twenty thousand dollars ($20,000.00), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any boiler regulations adopted by the Board of Boiler Rules,
(2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and
(3) Any regulations relating to sanitation adopted by the State Board of Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this article shall extend to or be construed as being applicable to the

regulation of the design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers.

(c) Standards to Be Followed in Adopting the Code.—All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the requirements of the National Building Code of the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Building Exits Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the National Board of Fire Underwriters for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code.—The Building Code Council may from time to time revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Building Codes.—The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations, provided that before any such building code or regulations or any amendments thereto shall be effective they must be officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Such approval shall be taken as conclusive evidence that a local code supersedes the State Building Code in its particular political subdivision. This article shall not affect any existing building codes or regulations until the North Carolina State Building Code has been legally adopted by the Building Code Council.

(f) Effect upon Existing Laws.—Until such time as the North Carolina State Building Code has been legally adopted by the Building Code Council pursuant to this article, the North Carolina Building Code adopted by the Council and the Commissioner of Insurance in 1953 shall remain in full force and effect. Such Code is hereby ratified and adopted.

(g) Publication and Distribution of Code.—The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council).

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant-Governor	1
Auditor	1
Treasurer	1
Secretary of State	1

OFFICIAL OR AGENCY	NUMBER OF COPIES
Superintendent of Public Instruction	3
State Board of Education	2
Attorney General	5
Commissioner of Agriculture	1
Commissioner of Labor	3
Commissioner of Insurance	5
State Board of Health	10
Medical Care Commission	3
State Highway Commission	3
Adjutant General	1
Utilities Commission	1
Budget Bureau	3
Department of Conservation and Development	3
State Board of Public Welfare	7
Justices of the Supreme Court	1 each
Clerk of the Supreme Court	1
Judges of the Superior Court	* 1 each
Emergency Judges of the Superior Court	* 1 each
Special Judges of the Superior Court	* 1 each
Solicitors of the Superior Court	* 1 each
State Library	2
Supreme Court Library	2
State Senators	* 1 each
Representatives of General Assembly	* 1 each
Other State-supported institutions, at the discretion of the Council	* 1 each
Schools	
University of North Carolina at Chapel Hill	*25
North Carolina State College of Agriculture and Engineering of the University of North Carolina	*15
Woman's College of the University of North Carolina	* 1
A & T College at Greensboro	* 5
All other State-supported colleges and universities in the State of North Carolina	* 1 each
Local Officials	
Clerks of the Superior Courts	1 each
Registers of Deeds of the Counties	* 1 each
Chairmen of the Boards of County Commissioners	* 1 each
City Clerk of each incorporated municipality	1 each

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(h) Violations.—Any person who shall be adjudged to have violated this article or the North Carolina State Building Code shall be guilty of a misdemeanor and shall upon conviction be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each thirty days that such violation continues shall constitute a separate and distinct offense. (1957, c. 1138.)

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

History.—See Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955); Pinnix v. Toomey, 242 N. C. 358, 87 S. E. (2d) 893 (1955); Jenkins v. Leftwich Electric Co., 254 N. C. 553, 119 S. E. (2d) 767 (1961).

Building Code Has Force of Law.—The 1936 North Carolina Building Code had the force of law. In re O'Neal, 243 N. C. 714, 92 S. E. (2d) 189 (1956).

By virtue of subsection (f) of this section, on July 13, 1957, the North Carolina Building Code of 1953 had the force of law. Drum v. Bisaner, 252 N. C. 305, 113 S. E. (2d) 560 (1960).

The Supreme Court will take judicial

notice of the Building Code adopted, promulgated and published by the Building Code Council. Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

Building Code Provisions Referred to in Complaint for Negligent Construction.—Pinnix v. Toomey, 242 N. C. 358, 87 S. E. (2d) 893 (1955).

National Electrical Code as Statutory Standard of Care.—See Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

National Electrical Code Has Force of Law.—On 10 November 1959, the National Electrical Code, as approved by the American Standards Association on 5 August 1959, and which Code is filed in the office of the Secretary of State of North Carolina, by virtue of this section has the force and effect of law in North Carolina. Jenkins v. Leftwich Electric Co., 254 N. C. 553, 119 S. E. (2d) 767 (1961).

And Violation Thereof Is Negligence Per Se.—Violations of the National Electrical Code, authorized by this section, are negligence per se. Jenkins v. Leftwich Electric Co., 254 N. C. 553, 119 S. E. (2d) 767 (1961).

Since article 300, sections 3008-3009, of the National Electrical Code has the force and effect of a statute, the failure to use a box or terminal fitting or bushing where the conductors left the electrical metal tubing on a kitchen exhaust fan was negligence per se. Drum v. Bisaner, 252 N. C. 305, 113 S. E. (2d) 560 (1960).

Applied in Swaney v. Peden Steel Co., 259 N. C. 531, 131 S. E. (2d) 601 (1963).

§ 143-139. Enforcement of Building Code.—(a) Procedural Requirements.—Subject to the provisions set forth herein, the Building Code Council shall adopt such procedural requirements in the North Carolina State Building Code as shall appear reasonably necessary for adequate enforcement of the Code while safeguarding the rights of persons subject to the Code.

(b) General Building Regulations.—The Insurance Commissioner shall have general supervision, through the Division of Engineering of the Department of Insurance, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code, the enforcement of which is specifically allocated to other agencies by subsections (c) and (d) below. The Insurance Commissioner, by means of the Division of Engineering, shall exercise his duties in the enforcement of the North Carolina State Building Code (including local building codes which have superseded the State Building Code in a particular political subdivision pursuant to G. S. 143-138 (e) in cooperation with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners pursuant to article 11, chapter 160 of the General Statutes of North Carolina, or G. S. 160-200(29), or G. S. 153-9(47) and (52), or any other applicable statutory authority.

(c) Boilers.—The Bureau of Boiler Inspection of the Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to boilers of the types enumerated in article 7 of chapter 95 of the General Statutes.

(d) Elevators.—The Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to elevators, moving stairways, and amusement devices such as merry-go-rounds, roller coasters, Ferris wheels, etc. (1957, c. 1138; 1963, c. 811.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section.

§ 143-140. Hearings before enforcement agencies as to questions under Building Code.—Any person desiring to raise any question under this article or under the North Carolina State Building Code shall be entitled to a full hearing before the appropriate enforcement agency, as designated in the preceding section. Upon request in writing by any such person, the enforcement agency shall appoint a time for the hearing, giving such person reasonable notice thereof. The enforcement agency, through an appropriate official, shall conduct a full and complete hearing of the matters in controversy and make a determination thereof within a rea-

sonable time thereafter. The person requesting the hearing shall, upon request, be furnished a written statement of the decision, setting forth the facts found, the decision reached, and the reasons therefor. In the event of dissatisfaction with such decision, the person affected shall have the options of

(1) Appealing to the Building Code Council or

(2) Appealing directly to the superior court, as provided in § 143-141. (1957, c. 1138.)

§ 143-141. Appeals to Building Code Council.—(a) Method of Appeal.—Whenever any person desires to take an appeal to the Building Code Council from the decision of a State enforcement agency relating to any matter under this article or under the North Carolina State Building Code, he shall within thirty days after such decision give written notice to the Building Code Council through the Division of Engineering of the Department of Insurance that he desires to take an appeal. A copy of such notice shall be filed at the same time with the enforcement agency from which the appeal is taken. The chairman of the Building Code Council shall fix a reasonable time and place for a hearing, giving reasonable notice to the appellant and to the enforcement agency. Such hearing shall be not later than the next regular meeting of the Council. The Building Code Council shall thereupon conduct a full and complete hearing as to the matters in controversy, after which it shall within a reasonable time give a written decision setting forth its findings of fact and its conclusions.

(b) Interpretations of the Code.—The Building Code Council shall have the duty, in hearing appeals, to give interpretations of such provisions of the Building Code as shall be pertinent to the matter at issue. Where the Council finds that an enforcement agency was in error in its interpretation of the Code, it shall remand the case to the agency with instructions to take such action as it directs.

(c) Variations of the Code.—Where the Building Code Council finds on appeal that materials or methods of construction proposed to be used are as good as those required by the Code, it shall remand the case to the enforcement agency with instructions to permit the use of such materials or methods of construction. The Council shall thereupon immediately initiate procedures for amending the Code as necessary to permit the use of such materials or methods of construction.

(d) Further Appeals to the Courts.—Whenever any person desires to take an appeal from a decision of the Building Code Council or from the decision of an enforcement agency (with or without an appeal to the Building Code Council), he may take an appeal either to the Wake County Superior Court or to the superior court of the county in which the proposed building is to be situated, in accordance with the provisions of article 33 of chapter 143 of the General Statutes. (1957, c. 1138.)

§ 143-142. Further duties of the Building Code Council.—(a) Recommended Statutory Changes.—It shall be the duty of the Building Code Council to make a thorough study of the building laws of the State, including both the statutes enacted by the General Assembly and the rules and regulations adopted by State and local agencies. On the basis of such study, the Council shall recommend to the 1959 and subsequent General Assemblies desirable statutory changes to simplify and improve such laws.

(b) Recommend Changes in Enforcement Procedures.—It shall be the duty of the Building Code Council to make a thorough and continuing study of the manner in which the building laws of the State are enforced by State, local, and private agencies. On the basis of such studies, the Council may recommend to the General Assembly any statutory changes necessary to improve and simplify the enforcement machinery. The Council may also advise State agencies as to any changes in administrative practices which could be made to improve the enforcement of building laws without statutory changes. (1957, c. 1138.)

§ 143-143. Effect on certain existing laws.—Nothing in this article shall be construed as abrogating or otherwise affecting the power of any State department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law not in conflict with the provisions herein. (1957, c. 1138.)

§ 143-143.1. Interdepartmental Building Regulation Committee.—(a) Creation; Membership.—There is hereby created an Interdepartmental Building Regulation Committee which shall be composed of seven members as follows: The head of the Division of Engineering of the Department of Insurance, the head of the Division of Sanitary Engineering of the State Board of Health, the head of the Division of Standards and Inspections of the Department of Labor, the head of the Division of School Planning of the Department of Public Inspection, the head of the Division of Engineering of the Budget Bureau, the head of the Division of Engineering of the Medical Care Commission, and a representative of the State Board of Public Welfare. Each member may formally designate, by written notice to the chairman of the Interdepartmental Building Regulation Committee, a representative from his department who may exercise any and all of his powers as a member of the Committee, including the right to vote.

(b) First Meeting; Organization; Rules and Regulations.—Within 30 days after the first day of July, 1957, the Interdepartmental Building Regulation Committee shall meet on call of the head of the Division of Engineering of the Department of Insurance. The Committee shall elect a chairman and such other officers as it may choose for such terms as it may designate in its rules and regulations. The Committee shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such subcommittees as the work of the Committee may require.

(c) Meetings.—The Committee shall meet regularly, at least once every three months, at places and dates to be determined by the Committee. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Committee. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Four members shall constitute a quorum.

(d) Powers and Duties.—The Interdepartmental Building Regulation Committee shall have the duty of establishing procedures for the interchange of plans among interested agencies and for the transmission to the applicant of the approval or disapproval of each interested agency, to the end that no applicant shall have to submit the same plans for approval to more than one State agency, which agency shall act upon each application within a reasonable time; which time shall not exceed 30 days unless the said agency shall advise the applicant that additional time is necessary for more information. (1957, c. 978.)

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

Article 10.

Various Powers and Regulations.

§§ **143-144 to 143-151:** Repealed by Session Laws 1959, c. 683, s. 6.

§ 143-152. Injury to water supply misdemeanor.—If any person shall in any way intentionally or maliciously damage or obstruct any water line of any public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1893, c. 63, s. 3; Rev., s. 3458; C. S., s. 7526.)

§ 143-153. Keeping swine near State institutions; penalty.—On the petition of a majority of the legal voters living within a radius of one-quarter of a mile of

the administrative building of any State educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one-quarter of a mile. Any person violating this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten nor more than fifty dollars. (1909, c. 706; C. S., s. 7527.)

§ 143-154. Expenditures for departments and institutions; accounting and warrants.—All expenditures of any character allowed by the General Assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the State Auditor's warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution. (1917, c. 289; C. S., s. 7528.)

§ 143-155. Institutions to file monthly statements with Auditor.—On the fifteenth of each month it shall be the duty of the head of each State institution to prepare an itemized statement of all the disbursements of such institution for the preceding month, and file the same with the State Auditor on blanks to be prepared and furnished to him by the Auditor. (1911, c. 99; C. S., s. 7529.)

§ 143-156. Certain institutions to report to Governor and General Assembly.—It shall be the duty of the boards of directors, managers, or trustees of the several State institutions for the insane, or the several institutions for the deaf, dumb, and blind, and of the State Prison to submit their respective reports to the Governor, to be transmitted by him with his message to the General Assembly. (1883, c. 60, ss. 2, 4; Rev., s. 5373; C. S., s. 7530.)

§ 143-157. Reports of departments and institutions; investigations and audits.—All State departments and State institutions shall make reports to the Governor from time to time as may be required by him, and the Governor is empowered to have all departments of the State government and State institutions examined and audited from time to time, and shall employ such experts to make audits and examinations and to analyze the reports of such institutions and departments as he may deem to be necessary. (1917, c. 58, s. 7; C. S., s. 7531.)

§ 143-158. Special investigations.—At any time, upon complaint made to him or upon his own motion, the Governor may appoint a special commission to investigate any State department or State institution, which commission shall have power to subpoena witnesses, require the production of books and papers, and to do all things necessary to a full and thorough investigation, and shall submit its findings to the Governor. The members of such special commission shall, while engaged in the performance of their duties, receive their actual expenses and a per diem of four dollars. (1917, c. 58, s. 8; C. S., s. 7532.)

§ 143-159. Governor given authority to direct investigation.—The Governor is hereby authorized and empowered to call upon and direct the Attorney General to investigate the management of or condition within any department, agency, bureau, division or institution of the State, or any other matters pertaining to the administration of the Executive Department, when the Governor shall determine that such an investigation shall be necessary. (1927, c. 234, s. 1.)

§ 143-160. Conduct of investigation.—Whenever called upon and requested by the Governor as set out in § 143-159, the Attorney General shall conduct such investigation at such reasonable time and place as may be determined by him. He shall have power to issue subpoenas, administer oaths, compel the attendance of witnesses and the production of papers necessary and material in such investigation. All subpoenas issued by him shall be served by the sheriff or other officer of any county to which they may be directed. Parties interested in such investigation may

appear at the hearing and be represented by counsel, who shall have the right to examine or cross-examine witnesses.

All persons subpoenaed to attend any hearing before the Attorney General shall, for a failure so to attend and testify, be subject to the same penalties as prescribed by law for such failure in the superior court. (1927, c. 234, s. 2.)

§ 143-161. Stenographic record of proceedings.—A stenographic record of the proceedings had in such investigation shall be taken and copy thereof forwarded by the Attorney General to the Governor with his report. (1927, c. 234, s. 3.)

§ 143-162: Repealed by Session Laws 1955, c. 984.

Article 11.

Revenue Bonds and Governmental Aid.

§ 143-163. State agencies may issue bonds to finance certain public undertakings.—The several departments, institutions, agencies and commissions of the State of North Carolina, acting at the suggestion of the Governor of North Carolina, with the approval of the Council of State, are hereby authorized to issue bonds of the several departments, agencies or commissions of the State, in such sum or sums, not to exceed in the aggregate two million dollars, at such time or times, in such denominations as may be determined, and at such rate of interest as may be most advantageous to the several departments, institutions, agencies and commissions of the State, the said bonds to run for a period not exceeding thirty years from date, which bonds may be sold and delivered as other like bonds of the State of North Carolina: Provided, however, that the credit of the State of North Carolina, or any of its departments, institutions, agencies or commissions, shall not be pledged further in the payment of such bonds, except with respect to the rentals, profits and proceeds received in connection with the undertaking, for which said bonds are issued, and said bonds and interest so issued shall be payable solely out of the receipts from the undertaking for which they were issued, without further obligation on the part of the State of North Carolina, or any of its departments, institutions, agencies or commissions, provided that no State department or institution issuing any of said bonds shall be allowed to pledge any of its appropriations received from the State as security for these bonds; Provided, further, that no State department, institution, agency or commission of the State shall make application for or issue any bonds, as provided in this section, after June first, one thousand nine hundred forty-one. (1935, c. 479, s. 1; Ex. Sess. 1936, c. 2, s. 1; 1937, c. 323; 1939, c. 391.)

Editor's Note.—The amendments changed the date in the last proviso.

§ 143-164. Acceptance of federal loans and grants permitted.—The State of North Carolina, and its several departments, institutions, agencies and commissions, are hereby authorized to accept and receive loans, grants, and other assistance from the United States government, departments and/or agencies thereof, for its use, and to receive like financial and other aid from other agencies in carrying out any undertaking which has been authorized by the Governor of North Carolina, with the approval of the Council of State. (1935, c. 479, s. 2.)

§ 143-165. Approval by Governor and Council of State necessary; covenants in resolutions authorizing bonds.—The several departments, institutions, agencies and commissions of the State of North Carolina, before issuing any revenue bonds as herein provided for any undertaking, shall first receive the approval of the undertaking from the Governor of North Carolina, which action shall be approved by the Council of State before such undertaking shall be entered into and revenue bonds issued in payment therefor in whole or in part.

Any resolution or resolutions heretofore or hereafter adopted authorizing the issuance of bonds under this article may contain covenants which shall have the

force of contract so long as any of said bonds and interest thereon remain outstanding and unpaid as to

(1) The use and disposition of revenue of the undertaking for which the said bonds are to be issued,

(2) The pledging of all the gross receipts or any part thereof derived from the operation of the undertaking to the payment of the principal and interest of said bonds including reserves therefor,

(3) The operation and maintenance of such undertaking,

(4) The insurance to be carried thereon and the use and disposition of the insurance moneys,

(5) The fixing and collection of rates, fees and charges for the services, facilities and commodities furnished by such undertaking sufficient to pay said bonds and interest as the same shall become due, and for the creation and maintenance of reasonable reserve therefor,

(6) Provisions that the undertaking shall not be conveyed, leased or mortgaged so long as any of the bonds and interest thereon remain outstanding and unpaid.

Provided, however, that the credit of the State of North Carolina or any of its departments, institutions, agencies or commissions shall not be pledged to the payment of such bonds except with respect to the rentals, profits and proceeds received in connection with the undertaking for which the said bonds are issued, and that none of the appropriations received from the State shall be pledged as security for said bonds. (1935, c. 479, s. 3; Ex. Sess. 1936, c. 2, s. 2.)

ARTICLE 12.

Law Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law Enforcement Officers' Benefit and Retirement Fund.—(a) In every criminal case finally disposed of in the criminal courts of this State, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, two dollars ($2.00) additional cost to be collected and paid over to the Treasurer of North Carolina and held in a special fund for the purposes of this article. The local custodian of such costs shall monthly transmit such moneys to the State Treasurer, with a statement of the case in which the same has been collected: Provided, however, that the costs assessed under this article shall not apply to violations of municipal ordinances, unless a warrant is actually issued and served; provided no part of said costs or assessments shall be paid by any county or municipality.

The moneys so received shall annually be set up in a special fund to be known as "The Law Enforcement Officers' Benefit and Retirement Fund."

(b) For the purpose of determining the recipients of benefits under this section and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund," which shall consist of the State Auditor, who shall be chairmen ex officio of said Board, the State Treasurer, the State Insurance Commissioner, and four members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one from the group of law enforcement officers as hereinafter defined, employed by the State, and one representing the public at large. No member of said board of Commissioners 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 meet-

ings of the Commission, the total of which meetings for which per diem may be allowable as herein provided not to exceed eight meetings in any one year. Four members of said Board shall constitute a quorum at any of said meetings, and no business shall be transacted unless a quorum be present. Ex officio members shall not receive any per diem.

(c) As soon as is practicable after March 13, 1941, and after the appointment of the four members herein authorized to be appointed by the Governor, the organization of said Board shall be perfected by the selection from its members of a vice-chairman, and secretary, to serve for a term of one year and until their successors shall have been elected and qualified, and by the selection by the Board, by a majority vote, of such employees as in the opinion of the Board, with the approval of the Governor, may be necessary for the proper handling of the business of the Board of Commissioners, such employee or such employees to hold office at the will of the Board of Commissioners. No employee of the Board of Commissioners shall during the period of such employment or during any leave of absence therefrom hold any public office, be a candidate for any public office, or engage in any political activity whatsoever for or on behalf of any candidate for public office, either in the primary or election. The violation of the restriction herein contained against political activity shall subject such employee to immediate discharge; and any such employee who shall use any funds of the Commission for political purposes or shall incur any expense whatsoever in connection with any political activity, paid or payable out of the funds of said Commission, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as provided by law in the case of misdemeanors. Nothing herein contained shall prevent any employee from exercising his individual right of franchise in any primary or election. Nothing in this section shall affect the right of any employee of said Commission who is at present a member of the General Assembly from continuing as such member for the duration of such present term.

(d) The said Board of Commissioners shall have control of all payments to be made from such Fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this article, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining any benefits under this article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law. The Board of Commissioners shall have authority to determine the membership eligibility or status of any member or applicant of any and all of those who come within the categories of law enforcement officers named in subsection (m) of this section in accordance with general rules and regulations adopted by the Board and the decision of the Board of Commissioners as to such membership eligibility or status shall be final.

(e) There shall be kept in the office of the said Board of Commissioners by the secretary, records which shall give a complete history and record of all actions of the Board of Commissioners in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or Board members.

(f) On or before the first day of January of each year the said Board of Commissioners shall make to the Governor of the State of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such Fund. There shall be annually made by the State Auditor's Department a

complete audit and examination of the receipts and the disbursements of the Board of Commissioners herein created.

(g) The Board of Commissioners of the said Fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said Fund in accordance with the purposes of this article. And the Board shall have the authority to invest and reinvest any funds not immediately needed in any of the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
(2) Obligations of the federal intermediate credit banks, federal home loan banks, Federal National Mortgage Association, banks for cooperatives, and federal land banks;
(3) Obligations of the State of North Carolina;
(4) General obligations of other states of the United States;
(5) General obligations of cities, counties, and special districts in North Carolina;
(6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services;
(7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioners, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States Government, or by some other agency of the United States Government;
(8) In certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the Federal Deposit Insurance Corporation not to exceed the sum of ten thousand dollars ($10,000.00) in any one bank or trust company; and
(9) In the shares of federal savings and loan associations and State chartered building or savings and loan associations in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed ten thousand dollars ($10,000.00) in any one of such associations.

Subject to the limitations set forth above, said Board shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(h) In case the amount derived from the different sources mentioned and included in this article shall not be sufficient at any time to enable the said Board of Commissioners to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said Fund shall be replenished sufficiently to warrant the resumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this article, he shall voluntarily pay into the Fund herein created a percentage of his monthly salary, which percentage shall be determined by the said Board: Provided, that any officer so voluntarily contributing to the Fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the Fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the Retirement Fund herein provided for, shall voluntarily pay into the Fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the Fund for credit to the individual account of such member, either or both:

(1) An amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall not exceed in any year fifteen per cent (15%) of such member's compensation; and

(2) A sum not to exceed three times the value of prior service of such member as determined by the Board of Commissioners;

such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law enforcement officer an amount equal to three times the value of his prior service and an amount equal to three times the cost of matching his contribution. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided by chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law Enforcement Officers' Benefit and Retirement Fund.

(j) All officers who have contributed to the Retirement Fund herein provided for, and who have had twenty years' continuous service as such peace officer in this State, shall be eligible for retirement benefits and the Board of Commissioners is authorized, in its discretion under rules and regulations promulgated by it, to determine when an officer has completed twenty years of continuous service.

(k) The Board of Commissioners is authorized and empowered in its discretion, upon a finding that any officer who has contributed to the Retirement Fund herein provided for has been discharged from the service through no fault of his own, to reimburse from the Fund herein created an amount not to exceed that which such officer has contributed to the Fund under the provisions of subsection (i) of this section.

(l) No officers as herein defined shall be eligible to the retirement benefits herein provided for until the expiration of five years from the date of the ratification of this article.

(m) Law enforcement officers in the meaning of this article shall include sheriffs, deputy sheriffs, constables, police officers, prison wardens and deputy wardens, prison camp superintendents, prison stewards, prison foremen and guards, highway patrolmen, and any citizen duly deputized as a deputy by a sheriff or other law enforcement officer in an emergency, and all other officers of this State, or of any political subdivision thereof, who are clothed with the full power of arrest and whose primary duties consist of enforcing on public property the criminal laws of the State and/or serving civil processes.

(n) Each justice of the peace required to assess and collect the additional cost provided for in this law shall, on or before the first day of each month, transmit such cost so collected, giving the name of the case in which such cost was taxed, to the clerk of the superior court of the county in which such case was tried, who will forthwith remit such funds to the Treasurer of the State of North Carolina as in all other cases. Failure of any justice of the peace to comply with the terms of this subsection shall make such justice of the peace liable for removal from office by the resident judge of the judicial district in which such action was tried.

(o) No State employees participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by Public Laws, 1941, chapter 25, known as "The Teachers' and State Employees' Retirement System Act."

(p) No State employee participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by "The Teachers' and State Employees' Retirement System Act," § 135-1 et seq.

(q) The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this section, and the moneys in the various funds created by this section, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this section specifically otherwise provided. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3, c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963, cc. 144, 939, 953.)

Cross Reference.—As to State Law Enforcement Officers' Death Benefit Act, see § 143-166.1. et seq.

Editor's Note.—The 1939 amendments rewrote this section.

The first 1941 amendment changed subsection (g) and added at the end of subsection (m) the words "and whose duties are primarily in enforcing the criminal laws of the State." The second 1941 amendment made changes in subsections (a), (b) and (c), and added subsection (o).

The 1943 amendment increased the additional cost mentioned in the first paragraph of subsection (a) from one dollar to two dollars and added the proviso to the said paragraph. Prior to the amendment part of the moneys mentioned in the second paragraph of subsection (a) was paid into the general fund of the State.

The 1949 amendment added the part of subsection (i) beginning with the third paragraph, and the 1951 amendment added the last sentence of subsection (d).

The 1953 amendment increased the amounts in subsection (g) from five thousand to ten thousand dollars. The first 1957 amendment added subsection (q). The second 1957 amendment rewrote subsection (g).

The 1961 amendment changed subsection (g) by substituting "three" for "two" in subdivision (6) and rewriting subdivision (7).

The first 1963 amendment struck out "a per diem of not exceeding seven dollars ($7.00)" following the word "than" in the second sentence of subsection (b) and inserted in lieu thereof "that provided in G. S. 138-5."

The second 1963 amendment rewrote the latter part of subsection (m).

The third 1963 amendment substituted "fifteen per cent (15%)" for "five per cent (5%)" in subdivision (1) of the third paragraph of subsection (i) and inserted "three times" near the beginning of subdivision (2) of the same paragraph. The third amendment also inserted "three times" and "an amount equal to three times" in the first sentence of the fourth paragraph of subsection (i).

Social Security Coverage for Members.—For act making appropriations so as to provide social security coverage for State law enforcement officers who are members of the Law Enforcement Officers' Benefit and Retirement Fund, see Session Laws 1959, c. 1169.

Policeman Excluded from Local Governmental Employees' Retirement System.—Policeman, who is entitled to the benefits of this section, is not eligible to become a member of the Local Governmental Employees' Retirement System, set out in § 128-24 (2). Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

Section Not Intended to Compensate Officers Making Arrests.—The additional cost in criminal cases provided by this section is not intended to be used to compensate the officers who make the arrests or participate in the prosecution, but is paid to the State Treasurer and by him disbursed for the purposes of the Law Enforcement Officers' Retirement Act. Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

Article 12A.

State Law Enforcement Officers' Death Benefit Act.

§ **143-166.1. Purpose.**—In consideration of hazardous public service rendered to the State and as deferred compensation to law enforcement officers employed by the State, there is hereby provided a system of death benefits for dependents who are closely related to such officers as may be violently killed in the discharge of their official duties. (1959, c. 1323, s. 1.)

Editor's Note.—Section 2 of the act inserting this article provides that the provisions of the act shall also apply and be in full force and effect with respect to any State law enforcement officer violently killed in the discharge of his official duties on or after January 1, 1949.

Section 2½ of the act inserting this article provides that the provisions of the act shall not apply to any State law enforcement officer accidently or violently killed in the discharge of his official duties after June 20, 1959.

§ **143-166.2. Definitions.**—The following words and phrases, when used in this article, shall have the meanings assigned to them by this section unless the context clearly indicates another meaning:

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

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

(3) The term "State law enforcement officer" or the term "officer" shall mean officers and members of the State Highway Patrol and officers and special agents of the State Bureau of Investigation;

(4) The term "violently killed" shall mean death of an officer resulting from wounds intentionally inflicted on such officer by any assailant, known or unknown;

(5) The term "widow" shall mean the wife of an officer who survives him and who was residing with such officer at the time of and during the six months next preceding the time of violent injury to such officer which resulted in his death and who also resided with such officer from the date of injury up to and at the time of his death. (1959, c. 1323, s. 1.)

§ 143-166.3. Payments; determination.—When any State law enforcement officer shall be violently killed while in the discharge of his official duties, the Council of State shall award the total sum of ten thousand dollars ($10,000.00) as follows:

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

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

(3) If there be no widow and no dependent child or children qualifying under the provisions of this article, then the sum shall be awarded to the surviving dependent parent of such officer; and if there be more than one surviving dependent parent, then said sum shall be awarded to and equally divided between the surviving dependent parents of said officer. (1959, c. 1323, s. 1.)

§ 143-166.4. Funds; conclusiveness of award.—Such awards of death benefits as are provided for by this article shall be made by the Council of State from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this article are hereby appropriated from said fund for this special purpose.

The Council of State shall have power to make necessary rules and regulations for the administration of the provisions of this article. It shall be vested with power to make all determinations necessary for the administration of this article and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Council itself. The Council of State shall keep a record of all proceedings conducted under this article and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Council shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Council of State may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder or to testify with respect to any matter relevant to proceedings conducted under this article, the Superior Court of Wake County, on application of the Council of State, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt. (1959, c. 1323, s. 1.)

§ 143-166.5. Other benefits not affected.—None of the other benefits now provided for State law enforcement officers or their dependents by the Workmen's Compensation Act or other laws shall be affected by the provisions of this article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1959, c. 1323, s. 1.)

§ 143-166.6. Awards exempt from taxes.—Any award made under the provisions of this article shall be exempt from taxation by the State or any political subdivision thereof, but so much of any such award as may be necessary to satisfy any valid claims of creditors against the deceased officer may be liable therefor, but the Council of State shall not be responsible for any determination of the validity of such claims and shall distribute the death benefits awards directly to the dependent or dependents entitled thereto under the provisions of this article. (1959, c. 1323, s. 1.)

Article 13.

Publications.

§ 143-167: Transferred to § 147-54.1 by Session Laws 1943, c. 543.

§ 143-168. Reports; conciseness; controls.—The annual or biennial reports now authorized or required to be printed by the several State agencies and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of those agencies and institutions. The details of the work of the agencies and institutions shall not be printed when not necessary to an intelligent understanding of such work, but totals and results may be tabulated and printed in their reports. The Department of Administration shall make such rules as may be necessary prescribing the scope and format of the matter to be published in annual or biennial reports, the methods of reproduction to be employed, and the number of copies of such reports to be published by the several State agencies and institutions. (1911, c. 211, s. 2; 1917, c. 202, s. 2; C. S., s. 7294; 1931, c. 261, s. 3; 1955, c. 983; 1961, c. 243, s. 2.)

Editor's Note.—The 1955 amendment made a minor substitution in the section.

The 1961 amendment rewrote this section.

§ 143-169. Limitations on publications.—(a) The Department of Administration shall make such rules as may be necessary prescribing the format of the matter to be published, the number of copies to be published, and the methods of reproduction to be employed in the publications of the several State agencies and institutions, other than annual or biennial reports.

(b) Every publication published at State expense which makes use of the multicolor process is prohibited except:

(1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;

(2) When the publication is a project of the Department of Conservation and Development, or is a part of the magazine "Wildlife in North Carolina", published under the auspices of the Wildlife Resources Commission; or

(3) When the express approval of the Department of Administration is obtained. (1911, c. 211, s. 2; C. S., s. 7302; 1931, c. 261, s. 3, c. 312, ss. 14, 15; 1955, c. 1203; 1961, c. 243, s. 3.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1961 amendment rewrote this section.

§ 143-170: Repealed by Session Laws 1955, c. 986.

Article 14.

State Planning Board.

§§ 143-171 to 143-177.1: Repealed by Session Laws 1959, c. 24.

Article 15.

Commission on Interstate Co-operation.

§ 143-178. North Carolina Commission on Interstate Co-operation.—There is hereby established the North Carolina Commission on Interstate Co-operation. This Commission shall be composed of ten members as follows:

(1) Speaker of the House of Representatives;

(2) Three senators designated by the President of the Senate;

(3) Three representatives designated by the Speaker of the House; and

(4) Three administrative officials designated by the Governor. (1937, c. 374, s. 4; 1947, c. 578, s. 3; 1959, c. 137, s. 2; 1961, c. 1108.)

Editor's Note.—The 1959 act abolishing the Governor's Committee on Interstate Co-operation and revising the membership of the North Carolina Commission on Interstate Co-operation, repealed former §§ 143-178 through 143-182, 143-186 and 143-188. The act also enacted new §§ 143-178 through 143-182, amended § 143-183 and renumbered § 143-187 as § 143-186.

The 1961 amendment rewrote this section.

§ **143-179. Officers of the Commission.**—The Governor shall biennially designate the chairman of the Commission from among the legislative members of the Commission. The Commission shall biennially elect its secretary from its membership. (1937, c. 374, s. 4; 1947, c. 578, s. 3; 1959, c. 137, s. 2.)

§ **143-180. Senate members on interstate co-operation.**—The President of the Senate shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the Senate as members of the Commission on Interstate Co-operation. (1937, c. 374, s. 1; 1947, c. 578, s. 1; 1959, c. 137, s. 2.)

§ **143-181. House members on interstate co-operation.**—The Speaker of the House of Representatives shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the House as members of the Commission on Interstate Co-operation. (1937, c. 374, s. 2; 1947, c. 578, s. 2; 1959, c. 137, s. 2.)

§ **143-182. Terms of office of members.**—Each of the Senate and House members of the Commission shall serve until his successor as a member of the Commission is designated. Each administrative member of the Commission shall serve for a term of two years and until his successor is designated. (1959, c. 137, s. 2.)

§ **143-183. Functions and purpose of Commission.**—It shall be the function of this Commission:

(1) To carry forward the participation of this State as a member of the Council of State Governments.

(2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

(3) To endeavor to advance co-operation between this State and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

a. The adoption of compacts,
b. The enactment of uniform or reciprocal statutes,
c. The adoption of uniform or reciprocal administrative rules and regulations,
d. The informal co-operation of governmental offices with one another,
e. The personal co-operation of governmental officials and employees with one another, individually,
f. The interchange and clearance of research and information, and
g. Any other suitable process.

(4) To study, analyze, and report to the Governor and the General Assembly it recommendations concerning interstate compacts affecting the interests of North Carolina and studies and reports prepared by the Council of State Governments and similar agencies; regularly to inform the members of the General Assembly and other State officials of the publications and services which the Council of State Governments makes available to them; and to attend appropriate national and regional conferences of

State officials considering interstate problems of concern to North Carolina and report thereon to the Governor and the General Assembly.

(5) In short, to do all such acts as will, in the opinion of this Commission, enable this State to do its part—or more than its part—in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose. (1937, c. 374, s. 6; 1959, c. 137, s. 3.)

Editor's Note.—The 1959 amendment renumbered former subdivision (4) as subdivision (5) and inserted new subdivision (4).

§ 143-184. Appointment of delegations and committees; persons eligible for membership; advisory boards.—The Commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure inter-governmental harmony, and may perform other functions for the Commission in obedience to its decisions. Subject to the approval of the Commission, the member or members of each such delegation or committee shall be appointed by the chairman of the Commission. State officials or employees who are not members of the Commission on Interstate Co-operation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this State shall not be eligible. The Commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The Commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards. (1937, c. 374, s. 7.)

§ 143-185. Reports to the Governor and General Assembly; expenses; employment of secretary, etc.—The Commission shall report to the Governor and to the legislature within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this article. The Commission may employ a secretary and a stenographer, it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the Council of State Governments, participate with other states in maintaining the said Council's district and central secretariats, and its other governmental services. The Governor and the Council of State are authorized to allocate from the contingency and emergency fund such sums as they shall find proper to provide for the necessary expenses which said Commission is authorized to incur, as hereinbefore provided. (1937, c. 374, s. 8; 1947, c. 578, s. 5.)

Editor's Note.—The 1947 amendment added the last sentence.

§ 143-186. Council of State Governments a joint governmental agency.—The Council of State Governments is hereby declared to be a joint governmental agency of this State and of the other states which co-operate through it. (1937, c. 374, s. 10; 1959, c. 137, s. 4.)

Editor's Note.—The 1959 amendment renumbered former § 143-187 as this section.

§ 143-187: Renumbered as § 143-186 by Session Laws 1959, c. 137, s. 4.

§ 143-188: Repealed by Session Laws 1959, c. 137, s. 1.

ARTICLE 16.

Spanish-American War Relief Fund.

§§ 143-189, 143-190: Repealed by Session Laws 1961, c. 481.

ARTICLE 17.

State Post-War Reserve Fund.

§ 143-191. Appropriation for Fund.—There is hereby appropriated from the general fund of the State the sum of twenty million dollars ($20,000,000.00.), the said sum, together with the investments and income therefrom, to be hereafter known and designated as the State Post-War Reserve Fund. (1943, c. 6, s. 1.)

Editor's Note.—As to repeal of this article insofar as it conflicts with §§ 142-50 through 142-54, see note under § 142-50.

§ 143-192. Fund to be invested by Governor and Council of State; State Treasurer custodian.—The Governor and Council of State are hereby fully authorized and directed to invest the said fund exclusively in bonds of the United States of America, of such series as may be readily converted into money and notes or certificates of indebtedness of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, and in bonds or notes of the State of North Carolina. The interest and revenues received from such investments, or profits realized in the sale thereof, shall become a part of the said State Post-War Reserve Fund and shall be likewise invested. Bonds of the State of North Carolina purchased for the said Fund shall not be cancelled or retired but shall remain in full force and the income therefrom reinvested as hereinbefore provided. The State Treasurer shall be custodian of all securities and investments made under authority of this article. (1943, c. 6, s. 2.)

§ 143-193. Fund to be held for such use as directed by General Assembly.—The said State Post-War Reserve Fund shall be held for such use as shall hereafter be directed by an act of the General Assembly of North Carolina, and no other use thereof whatsoever shall be made. (1943, c. 6, s. 3.)

§ 143-194. Report to General Assembly.—The Governor and Council of State shall make a report in writing to the General Assembly, not later than the tenth day of each regular or special session thereof, stating the nature and amount of all receipts and disbursements from the said Fund and the amount contained in said Fund, and giving an itemized statement of all investments made as herein authorized, which report shall be spread upon the journals of the Senate and House of Representatives. (1943, c. 6, s. 4.)

ARTICLE 18.

Rules and Regulations Filed with Secretary of State.

§ 143-195. Certain State agencies to file administrative regulations or rules of practice with Secretary of State; rate, service or tariff schedules, etc., excepted.—On or before the first day of June of one thousand nine hundred and forty-three, each agency of the State of North Carolina created by statute and authorized to exercise regulatory, administrative or semi-judicial functions, shall file with the Secretary of State a complete copy of all general administrative rules and regulations or rules of practice and procedure, formulated or adopted by the agency for the performance of its functions or for the exercise of its authority and shall thereafter, immediately upon the adoption of any new general administrative rule or regulation or rule of practice and procedure, or the formulation or adoption of any amendment to any general administrative rule or regulation or rule of practice and procedure, file a copy of the same with the Secretary of State: Provided that nothing contained in this article shall require any State agency to file in the office of the Secretary of State

any rate, service or tariff schedule or order or any administrative rule or regulation referring to any such rate, service or tariff schedule. (1943, c. 754, s. 1.)

Editor's Note.—For comment on this and the three following sections, see 21 N. C. Law Rev. 328.

Cited in State v. Speizman, 230 N. C. 459, 53 S. E. (2d) 533 (1949); Simodis v. State Board of Alcoholic Control, 258 N. C. 282, 128 S. E. (2d) 587 (1962); Swaney v. Penden Steel Co., 259 N. C. 531, 131 S. E. (2d) 601 (1963).

§ 143-196. Rules and regulations effective only after filing; date of filing to be shown.—The general administrative rules and regulations or rules of practice and procedure, formulated or adopted by any of the State agencies, shall remain in full force and effect until the first day of June, one thousand nine hundred and forty-three, but thereafter shall be effective only from and after the time a copy is filed with the Secretary of State. For purposes of record, it shall be the duty of the Secretary of State to stamp each rule and regulation as the same is filed, showing thereon the date the same is filed in his office. (1943, c. 754, s. 2.)

§ 143-197. Copies of rules and regulations available to public.—The Secretary of State, upon the call of the commission created by Resolutions Twenty-seven and Thirty-four of the General Assembly of one thousand nine hundred and forty-one, or any member of the said commission shall supply copies of said rules and regulations filed in his office, and the said commission or any member thereof shall have access to any or all of said rules and regulations during any hour that the office of the Secretary of State is open to the public. The said rules and regulations shall be available to any member of the public, but the Secretary of State shall have the authority to charge the usual and customary fee for certified copies thereof. (1943, c. 754, s. 3.)

§ 143-198. Construction of article.—The provisions of this article shall not be construed as affecting or repealing any provisions in any act prescribing adoption, promulgation or approval of administrative rules or regulations and rules of practice and procedure, but the provisions of this article shall be in addition to the provisions which may be contained in any act with respect to the prescribing, adoption, promulgation or approval of such rules. (1943, c. 754, s. 4.)

§ 143-198.1. State agencies and boards to file copy of certain administrative rules with clerks of superior courts; clerks to file as official records.—In addition to the requirements hereinbefore made in this article, every agency and administrative board of the State of North Carolina created by statute and authorized to exercise regulatory, administrative, or quasi-judicial functions, shall within ninety days of March 17, 1949, file with the clerk of the superior court of each county in North Carolina, a certified indexed copy of all general administrative rules and regulations or rules of practice and procedure, the violation of which would constitute a crime, formulated or adopted by such agency or administrative board for the performance of its functions or for the exercise of its authority, and shall also mail to each member of the General Assembly of 1949 a similar certified indexed copy.

In addition to the original statement filed with each clerk of the superior court, as required herein, each such agency or board shall, within fifteen days of the adoption of any additional or amendatory rule or regulation, file with each clerk of the superior court a certified indexed copy of such new or amendatory rule or regulation.

The clerk of the superior court of each county shall file as part of the records of his office all such rules and regulations. (1949, c. 378.)

Editor's Note.—For a brief comment on this section, see 27 N. C. Law Rev. 408.

ARTICLE 19.

Roanoke Island Historical Association.

§ 143-199. Association under patronage and control of State.—Roanoke Island Historical Association, Incorporated is hereby permanently placed under the patronage and control of the State. (1945, c. 953, s. 1.)

§ 143-200. Members of board of directors; terms; appointment.—The governing body of said Association shall be a board of directors consisting of the Governor of the State, the Attorney General and the Director of the State Department of Archives and History as ex officio members, and the following twenty-one members: J. Spencer Love, Greensboro; Miles Clark, Elizabeth City; Mrs. Richard J. Reynolds, Winston-Salem; D. Hiden Ramsey, Asheville; Mrs. Charles A. Cannon, Concord; Dr. Fred Hanes, Durham; Mrs. Frank P. Graham, Chapel Hill; Bishop Thomas C. Darst, Wilmington; W. Dorsey Pruden, Edenton; John A. Buchanan, Durham; William B. Rodman, Jr., Washington; J. Melville Broughton, Raleigh; Melvin R. Daniels, Manteo; Paul Green, Chapel Hill; Samuel Selden, Chapel Hill; R. Bruce Etheridge, Manteo; Theodore S. Meekins, Manteo; Roy L. Davis, Manteo; M. K. Fearing, Manteo; A. R. Newsome, Chapel Hill. The members of said board of directors herein named other than the ex officio members, shall serve for a term of two years and until their successors are appointed. Appointments thereafter shall be made by the membership of the Association in regular annual meeting or special meeting called for such purpose, and in the event the Association through its membership should fail to make such appointments, then the appointments shall be made by the Governor of the State. Vacancies occurring on the board of directors shall be be filled by the Governor of the State. (1945, c. 953, s. 2.)

§ 143-201. Bylaws; officers of board.—The said board of directors when organized under the terms of this article shall have authority to adopt bylaws for the organization and said bylaws shall thereafter be subject to change only by three-fifths vote of a quorum of said board of directors; the board of directors shall choose from its membership or from the membership of the Association a chairman, a vice-chairman, a secretary and a treasurer, which offices in the discretion of the board may be combined in one, and also a historian and a general counsel. The board also in its discretion may choose one or more honorary vice-chairmen. (1945, c. 953, s. 3.)

§ 143-202. Exempt from taxation; gifts and donations.—The said Association is and shall be an educational and charitable association within the meaning of the laws of the State of North Carolina, and the property and income of such Association, real and personal, shall be exempt from all taxation. The said Association is authorized and empowered to receive gifts and donations and administer the same for the charitable and educational purposes for which the Association is formed and in keeping with the will of the donors, and such gifts and donations to the extent permitted by law shall be exempted from the purpose of income taxes and gift taxes. (1945, c. 953, s. 4.)

§ 143-203. State Auditor to make annual audit.—It shall be the duty of the State Auditor to make an annual audit of the accounts of the Association and make a report thereof to the General Assembly at each of its regular sessions. (1945, c. 953, s. 5.)

§ 143-204. Authorized allotment from contingency and emergency fund.—The Governor and Council of State, in the event State aid is reasonably necessary for the restoration and production of the pageant known and designated as "The Lost Colony," are authorized and empowered to allot a sum not exceeding ten thousand dollars ($10,000) a year from the contingency and emergency fund to aid in the restoration and production of said pageant, such allotment, however, to

be made only upon evidence submitted to the Governor and Council of State by the Association that during the immediately preceding season of production because of inclement weather or other circumstances or factors beyond the control of the Association, the said "Lost Colony" was operated at a deficit. (1945, c. 953, s. 6.)

Article 19A.

Governor Richard Caswell Memorial Commission.

§ **143-204.1. Creation and membership; terms and vacancies.**—There is created the Governor Richard Caswell Memorial Commission to be composed of twenty members, of whom—the Director of the State Department of Archives and History, the State Superintendent of Public Instruction, the mayor of the city of Kinston, and the chairman of the board of county commissioners of Lenior County—shall serve as ex officio members and sixteen of whom shall be appointed by the Governor. Four appointive members shall be named for a term of two years, four for a term of four years, four for a term of six years, and four for a term of eight years, who shall hold membership on said Commission for the term specified and until their successors are appointed and qualified; provided, that upon expiration of the first term to which an appointment is made each term shall thereafter be for a period of eight years and any vacancy occurring shall be filled by the Governor for the unexpired term of the person whose vacancy is to be filled. (1955, c. 977, s. 1.)

§ **143-204.2. Powers of Commission; appropriations by counties and municipalities.**—The Commission is authorized and empowered to receive property, both real and personal, by gift, devise, bequest, or otherwise and to solicit funds for the purpose of establishing, developing and maintaining said memorial. The governing bodies of the counties and municipalities of the State are hereby authorized to appropriate any surplus funds, not derived from ad valorem taxation, to said Commission for the purposes of developing and maintaining the memorial herein authorized. The Commission may organize such groups or units as in its discretion may be helpful in raising funds through organizations, societies, and clubs throughout the State for the purpose of developing and maintaining the said memorial. (1955, c. 977, s. 2.)

§ **143-204.3. Acquisition and control of memorial property; care, maintenance and development.**—There is appropriated out of the general fund of the State of North Carolina the sum of twenty-five thousand dollars ($25,000) for the purpose of acquiring in the name of the State the title in fee simple absolute to twenty-two acres of land surrounding that certain half-acre parcel of land which was reserved forever by the last will and testament of Governor Richard Caswell as a family cemetery, being known as the Caswell Cemetery, located in Lenior County to the west of the city of Kinston. The said twenty-two acres of land and the half acre of the said cemetery, as well, shall, following the purchase of the said premises, be and remain forever under the control and management of the said commissioners and their successors in office who are hereby charged with the care, maintenance, and development of the premises as a perpetual memorial and shrine to the end that the said premises shall be preserved, protected, improved and rendered of inspirational and educational value to the public forever. (1955, c. 977, s. 3.)

§ **143-204.4. Members deemed commissioners of public charities.**—Members of the Commission shall be deemed commissioners of public charities within the meaning of the proviso to article XIV, section 7, of the Constitution of North Carolina. (1955, c. 977, s. 4.)

Article 19B.

Historic Swansboro Commission.

§ **143-204.5. Appointment of Commission; ex officio members; vacancies.**—The Governor is hereby authorized, empowered and directed to appoint a commis-

sion of not less than 15 members, to be known as the Historic Swansboro Commission. In addition to the members to be appointed by the Governor, the mayor of the town of Swansboro, the chairman of the board of commissioners of Onslow County, and the Director of the State Department of Archives and History shall serve on the said Commission as ex officio members. The Governor is authorized to fill any vacancies on the Commission occasioned by the members appointed by him. (1963, c. 607, s. 1.)

§ **143-204.6. Powers.**—The aforesaid Commission is authorized and empowered to acquire title to historic properties in or near the town of Swansboro, and to repair, restore or otherwise improve such properties, and to maintain them until the work of the Commission shall be terminated. (1963, c. 607, s. 2.)

§ **143-204.7. Appropriations.**—Any appropriations voted by the General Assembly that may be for the purposes stated above shall be made to the State Department of Archives and History. (1963, c. 607, s. 3.)

Article 20.

Recreation Commission.

§ **143-205. Recreation Commission created.**—There is hereby created an agency to be known as the North Carolina Recreation Commission. (1945, c. 757, s. 1; 1963, c. 542.)

Editor's Note.—The 1963 act re-enacted this section without change.

§ **143-206. Definitions.**—(a) Commission, for the purposes of this article, means the North Carolina Recreation Commission.

(b) Committee means the Advisory Recreation Committee.

(c) Council means the Governor's Co-ordinating Council on Recreation.

(d) Recreation is defined to mean those activities which are diversionary in character and which aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature. (1945, c. 757, s. 2; 1963, c. 542.)

Editor's Note.—The 1963 amendment deleted "time" between "leisure" and "nature" in subsection (d) and added subsection (c).

§ **143-207. Membership of Commission; terms; removal; vacancies; meetings; expenses.**—(a) The Recreation Commission shall consist of ten members, and shall include the Governor, the chairman of the Committee, a representative of the Council, the President of the North Carolina Recreation Society, and six other members who shall be appointed by the Governor. The six original members so appointed by the Governor shall serve for terms as follows: One member shall be appointed for a term of six (6) years, one for a term of five (5) years, one for a term of four (4) years, one for a term of three (3) years, one for a term of two (2) years, and one for a term of one (1) year. Successive members shall be appointed to serve for terms of six (6) years each. In addition, the Governor shall appoint the representative of the Council who shall serve for a term of two (2) years. The Committee chairman and the President of the North Carolina Recreation Society shall serve on the Commission only while holding these offices.

(b) In making appointments to the Commission, the Governor shall choose persons who understand the rural, urban, governmental, private and professional membership groups, and commercial recreation interests of North Carolina and the nation. The Commission shall elect one of its members to act as chairman. A majority of the Commission shall constitute a quorum.

(c) Any appointed member of the Commission may be removed by the Governor.

(d) Vacancies in the Commission shall be filled by the Governor for the unexpired term.

(e) The Commission shall meet quarterly on dates to be fixed by the chairman. The Commission may be convoked at such other times as the Governor or chairman may deem necessary.

(f) Members of the Commission shall be allowed travel and maintenance expense at the rates allowed to members of the State commissions and boards while attending meetings of the Commission, or its committees, or while engaged in the performance of official duties for the Commission. (1945, c. 757, s. 3; 1963, c. 542.)

Editor's Note.—The 1963 amendment rewrote this section.

§ **143-208. Duties of Commission.**—It shall be the duty of the Commission:

(1) To study and appraise recreation needs of the State and to assemble and disseminate information relative to recreation.

(2) To co-operate in the promotion and organization of local recreation systems for counties, municipalities, townships, and other political subdivisions of the State and to aid them in designing and laying out recreation areas and facilities, and to advise them in the planning and financing of recreation programs.

(3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.

(4) To establish and promote recreation standards.

(5) To co-operate with State and federal agencies, the Governor's Co-ordinating Council on Recreation, the Recreation Advisory Committee, private membership groups and with commercial recreation interests, in the promotion of recreation opportunities, and to act as representative of the State in recreation conferences, study groups, and other matters of recreation concern.

(6) To submit a biennial report of its activities to the Governor. (1945, c. 757, s. 4; 1963, c. 542.)

Editor's Note.—The 1963 amendment substituted "recreation" for "recreational" in subdivisions (1) and (5) and in three places in subdivision (2). It also inserted in subdivision (5) the reference to the Governor's Co-ordinating Council on Recreation, and at the end of subdivision (5) the provision as to acting as representative of the State.

§ **143-209. Powers of Commission.**—The Commission is hereby authorized:

(1) To make rules and regulations for the proper administration of its duties.

(2) To accept any grant of funds made by the United States, or any agency thereof, for the purpose of carrying out any of its functions.

(3) To accept gifts, bequests, devises and endowments. The funds, if given as an endowment, shall be invested in such securities as designated by the donor, or, if there is no designation, in those in which the State Sinking Fund may be invested. All such gifts, bequests, devices, and all proceeds from such invested endowments, shall be used for carrying out the purpose for which they are made.

(4) To administer all funds available to the Commission, and to advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned to or administered by the State for recreation programs and services on land water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.

(5) To act jointly, when advisable, with any other State agency, institution, department, board or commission in order to carry out the Commission's and other objectives and responsibilities. The Commission and other agencies shall co-operate in the furtherance of the purposes of this article.

(6) To employ, with the approval of the Governor, an executive director, and upon the recommendation of the executive director such other persons as may be needed to carry out the provisions of this article. The executive director shall act as secretary to the Commission.

(7) To serve as the recreation co-ordinative and advisory agency for the Governor, the Council of State and the agencies and departments of State government when the use of federal funds for recreation purposes are contemplated, are requested, or are made available for use in North Carolina. (1945, c. 757, s. 5; 1963, c. 542.)

Editor's Note.—The 1963 amendment added all of subdivision (4) following the word "Commission" near the beginning of the subdivision. It also rewrote subdivision (5) and added subdivision (7).

§ 143-210. Advisory Committee.—The Governor shall name a Recreation Advisory Committee consisting of thirty members who shall serve for terms of two (2) years. The Governor shall name one member to act as a chairman of the Committee. Vacancies occurring on the Committee shall be filled by the Governor for the unexpired term.

Members of the Committee shall represent, insofar as feasible, all groups and phases of beneficial recreation in the State.

The Committee shall meet once each year with the Commission at a time and place to be fixed by the Commission. Members of the Committee shall serve without compensation, but shall be allowed travel and maintenance expense at the rates allowed to members of other State commissions and boards for attendance at the annual meeting and such other meetings as may be recommended by the executive director and approved by the chairman.

The Committee shall act in an advisory capacity to the Commission, discuss recreation needs of the State, exchange ideas, and make to the Commission recommendations for the advancement of recreation opportunities. (1945, c. 757, s. 6; 1963, c. 542.)

Editor's Note.—The 1963 amendment made minor changes in the first and fourth paragraphs and added to the third paragraph the provision for travel and maintenance expense.

§ 143-210.1. Governor's Co-ordinating Council on Recreation.—(a) The Governor shall name a Governor's Co-ordinating Council on Recreation. Members shall be appointed for two-year terms from the staff and boards or commissions of agencies and departments of State government, from regional and federal agencies and departments, from State and national groups and from private and commercial agencies and organizations.

(b) The Council shall act in a State recreation correlation capacity, for the Governor and the Commission.

(c) The Governor shall appoint, for two-year terms, a Council member who shall serve as the representative of the Governor and the Council and as a commissioner on the Commission.

(d) The Council shall meet quarterly, and at other times, at the call of the Governor, who shall serve as chairman. The chairman of the Commission shall be vice-chairman of the Council and shall serve as its chairman in the absence of the Governor. (1963, c. 542.)

Article 21.

State Stream Sanitation and Conservation.

§ 143-211. Declaration of policy.—It is hereby declared to be the policy of the State that the water resources of the State shall be prudently utilized in the best interest of the people. To achieve this purpose, the government of the State shall assume responsibility for the quality of said water resources. The maintenance of the quality of the water resources requires the creation of an agency charged

with this duty, and authorized to establish methods designed to protect the water requirement for health, recreation, fishing, agriculture, industry, and animal life. This agency shall establish and maintain a program adequate for present needs, and designed to care for the future needs of the State. (1951, c. 606.)

Editor's Note.—Session Laws 1951, c. 606, rewrote this article which was formerly captioned "State Stream Sanitation and Conservation Committee" and comprised §§ 143-211 through 143-215.1, codified from Session Laws 1945, c. 1010 and Session Laws 1947, c. 786.

For comment on this article, see 29 N. C. Law Rev. 365.

§ **143-212. Definitions.**—The terms used in this article are defined as follows:

(1) The term "Committee" shall mean the committee in the North Carolina Department of Water Resources as hereinafter provided, and the term "member" shall mean member of said committee.

(2) Whenever reference is made in this article to the "discharge of waste," it shall be interpreted to include the discharge of wastes into any unified sewerage system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State.

(3) The term "disposal system" means a system for disposing of sewage, industrial waste or other wastes, and including sewer systems and treatment works.

(4) The term "effective date" means the date, as established pursuant to § 143-215 and announced by official regulations of the Committee, after which the provisions of §§ 143-215.1 and 143-215.2 shall become applicable and enforceable, with respect to persons within one or more watersheds designated by the Committee.

(5) The term "outlet" means the terminus of a sewer system, or the point of emergence of any sewage, industrial waste or other wastes or the effluent therefrom, into the waters of the State.

(6) The term "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, government agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(7) The term "pollution" means a condition of any waters (as determined by standardized tests under conditions and procedures to be prescribed by official regulations to be issued under authority of this article) which is in contravention of the standards established and applied to such waters pursuant to § 143-215.

(8) The term "sewer system" means pipe lines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(9) The term "standard" or "standards" means such measure or measures of the quality of waters as are established by the Committee pursuant to § 143-215.

(10) The term "treatment works" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste or other wastes.

(11) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed designated by the Committee for purposes of §§ 143-215, 143-215.1 and 143-215.2 to be defined by the Committee in its official regulations.

(12) The term "waste" shall mean and include the following:

a. "Sewage" which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. "Industrial waste" which shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resource.

c. "Other waste" which shall mean sawdust, shavings, lime, refuse, offal, oil, tar chemicals, and all other substances, except industrial waste and sewage, which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

(13) The term "waters" shall mean any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which the State has jurisdiction. (1951, c. 606; 1957, c. 1275, s. 1; 1959, c. 779, s. 8.)

Editor's Note.—Session Laws 1957, c. 1275, s. 1, deleted from subdivision (12) a paragraph which read as follows: "The terms 'waste,' 'industrial waste,' and 'other wastes' shall not be construed to include silt, soil and its natural content which may in anywise be discharged into streams."

The 1959 amendment substituted "Department of Water Resources" for "State Board of Health" in subdivision (1).

§ 143-213. State Stream Sanitation Committee; creation.—(a) Establishment of Committee.—For the purpose of administering this article, there is hereby created within the Department of Water Resources a permanent committee to be known as the "State Stream Sanitation Committee", which shall be composed of seven members appointed by the Governor, two who shall, at the time of appointment, be actively connected with and have had production experience in the field of agriculture, one who shall, at the time of appointment, be actively connected with and have had experience in the wildlife activities of the State, two who shall, at the time of the appointment, be actively connected with and have had practical experience in waste disposal problems of municipal government, and two who shall, at the time of appointment, be actively connected with and have had industrial production experience in the field of industrial waste disposal. Of the members initially appointed by the Governor, two shall serve for terms of two years each, two shall serve for terms of four years each, and two shall serve for a term of six years. Thereafter, all appointments shall be for terms of six years; provided, that the additional member representing agriculture provided for in this subsection shall be appointed initially for a term of two years. Ex officio members shall have all the privileges, rights, powers and duties held by appointed members under the provisions of this article except the right to vote.

(b) Appointments Generally.—All appointments made by the Governor during a session of the General Assembly shall be subject to confirmation by the Senate. All appointments made to fill offices for terms expiring when the legislature is not in session and to fill vacancies occurring for any reason shall be valid until the convening of the next General Assembly following such interim appointment when such appointments shall be subject to confirmation by the Senate. In each instance the appointment shall be of a person of experience in the same field as that of the member who is being replaced. The Governor may at any time, after notice and

hearing, remove any member for gross inefficiency, neglect of duty or other sufficient cause.

(c) Initial Appointments.—In order to make available to the State the benefit of the six years of study by the State Stream Sanitation and Conservation Committee created for that purpose by the legislature of 1945, all members appointed by the Governor initially, except the member who shall have had experience with wildlife activities, shall be from the present members of the State Stream Sanitation and Conservation Committee.

(d) Compensation of Committee Members.—No salary or other compensation, for services thereon, shall be allowed members of the Committee who already receive compensation as officials or employees of State departments. Service on the Committee is to be considered as part of the duties of such officials as representatives of the respective departments. Reimbursement for travel shall be made from travel funds available in their respective departments. The other members shall receive ten dollars ($10.00) per day, including necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business of the Committee. In addition, they shall receive mileage according to State practice while going to and from any place of meeting, or when on official business of the Committee. (1951, c. 606; 1953, c. 1295; 1957, c. 992; 1959, c. 779, s. 8.)

Editor's Note.—The 1953 amendment rewrote the former first sentence of subsection (b) to appear as the present first two sentences. The 1957 amendment changed subsection (a) by providing for an additional member representing agriculture.

The 1959 amendment substituted "Department of Water Resources" for "State Board of Health" in subsection (a).

Prior to the amendment the Committee had nine members. The other two being the chief engineer of the State Board of Health, and the chief engineer of the Water Resources and Engineering Division of the Department of Conservation and Development.

§ 143-214. Organization of Committee; meetings.—(a) First Meeting; Organization; Rules; Regulations.—The Committee shall, within 30 days after its appointment, meet and organize, and elect from among its members a chairman and such other officers as it may choose for such terms as may be specified by the Committee in its rules and regulations. The chairman may appoint members to such committees as the work of the Committee may require.

(b) Meeting of Committee.—The Committee shall meet regularly, at least once every six months, at places and dates to be determined by the Committee. Special meetings may be called by the chairman on his own initiative, and must be called by him at the request of two or more members of the Committee. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum. (1951, c. 606; 1957, c. 1267, s. 2; 1959, c. 779, s. 8.)

Editor's Note.—The 1957 amendment substituted subsections (c) and (d), since deleted, for the former subsections relating to the former executive secretary, the personnel and facilities of the Committee and its fiscal affairs.

The 1959 amendment changed the catchline and deleted former subsections (c) and (d) which as rewritten are now subsections (c) and (d) of § 143-356.

§ 143-215. Water classification; standards and assignment of classifications.—(a) Duties of Committee under This Section.—The Committee is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this article:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the Committee believes ought to be classified separately in

order to promote the policy and purposes of this article, omitting only such waters as, in the opinion of the Committee, are insufficiently important to justify classification or control under this article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Committee deems proper in order to promote the policy and purposes of this article most effectively.

(b) Criteria for Classification.—In developing and adopting classifications, and the standards applicable to each, the Committee shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to an existing or a contemplated best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards.—In establishing the standards applicable to each classification, the Committee shall consider, and the standards when finally adopted and published shall state: The extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications.—In assigning to each identified water the appropriate classifications (with it accompanying standards), the Committee shall consider, and the decision of the Committee when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominent economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses which have been made, are being made, or may in the future be made, of such water for transportation, domestic consumption, industrial consumption, bathing, fishing and fish culture, fire prevention, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) The extent to which such water is already receiving sewage, industrial waste, or other waste as a result of present or past usage of the water, and the relative economic values involved in improving or attempting to improve the condition of such water.

(e) Proposed Adoption and Assignment of Classification.—Prior to the adoption by the Committee of the series of classifications and standards applicable thereto as specified in subsection (a) (1) of this section, prior to the assignment by the Committee of any such classifications to any waters as specified in subsection (a) (3) of this section, and prior to any modification of any of such actions previously taken by the Committee, the Committee shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the following requirements:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Committee proposes to take. The notice shall either include details of such proposed action, or where such proposed action, as in the case of proposed assignments of classifications to identified waters, is too lengthy for publication, as hereafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the

office of the Committee in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Committee pursuant to the provisions of § 143-215.4.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Committee on or before the first date set for the hearing. The Committee is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Committee shall permit anyone who so desires to file a written argument or other statement with the Committee in relation to any proposed action of the Committee at any time within 30 days following the conclusion of any public hearing or within any such additional time as the Committee may allow by notice given as prescribed in this section.

(f) Final Adoption and Assignment of Classifications.—Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Committee pursuant to this section, the Committee shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the Committee shall likewise publish as part of its official regulations, the effective date for the application of the provisions of §§ 143-215.1 and 143-215.2 to persons within such watershed or watersheds.

(g) Committee's Power to Modify or Revoke.—The Committee is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification or revocation, however, to be subject to the procedural requirements of this article. (1951, c. 606; 1957, c. 1275, s. 2.)

Editor's Note.—The 1957 amendment struck out the last sentence of subsection (f) which read as follows: "Such effective date shall not be less than 60 days from the date of such publication."

§ **143-215.1. Control of new sources of pollution.**—(a) Required Permits.—After the effective date applicable to any watershed, no person shall:

(1) Make any new outlet into the waters of such watershed;

(2) Construct or operate any new disposal system within such watershed;

(3) Alter or change the construction or the method of operation of any existing disposal system within such watershed;

(4) Increase the quantity (determined by such method of measurement as the Committee shall prescribe by its official regulations) of sewage, industrial waste, or other waste discharged through any existing outlet or processed in any existing disposal system to an extent which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water, or to an extent beyond such minimum limits as the Committee may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;

(5) Change the nature of the sewage, industrial waste, or other wastes discharged through any existing outlet or processed in any existing disposal system in any way which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water: Unless such person shall have applied to the Committee for and shall have received from the Committee a permit therefor and shall have complied with such conditions, if any,

as are prescribed by such permit, and in this connection no such permit shall be granted for the disposal of sewage or industrial wastes into waters classified as sources of public water supply, or into unclassified waters used as sources of public water supply where the State Board of Health determines and advises the Committee that such disposal is sufficiently close to the source of the public water supply as to have an adverse effect thereon, until the Committee has referred the complete plans and specifications to the State Board of Health and said Board advises the Committee in writing that same are approved in accordance with the provisions of G. S. 130-161. In any case where the Committee denies a permit, it shall state in writing the reason for such denial and shall also state the Committee's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. If any person has obtained the approval of the State Board of Health for the construction, alteration, or change of any disposal system and a contract has been entered into for the construction thereof, or construction has been begun thereon, or a bond election has been authorized therefor, prior to the effective date applicable to any watershed in which such disposal system is located, such person shall not be required to obtain a permit from the Committee with respect to such construction, alteration or changes.

(b) Committee's Powers as to Permits.—The Committee shall act upon all applications for permits so as to effectuate the purpose of this section, by preventing so far as reasonably possible, any pollution or any increase in the pollution of the waters of the State from any additional or enlarged sources. The Committee shall have the power:

(1) To grant a permit with such conditions attached as the Committee believes necessary to achieve the purposes of this section;

(2) To grant any temporary permit for such period of time as the Committee shall specify even though the action allowed by such permit may result in pollution or increased pollution where conditions make such temporary permit essential; and

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no conditions shall be attached to the permit, except when the Committee finds such denial or such conditions necessary to effectuate the purposes of this section.

(c) Procedure as to Applications and Permits.—All applications for permits and all permits issued by the Committee, or decisions denying any application for a permit, shall be in writing. The Committee shall act on all applications for permits as rapidly as possible and consideration of and action on such applications shall be given preference to all other business of the Committee. The Committee shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Committee to take action on an application for a permit within 90 days shall be treated as approval of such application. The Committee shall adopt such forms and rules as it deems necessary, to be published as part of its rules of procedure, with respect to the application for the grant or denial of permits pursuant to this section.

(d) Hearings and Appeals.—Any person whose application for a permit is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Committee upon making written demand therefor within 30 days following the giving of notice by the Committee as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Committee on the application shall be final and binding. If demand for a hearing is made, the procedure with respect

thereto and with respect to all further proceedings in the case shall be as specified in § 143-215.4 and in any applicable rules of procedure of the Committee. (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8.)

Editor's Note.—The 1955 amendment rewrote the last sentence in subdivision (5) of subsection (a).

The 1959 amendment made changes in the first part of subdivision (5) of subsection (a) but made no changes in the last two sentences of the subdivision.

§ 143-215.2. Abatement of existing pollution.—(a) Required Compliance with Special Orders.—After the effective date applicable to any watershed, no person shall discharge any sewage, industrial waste, or other waste into the waters of such watershed in violation of, or except upon compliance with the terms of, any special order issued by the Committee to such person in accordance with the procedure specified by this article.

(b) Committee's Powers as to Special Orders.—The Committee is hereby empowered, after the effective date applicable to any watershed, to issue (and from time to time to modify or revoke) a special order to any person whom it finds responsible for causing or contributing to any pollution of water within such watershed. Such an order may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Committee deems necessary and feasible in order to alleviate or eliminate such pollution. No such special order shall be issued against a person, or, if issued, the time for compliance therewith by such person shall be extended to the extent necessary, where the Committee concludes, after investigation, or where it is demonstrated after a hearing, that it is impossible or, for the time being, not feasible for such person to correct or eliminate the activities causing or contributing to any pollution. Such a situation shall be deemed to exist where no adequate or practical method of disposal or treatment is known for the particular waste for which such person is responsible, or where the cost of any such known method of disposal or treatment is unduly burdensome in comparison with the pollution abatement results which can be achieved, or where a known method of disposal or treatment cannot be adopted because of financial inability (due to statutory restriction on borrowing power or otherwise), or where there is reason to believe that diligent research and experimentation is being carried on to such an extent as to justify postponement of the adoption of relatively inefficient known methods of disposal or treatment until further opportunity is given for the discovery of more effective methods. The burden of proof as to any of such conditions or any other conditions alleged to exist as a reason for the non-issuance of a special order or for extension of the time of compliance therewith shall be upon the person alleging such conditions.

(c) Procedure as to Special Orders.—No special order shall be issued by the Committee (unless issued upon the consent of a person affected thereby) except after a hearing in accordance with the procedural requirements specified in § 143-215.4 and in any applicable rules of procedure of the Committee. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(d) Appeals.—Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of § 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Committee shall be final and binding.

(e) Encouragement of Voluntary Action.—The powers conferred by this section are granted for the purpose of enabling the Committee to carry out a Statewide program of pollution abatement to the end that ultimately the purposes of this article will be achieved. It is the intent of this section, however, that the Committee shall seek to obtain the co-operative effort of all persons contributing to each situation involving pollution in remedying such situation, and that the powers granted by

this section shall be exercised only when the objective of this section cannot be otherwise achieved within a reasonable time.

(f) Equality of Enforcement Action.—It is the intent of this article that a comprehensive all-inclusive effort be made to accomplish the purposes of this article and to that end it is specifically provided that whenever more than one person is found to be responsible for a condition involving pollution of any segment of any particular water as identified and classified under § 143-215 that the Committee shall endeavor to obtain the co-operative effort of all such persons and that if this cannot be accomplished and the Committee deems it necessary to take enforcement action to correct such pollution, by invoking the power granted by this article, such action shall be taken against all persons who share responsibility for such condition, to the extent that such persons have not voluntarily undertaken satisfactory remedial measures or have not agreed, by consenting to the issuance of special orders pursuant to this section to undertake such measures: Provided, however, that where because of operation of law or otherwise, enforcement against any municipality or other political subdivisions of the State cannot be had, no special order shall be issued against any other person within the segment of water where abatement of pollution is sought.

When an order of the Committee to abate discharge of untreated or inadequately treated sewage and other waste is served upon a municipality or upon a sanitary district, the governing board of such municipality or the sanitary district board of such district shall, unless said order be reversed on appeal, proceed to provide funds, using any or all means necessary and available therefor by law, by issuance of bonds secured by the full faith and credit of such municipality or district or by issuance of revenue bonds or otherwise, for financing the cost of all things necessary for full compliance with said order and shall thereby comply with said order: Provided, nothing herein shall be construed to supersede or modify the provisions of the Local Government Act or of the Revenue Bond Act of 1938 with respect to approval or disapproval of bonds by the Local Government Commission and to the sale of bonds by said Commission: Provided, however, that before court action is instituted to enforce any order issued against any person polluting a segment of the stream, the Committee shall, if the municipal pollution is of such magnitude as to warrant consideration, take into consideration the probable time required by any municipality polluting the same segment of said stream to abate its pollution.

(g) Voluntary Projects; Applications for Certificate of Approval; Installation of Treatment Works and Approval Thereof.—After April 6, 1951, any person who is discharging or who proposes to discharge, sewage, industrial waste, or other waste into any waters of the State may submit to the Committee proposed plans for the installation of treatment works with respect to such sewage, industrial waste or other waste, and apply to the Committee for approval thereof. Such applications shall be in such form as the Committee may prescribe in its rules of procedure, shall describe in precise detail the nature and volume of the sewage, industrial waste or other waste which the applicant discharges or proposes to discharge, and shall contain or be supplemented by any information whatsoever which the Committee may request. The applicant may submit the opinion of any independent expert as to the probable effectiveness and results of such treatment works and the Committee may request that the opinion of experts or additional experts be obtained in any case where it considers the same necessary, the expense in connection therewith to be borne by the applicant. Such an application may be filed by any person irrespective of whether any proceedings involving such person have been taken or are pending under any other provision of this article.

(h) Voluntary Projects, Conditions for Issuance of Certificate.—The Committee shall make a thorough investigation of any application filed pursuant to this section before acting thereon, and may require the applicant to submit any statements in support of such application under oath. The Committee shall not issue a certificate of approval to any applicant, unless it finds that the proposed treatment works, if

installed and operated in accordance with the plans submitted to the Committee:

(1) Will provide an effective method of preventing or abating actual or potential pollution of waters into which the applicant is discharging or proposes to discharge any sewage, industrial waste, or other waste; and

(2) Will require such expenditure by the applicant, in relation to the waste treatment problem to be remedied and the size and nature of the applicant's activities resulting in such problem, that it is fair to give the applicant reasonable protection against being required by law, at some later date, to make further capital expenditures in connection with the same waste treatment problem.

(i) Voluntary Projects, Effect of Certificate of Approval.—If the Committee approves the proposed treatment works, with any modifications it may recommend, it shall have the power to issue to the applicant a certificate of approval which shall have the following effect and be subject to the following limitations:

(1) Such certificate shall give the person to whom it is issued binding assurance that, for the period specified in the certificate and so long as such person complies with all the terms of the certificate, he will not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for the purpose of alleviating or eliminating any pollution or alleged pollution resulting from the sewage, industrial waste or other waste which such person is discharging into any water.

(2) Such certificate shall be effective from the date of its issuance for such period of time as the Committee deems fair and reasonable in the light of all the circumstances.

(3) Such certificate shall provide that it shall become void unless the applicant completes the proposed treatment works within a time limit specified in such certificate, and unless the proposed treatment works is constructed and at all times operated in accordance with the plans and specifications approved by the Committee pursuant to this section.

(4) Such certificate shall be effective only with respect to the nature and volume of sewage, industrial waste or other waste described in the application or in the certificate itself after treatment by the proposed treatment works.

(5) Such certificate shall inure to the benefit of any successors or assigns of the applicant subject to the same conditions as are applicable to the applicant.

(6) Such certificate may impose any other limitations on its effectiveness as the Committee may deem necessary or appropriate.

(j) Voluntary Projects, Procedure.—The Committee by rules of procedure, not inconsistent with this article, may specify any further rules applicable to the granting of certificates of approval pursuant to this section. Any action by the Committee on an application for a certificate of approval is a matter of discretion and consequently there shall be no right to a hearing nor to an appeal with respect to any refusal of the Committee to grant any certificate of approval, or to the terms thereof. The Committee shall have power to entertain and act on applications for modification of any certificate of approval. The Committee shall have no power to revoke or modify a certificate of approval which has been issued, except by agreement, or except where the terms of such certificate have been violated or have not been fulfilled.

(k) Nonvoluntary Projects, Effect of Compliance.—Any person who installs a treatment works for the purpose of alleviating or eliminating pollution in compliance with the terms of, or as a result of conditions specified in, a permit issued pursuant to § 143-215.1 or a special order issued pursuant to § 143-215.2 or a final decision of the Committee or a court rendered pursuant to either of said sections,

shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this and any other State law relating to the control of water pollution, for a period to be fixed by the Committee or Court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order or decision or the conditions of such permit become finally effective, if:

(1) The treatment works results in the elimination or alleviation of pollution to the extent required by such permit, special order or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order or decision within the time limit, if any, specified thereby, or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, c. 1131, s. 2.)

Editor's Note.—The 1955 amendment added the second paragraph of subsection (f).

§ 143-215.3. General powers of Committee.—(a) Auxiliary Powers.—In addition to the specific powers prescribed elsewhere in this article, and for the purpose of carrying out its duties, the Committee shall have the power:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this article and rules of procedure establishing and amplifying the procedures to be followed in the administration of the article: Provided, that no regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by § 143-215.4;

(2) To conduct such investigations as it may deem necessary to carry out its duties as prescribed by this article, and for this purpose to enter upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste and to require written statements or reports under oath with respect to pertinent questions relating to the operation of any sewer system, disposal system or treatment works: Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision;

(3) To conduct public hearings in accordance with the procedures prescribed by this article;

(4) To delegate such of the powers of the Committee as the Committee deems necessary to one or more of its members or to any qualified employee of the Board of Water Resources; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Committee; and further provided that the Committee shall not delegate to persons other than its own members the power to conduct hearings and to make decisions with respect to the classification of waters, the assignment of classifications, or the issuance of any special order for the abatement of existing pollution;

(5) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the Committee may deem necessary for enforcement of any of the provisions of this article or of any official actions of the Committee, including proceedings to enforce subpoenas or for the punishment of contempt of the Committee;

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To investigate any killing of fish and wildlife which, in the opinion of

the Committee, is of sufficient magnitude to justify investigation, and is known or believed to have resulted from the pollution of waters as defined in this article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly, or unlawfully, or willfully and unlawfully, caused pollution of waters as defined in this article, in such quantity, concentration or manner that fish or wildlife are killed as a result thereof, the Committee may recover, in the name of the State, damages from such person.

The measures of damages shall be the amount determined by the Committee and the North Carolina Wildlife Resources Commission or the North Carolina Department of Conservation and Development, whichever has jurisdiction over the fish or wildlife destroyed, to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith.

Upon receipt of the estimate of damages caused, the Committee shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as it deems proper and reasonable and if no settlement is reached within a reasonable time, the Committee shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Committee on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this article or any other law of the State shall not bar any such action.

The proceeds of any recovery had, less the cost of investigations recovered and retained or otherwise disbursed by the Committee to the appropriate investigating agencies, shall be paid to the appropriate State agency to be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in the waters in question. Any such funds received are hereby appropriated for these designated purposes.

Nothing in this subdivision shall be construed in any way to limit or prevent any other action which is now authorized by this article.

(b) Research Functions.—The Committee shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for waste disposal problems. To this end, the Committee may co-operate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina education institution, with the consent of such institution. In addition, the Committee shall have the power to co-operate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this article. All State departments shall advise with and co-operate with the Committee on matters of mutual interest.

(c) Relation with the Federal Government.—The Committee as official agency for the State is delegated to act in local administration of all matters covered by Public Law 660, 84th Congress, as amended, and future legislation by Congress relating to water quality.

(d) Relations with Other States.—The Committee may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086.)

Editor's Note.—The 1957 amendment substituted "State Board of Health" for "Committee" in subdivision (4) of subsection (a).

The 1959 amendment substituted "Board of Water Resources" for "State Board of Health" in subdivision (4) of subsection (a). It also rewrote subsection (c).

The 1963 amendment added subdivision (7) to subsection (a).

§ 143-215.4. General provisions as to procedure; seal.—(a) Persons Entitled to Notice, Mailing List.—In any proceeding pursuant to §§ 143-215.1, 143-215.2, 143-215.3, the Committee shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to § 143-215, the Committee shall give notice as provided by that section, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Committee to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Committee, ask to be permanently recorded on such mailing list.

(b) Publication and Codification of Committee's Regulations and Rules.—All official acts of the Committee which have or are intended to have general application effect shall be incorporated either in the Committee's official regulations (applying and interpreting this article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Committee be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Secretary of State. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Committee in sufficient numbers to satisfy all reasonable requests therefor. The Committee shall codify its regulations and rules and from time to time shall revise and bring up to date such codifications.

(c) Notices.—All notices which are required to be given by the Committee or by any party to a proceeding shall be given by registered mail to all persons entitled thereto, including the Committee. The date of receipt for such registered mail shall be the date when such notice is deemed to have been given. Notice by the Committee may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Committee by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(d) Hearings.—The following provisions, together with any additional provisions not inconsistent herewith which the Committee may prescribe, shall be applicable in connection with hearings pursuant to this article, except where other provisions are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to §§ 143-215.1 and 143-215.2 or 143-215.3 whether called at the instance of the Committee or of any person, shall be held upon not less than 30 days' written notice given by the Com-

mittee to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings by the Committee shall be open to the public.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Committee. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Committee.

(4) The Committee shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas issued, by the Committee, in connection with any hearing shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be as prescribed in connection with subpoenas, issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Committee, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Committee, as the case may be, at whose instance the hearing is being held.

(7) No decision or order of the Committee shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(8) Following any hearing, the Committee shall afford the parties thereto an opportunity to submit within such time as prescribed by the Committee proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Committee's ruling with respect to each such requested finding of fact and conclusion of law.

(9) All orders and decisions of the Committee shall set forth separately the Committee's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Committee is based.

(10) The Committee shall have the authority to adopt a seal which shall be the seal of said Committee and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Committee or its minutes may be certified by the secretary of the Committee under his hand and the seal of the Committee and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of same if such records are competent, relevant and material in any such action or proceedings. The Committee shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Committee or by any other person or interested party where material, relevant and competent. (1951, c. 606.)

§ 143-215.5. Judicial review.—Any person against whom any final order or decision has been made except where no appeal is allowed as provided by § 143-215.2 (j) shall have a right of appeal to the superior court of the county where the order or decision is effective within 30 days after such order or decision has be-

come final. Upon such appeal the Committee shall send a certified transcript of the order or decision and the notice of appeal to the superior court. The trial shall be de novo, with the procedure as in other civil matters, and appellant shall have the right to have a jury trial.

Any person discharging wastes into the waters which are the subject matter of the proceedings, whether such discharge is immediate or remote, shall have the right to intervene in said pending proceeding and shall have the same right as any other party to introduce evidence as to the reasonableness of the order as defined. Failure of such person to intervene in the proceeding shall not operate to deny him his right to a full hearing on any order that might subsequently be issued to him as provided in this section.

Both the person and the Committee may introduce evidence bearing upon the reasonableness of the order, and the court and jury shall give due consideration to the practicability, the physical and economic feasibility of disposing of the waste involved, and the economic effect on the community, and shall enter such judgment and orders enforcing such judgment as the public interest and equities of the case may require, and as shall be consistent with the provisions of this article. Such judgment and orders shall fix a period of time, during which the compliance therewith shall constitute a satisfactory method of discharging such wastes. The appellant shall not, during said period of time, and while in compliance with said orders, be required, by the Committee or by any court, to change further his method or process of discharging his wastes. In fixing said period of time, due consideration shall be given to the expense involved. Appeals from the judgment and orders of the superior court will lie to the Supreme Court. No bond shall be required of the Committee in appeal to the courts. (1951, c. 606.)

§ 143-215.6. Violations and penalties.—(a) Acts Which Constitute Violations.—After the effective date applicable to any watershed it shall be a violation of this article for any person within such watershed:

(1) To perform any of the acts specified in § 143-215.1 (a) without first obtaining a permit as required by § 143-215.1, or to perform any such acts in disregard of the terms of any such permit.

(2) To fail to comply with the terms of any special order issued by the Committee to such person, which has become final, pursuant to § 143-215.2.

No person, however, shall be charged with nor convicted of any violation under the provisions hereof by reason of any act or neglect on the part of such person resulting from any act of God, war, strike, riot or other event over which such person has no control.

(b) Penalties for Violations.—Any person who shall be adjudged to have violated this article shall be guilty of a misdemeanor and shall be liable to a penalty of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each violation. In addition, if any person is adjudged to have committed such violation wilfully, the court may determine that each week during which such violation continued constitutes a separate violation subject to the foregoing penalty: Provided, however, that where a vote of the people is required to effectuate the intent and purpose of this article by a municipality or other political subdivision of the State and the vote on the referendum is against the means or machinery for carrying the same into effect, then, and only then, this section shall not apply to the elected officials or to any duly authorized appointed officials or employees, of said municipality or political subdivision. (1951, c. 606.)

§ 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.—This article shall not be construed as amending, repealing, or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of public water supplies, as now administered by the State Board of Health; nor shall the provisions of this article

be construed as being applicable to or in anywise affecting the authority of the North Carolina State Board of Health to control the sanitary disposal of sewage as provided in G. S. chapter 130, article 13, or as affecting the powers, duties and authority of city, county, county-city and district health departments usually referred to as local health departments or as affecting the charter powers and ordinances and authority to pass ordinances in regard to sewage disposal of municipal corporations. (1951, c. 606; 1957, c. 1357, s. 11.)

Editor's Note.—The 1957 amendment inserted "to control the sanitary disposal of sewage as provided in G. S. chapter 130, article 13" in lieu of the former reference to privies and septic tanks. It also inserted "those sections" in place of specified sections of former chapter 130.

ARTICLE 22.

State Ports Authority.

§ 143-216. Creation of Authority; membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.—The North Carolina State Ports Authority is hereby created, consisting of and governed by a board of nine members, said North Carolina State Ports Authority being hereinafter for convenience designated as the Authority. On or after the first day of July, 1961, the Governor shall appoint the members of said board and the membership thereof shall be selected from the State at large, and insofar as is practicable, so as to fairly represent each section of the State and all of the business, agricultural, and industrial interests of the State. Of the nine members appointed in 1961, three shall be appointed for terms of two years each, three shall be appointed for terms of four years each, and three shall be appointed for terms of six years each; thereafter, all regular appointments shall be for terms of six years. Any vacancy occurring in the membership on said board for any cause shall be filled by the Governor for the unexpired term. The board shall elect one of its members as chairman, one as vice-chairman, and shall also elect a secretary and a treasurer who may not necessarily be a member of the Authority. The board shall meet upon the call of its chairman and a majority of its members shall constitute a quorum for the transaction of its business. The members of the Authority shall not be entitled to compensation for their services but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242.)

Editor's Note.—The 1949 and 1953 amendments rewrote this section. Section 2 of the 1953 amendatory act provided that the term of office of the members of the board serving in such capacity as of March 6, 1953, should terminate at twelve o'clock midnight on the 31st day of May, 1953.

The 1959 amendment increased the membership of the Ports Authority from seven to nine members. Section 2 of the amendatory act provided for the appointment of the two new members.

The 1961 amendment substituted "July, 1961" for "June, 1953" in the second sentence. It also struck out the former third and fourth sentences and inserted in lieu thereof the present third sentence.

For act transferring to the State Ports Authority all property and functions of the Morehead City Port Commission and providing for cancellation of outstanding bonds of said Commission, see Session Laws 1951, c. 776.

Re-enactment of Repealed Parts of Article.—Chapter 446 of the Session Laws of 1959 provides: "Article 22, of chapter 143, of the General Statutes of North Carolina, creating the North Carolina State Ports Authority, to the extent that all or any part of said article was heretofore repealed by chapters 269 or 584, of the Session Laws of 1957, the same is hereby re-enacted."

§ 143-217. Purposes of Authority.—Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft, terminal railroads and facilities and high-

ways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of water-borne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.

(3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.

(4) To co-operate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

(5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.

(6) To act as agent for the United States of America or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.

(7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of water-borne commerce, foreign and domestic, to, through, and from said harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. (1945, c. 1097, s. 2; 1953, c. 191, ss. 3, 4.)

Editor's Note.—The 1953 amendment rewrote subdivisions (1) and (7).

Authority Was Created for Public Purpose.—Beyond question, the Authority was created and empowered to act to accomplish a public purpose. North Carolina State Ports Authority v. First-Citizens Bank & Trust Co., 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ **143-218. Powers of Authority.**—In order to enable it to carry out the purposes of this article, the said Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this article, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and

operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, including terminal railroads;

(5) On or after the first day of June, 1953, the board, with the approval of the Governor, shall appoint an executive director for the Authority who shall serve at the pleasure of the board. The salary of the said executive director shall be fixed by the Governor with the approval of the Advisory Budget Commission. The director shall have authority to appoint, employ and dismiss at pleasure, such number of employees as may be deemed necessary by the board to accomplish the purposes of this article. The compensation of such employees shall be fixed by the board. The governing board of said Ports Authority shall annually appoint an executive committee of three members of the board, which executive committee shall be vested with authority to do all acts which might be performed by the whole board, provided the board has not theretofore acted upon such matters. The members of the said executive committee shall serve until their successors are duly appointed;

(6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this article;

(7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this article;

(8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this article;

(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

(10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the

Authority may deem necessary or expedient in facilitating its business;

(12) Be authorized and empowered to do any and all other acts and things in this article authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this article: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon. (1945, c. 1097, s. 3; 1949, c. 892, s. 2; 1953, c. 191, s. 5; 1959, c. 523, ss. 3-5.)

Editor's Note.—The 1949 amendment inserted subdivision (2) and made changes in subdivision (5).

The 1953 amendment rewrote subdivision (5).

The 1959 amendment added the phrases "or from any public or private sources available" and "or any public or private lender or donor" in subdivision (9), and deleted the words "by any such federal agency" which formerly appeared immediately preceding the proviso in said subdivision.

Lease of Facility to Private Corporation.—A lease by the Port Authority of a grain handling facility to a private corporation, under the terms of which the corporation would pay during a five-year term all costs of operation of facility and rentals sufficient to pay in full revenue bonds issued by the Authority, was within the power of the Authority and did not constitute a loan of the credit of the State or the agency. North Carolina State Ports Authority v. First-Citizens Bank & Trust Co., 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 143-218.1. Approval of acquisition and disposition of real property.—Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State Ports Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the North Carolina State Ports Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "North Carolina State Ports Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina State Ports Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right of way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1959, c. 523, s. 6.)

§ 143-219. Issuance of bonds.—(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, terminal railroad or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized at one time or from time to time to issue negotiable revenue bonds of the Authority. The principal and interest of such revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(c) Revenue bonds issued under the provisions of this article shall not be deemed

to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(d) Such bonds and the income thereof shall be exempt from all taxation within the State. (1945, c. 1097, s. 4.)

Effect of Section 13 of State Ports Bond Act of 1949.—This section remains in full force and effect except to the extent, if any, it is in irreconcilable conflict with § 13 of the State Ports Bond Act of 1949. North Carolina State Ports Authority v. First-Citizens Bank & Trust Co., 242 N. C. 416, 88 S. E. (2d) 109 (1955).

Section 13 of the State Ports Bond Act does not prohibit or suspend the Authority's right to raise $60,000 of the cost of construction of a particular new facility by the issuance and sale of revenue bonds and to pledge the revenues to be derived from the operation of the particular facility to secure the payment of the bonds. North Carolina State Ports Authority v. First-Citizens Bank & Trust Co., 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 143-220. Power of eminent domain.—For the acquiring of rights of way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State, or by the North Carolina State Highway Department, or by railroad corporations, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5.)

§ 143-221. Exchange of property; removal of buildings, etc.—The Authority may exchange any property or properties acquired under the authority of this chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, railroads, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of is plans for port development, under the authorization of this article. (1945, c. 1097, s. 6.)

§ 143-222. Dealing with federal agencies.—The Authority board is authorized to assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the Authority, for the use by such grantee for any purpose included within the general purposes of this article, as stated in § 143-217, such assignment, transfer, lease, conveyance, grant or donation to be upon such terms as the Authority board may deem advisable. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including terminal railroads, roads, highways, causeways, or bridges and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the Authority board is further authorized to transfer and pay over to the United

States of America or to the appropriate agency or department thereof, such of the moneys belonging to the Authority board as may be found needed or reasonably required by said United States of America to meet and pay the amount of judgments or condemnation, including costs, if any to be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow said United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of said facilities before referred to. (1945, c. 1097, s. 7.)

§ 143-223. Terminal railroads.—The Authority shall have the power and authority to acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports a line of terminal railroads with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith or appurtenant thereto shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, and merchandise over, along or upon the track of such railroad or other conveyances. And the Authority shall have the right and authority to make agreements as to scale of wages, seniority, and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the operation of the terminal railroads provided for in this section, and the service and equipment pertinent thereto. And should the said Department exercise the authority herein given, then in such event it shall be the duty of the said Department to make such agreements with said employees hereinabove specified, in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) as amended or as hereafter amended to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby. The Authority shall have the right and authority with its terminal railroads to connect with or cross any other railroad upon payment of just compensation and to receive, deliver to and transport the freight, passengers, and cars of common carrier railroads as though it were an ordinary common carrier. (1945, c. 1097, s. 8.)

§ 143-224. Jurisdiction of the Authority; appointment and authority of special police.—The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

The Executive Director of the Authority is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have all the powers of policemen of incorporated towns. Such policemen shall have the power to arrest without warrant persons committing violations of State law in their presence in or on any of the grounds and in any of the harbors and seaports within the State over which the Authority has jurisdiction. Employees appointed as such special policemen shall take the general oath of office prescribed by General Statutes 11-11. (1945, c. 1097, s. 9; 1959, c. 523, s. 7.)

Editor's Note.—The 1959 amendment added the second paragraph.

§ 143-225. Treasurer of the Authority.—The Authority shall select its own treasurer. The Authority shall require a surety bond of such appointee in such amount as the Authority may fix, and the premium or premiums thereon shall be

paid by said Authority as a necessary expense of said Authority. (1945, c. 1097, s. 10; 1959, c. 523, s. 8.)

Editor's Note.—Prior to the 1959 amendment the Authority was required to select one of its members as treasurer.

§ 143-226. Deposit and disbursement of funds.—All Authority funds shall be deposited in a bank or banks to be designated by the Authority. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chairman, the acting chairman or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this article and only when the account or expenditure for which the same is to be given in payment has been audited and approved by the Authority or its executive director. Any and all revenues and earnings received by the Authority from its operations shall be handled as directed in section 13, chapter 820 of the Session Laws of 1949. (1945, c. 1097, s. 11; 1951, c. 1088, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 143-227. Annual audit; copies to be furnished.—At least once in each year the State Auditor shall cause to be made a detailed audit of all monies received and disbursed by the Authority during the preceding year. Such audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show the complete financial condition of the Authority. A copy of the said audit shall be furnished to each member of the governing body of the said Authority and to the officers thereof and to the Governor, the Budget Bureau and the Attorney General. (1945, c. 1097, s. 12; 1951, c. 1088, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 143-227.1. Purchase of supplies, material and equipment.—All the provisions of article 3 of chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. (1953, c. 191, s. 6.)

§ 143-228. Liberal construction of article.—It is intended that the provisions of this article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen. (1945, c. 1097, s. 13.)

Statutes Not to Be Construed to Hamper Authority in Accomplishment of Its Purpose.—Recognizing the dominant intent of the General Assembly to provide maximum development and use of our seaports, no construction should be placed on statutes relating to the Authority, unless plainly required by the express terms thereof, that would tend to hamper the Authority in its efforts to accomplish the very purposes of its existence. North Carolina State Ports Authority v. First-Citizens Bank & Trust Co., 242 N. C. 416, 88 S. E. (2d) 109 (1955).

§ 143-228.1. Warehouses, wharves, etc., on property abutting navigable waters.—The powers, authority and jurisdiction granted to the North Carolina State Ports Authority under this article and chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property owned, leased or under the control of such other persons, firms and corporations abutting upon and adjacent to navigable waters

and streams in this State, nor to prevent such other persons, firms and corporations from constructing, owning, leasing and operating in connection therewith wharves, docks and piers, nor to prevent such other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of such properties, facilities, lands and improvements after such construction. (1955, c. 727.)

Article 23.

Armory Commission.

§ 143-229. Definitions.—The terms used in this article mean:

(1) Armory: Any building and/or land suitable for armory purposes with area adjacent thereto, and any building and/or land suitable for warehousing, motor parking, instruction, training, or any other use necessary for any unit.

(2) Armory Site: Any land suitable for the construction of an armory as defined in (1) above, with the adjacent area thereto necessary for motor parking, instruction and training of any unit.

(3) Commission: The Armory Commission created by this article.

(4) Facilities: Furniture, equipment, warehouses, motor sheds, target ranges and any other adjunct necessary to administration, instruction and training of any unit.

(5) Funds: Any funds appropriated by any municipality, county or the United States of America and made available for the purpose of acquiring armory sites or constructing or repairing any armory, warehouse, or other facility for the use of any unit or for any other purpose in connection with the housing, training, instruction or promotion of interest of any unit. It shall also include funds which may be donated for the benefit, directly or indirectly, of any unit.

(6) Municipality: Any incorporated city or town and any unincorporated city or town.

(7) Unit: Any National Guard unit active or inactive or State guard unit or other organized military unit of which the Governor is commander-in-chief. (1947, c. 1010, s. 1.)

§ 143-230. Composition of Commission.—The Governor of the State of North Carolina, the Attorney General of North Carolina, the Adjutant General of North Carolina, together with two federally recognized officers on the active list of the North Carolina National Guard to be appointed by the Governor and to serve at the pleasure of the Governor, shall constitute the North Carolina Armory Commission. The Governor shall be its chairman and the Adjutant General shall be its secretary. (1947, c. 1010, s. 2.)

§ 143-231. Location of principal office; service without pay; travel expenses; meetings and quorum.—The Commission above named shall have its principal office in Raleigh. The members shall serve without compensation and shall be allowed their reasonable expense incurred in attending meetings of the Commission or while traveling under orders for the performance of duty in connection with the business of the Commission. Such expense shall be payable out of any funds available to the Commission or, if the Governor so directs, out of the appropriation for the Adjutant General's Department. The Commission shall hold regular or special meetings at Raleigh or other designated places at the direction and on call of the Governor, after reasonable notice. A majority of the members shall constitute a quorum for the consideration of business. (1947, c. 1010, s. 3.)

§ 143-232. Authority to foster development of armories and facilities.—The Commission is authorized and empowered to foster the development in North

Carolina of adequate armories and other necessary facilities for the proper housing, instruction, training and administration of all units and facilities necessary for the proper protection, care, maintenance, repair, issue and upkeep of public and military property issued to or for the use of any unit. (1947, c. 1010, s. 4.)

§ 143-233. Powers of Commission specified.—The Commission is further authorized and empowered:

(1) To act as an agency of the State of North Carolina for the purpose of setting up and administering any State-wide plan for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities which are now or may be necessary in order to comply with any federal law and in order to receive, administer and disburse any funds which may be provided by act of Congress for such purpose;

(2) As such agency of the State of North Carolina, to promulgate State-wide plans for the acquisition of armories and armory sites, for the construction and maintenance of armories and such other facilities as may be found desirable or necessary to meet the requirements and receive the benefits of any federal legislation with respect thereto;

(3) To receive and administer any funds which may be appropriated by any act of Congress or otherwise for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities, which may at any time become available for such purposes;

(4) To receive and administer any other funds which may be available in furtherance of any activity in which the Commission is authorized and empowered to engage under the provisions of this article;

(5) To adopt such rules and regulations as may be necessary to carry out the intent and purpose of this article. (1947, c. 1010, s. 5.)

§ 143-234. Power to acquire land, make contracts, etc.—In furtherance of the duties, powers and authority given herein, the Commission is authorized and empowered to accept and hold title to real property in the name of the State of North Carolina, and to engage in contracts and do any and all things necessary to carry out any State-wide program for the acquisition of armories and armory sites, for the construction and maintenance of armories and to provide facilities which may be considered by it as necessary for any unit and which may be authorized by act of Congress or otherwise. (1947, c. 1010, s. 6.)

§ 143-235. Counties and municipalities may lease, convey or acquire property for use as armory.—Every municipality and county of the State of North Carolina is hereby authorized and empowered to lease or convey by deed to the State of North Carolina:

(1) Any existing armory and the land adjacent thereto;

(2) Any real property suitable for the construction of an armory, warehouse or other facility; and

(3) Any real property suitable for use in the administration, instruction and training of any unit.

Every municipality and county is further authorized and empowered to acquire any real property which may be suitable for use as an armory or for the construction of an armory thereon, or for any other purpose of a unit. Contracting of an indebtedness and expenditure of public funds by any municipality or county to comply with the provisions of this article are hereby declared to be a necessary expense and for a public purpose. (1947, c. 1010, s. 7; 1949, c. 1066, s. 1.)

Editor's Note.—The 1949 amendment struck out "hereafter acquired" formerly appearing after the word "any" at the beginning of subdivision (1).

§ 143-235.1. Prior conveyances validated.—All conveyances of real property made before April 20, 1949, by any municipality or county of the State of North

Carolina to the State of North Carolina for armory purposes are hereby validated and ratified in every respect. (1949, c. 1066, s. 2.)

§ **143-236. County and municipal appropriations for benefit of military units.**—Every municipality and county is hereby authorized and empowered to appropriate for the benefit of any unit or units such amounts of public funds from year to year as the governing body of such municipality or county may deem wise, patriotic and expedient; and is further authorized, either alone or in connection with others, to provide heat, light, water, telephone service and/or other costs of operation and maintenance of any armory. (1947, c. 1010, s. 8.)

Cross Reference.—As to municipal and county aid for construction of armory facilities, see §§ 127-112 to 127-117.

§ **143-236.1. Unexpended portion of State appropriations.**—The unexpended portion of any appropriation from the General Fund of the State for the purposes set out in this article, remaining at the end of any biennium, shall not revert to the General Fund of the State, but shall constitute part of a permanent fund to be expended from time to time in the manner and for the purposes set out in this article. (1949, c. 1202, s. 2.)

Cited in Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

Article 23A.

Stadium Authority.

§§ **143-236.2 to 143-236.13:** Repealed by Session Laws 1963, c. 686, effective July 1, 1963.

Article 24.

Wildlife Resources Commission.

§ **143-237. Title.**—This article shall be known and may be cited as the North Carolina Wildlife Resources Law. (1947, c. 263, s. 1.)

Cross Reference.—As to Motorboat Committee of the Wildlife Resources Commission and enforcement of the motorboat law by the Commission, see § 75A-3.

Cited in State v. Story, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

§ **143-238. Definitions.**—As used in this article unless the context clearly requires otherwise:

(1) The word "Commission" shall mean the North Carolina Wildlife Resources Commission.

(2) The word "Director" shall mean the Executive Director of the North Carolina Wildlife Resources Commission.

(3) The terms "wildlife resources" and "wildlife" shall mean and include game birds and other game animals, game and fresh-water fishes, fur bearing animals, song and insect-eating birds, non-game mammals and birds, and all other naturally wild aquatic and terrestrial animals, except those species of fish and other wild aquatic animals which shall come under the classification of commercial fisheries. (1947, c. 263, s. 2.)

§ **143-239. Statement of purpose.**—The purpose of this article is to create a separate State agency to be known as the North Carolina Wildlife Resources Commission, the function, purpose, and duty of which shall be to manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina, and to administer the laws relating to game, game and fresh-water fishes, and other wildlife exclusive of commercial fisheries, enacted by the General Assembly

to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical game, game fish, and wildlife program directed by qualified, competent, and representative citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of wildlife resources. (1947, c. 263, s. 3.)

Cross Reference.—For powers and duties of Wildlife Resources Commission as to agents for distribution and sale of hunting, fishing and trapping licenses, see § 113-81.4 et seq.

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.—There is hereby created a Commission to be known as the North Carolina Wildlife Resources Commission. The Commission shall consist of eleven citizens of North Carolina, who shall be competent and qualified as herein provided, and who shall be appointed by the Governor. At least one of the Commission members shall be appointed from each of the following geographical districts; plus two members at large as provided in G. S. 143-241:

First district to be composed of the following counties:

Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties:

Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties:

Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties:

Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, New Hanover, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties:

Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties:

Anson, Cabarrus, Davidson, Mecklenburg, Moore, Montgomery, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties:

Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties:

Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties:

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems. (1947, c. 263, s. 4; 1961, c. 737, s. 1½.)

Editor's Note.—The 1961 amendment increased the membership from nine to eleven and made other changes in the first paragraph.

Commission to Act by Resolution.—The Wildlife Resources Commission, in the discharge of its important duties in the public interest, can act only by resolution passed in a legal meeting of its members sitting as a commission, which resolution should be recorded in its minutes, and thus become the best evidence of the Commission's actions. State v. Story, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

Resolution Authorizing Director to Purchase Lands.—Resolution of the Wildlife Resources Commission authorizing its director to negotiate for the purchase of certain lands and setting up a certain sum in its budget therefor, even if it be construed to authorize the director to actually purchase the lands designated, is not authorization to him to institute proceedings to condemn any part of the lands. Such reso-

lution cannot support a finding that an application for certificate of public convenience and necessity of the acquisition of the land was filed by the Wildlife Resources Commission so as to confer jurisdiction on the Utilities Commission to issue the certificate. State v. Story, 241 N. C. 103, 84 S. E. (2d) 386 (1954).

§ 143-241. Appointment and terms of office of Commission members.—The terms of office of the members of the North Carolina Wildlife Resources Commission now serving in such capacity shall expire as of midnight June 30, 1961.

On the first day of July, 1961, the Governor shall appoint members of the North Carolina Wildlife Resources Commission from the several districts created by G. S. 143-240 as follows: One member each from the first, fourth and seventh districts, who shall serve for terms of two years; one member each from the second, fifth and eighth districts, who shall serve for terms of four years; and one member each from the third, sixth and ninth districts, who shall serve for terms of six years. Thereafter, as the terms of office of the members of the Commission from the districts expire, their successors shall be appointed for terms of six years each.

In addition to the members appointed from the several districts herein provided for, the Governor shall appoint two additional members from the State at large, one of whom shall serve for a term of four years and the other shall serve for a term of two years. Thereafter, as the terms of office of the members appointed from the State at large expire, their successors shall be appointed for terms of four years each.

All members appointed pursuant to this section shall serve until their successors are appointed and qualified. Any member of the Commission appointed pursuant to this section may be removed by the Governor for cause. (1947, c. 263, s. 5; 1961, c. 737, s. 1.)

Editor's Note.—The 1961 amendment rewrote this section.

§ 143-242. Vacancies by death, resignation, removal, or otherwise.—Vacancies in the Commission resulting from death, resignation, removal, or from any other cause, shall be filled by appointment by the Governor of a competent person for the unexpired term. (1947, c. 263, s. 6.)

§ 143-243. Organization of the Commission; election of officers.—The Commission shall hold at least two meetings annually in the city of Raleigh, one in January and one in July, and five members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times and places within the State as may be deemed necessary for the efficient transaction of the business of the Commission. The Commission may hold additional or special meetings at any time at the call of the chairman or on call of any three members of the Commission. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this article, and shall have an official seal, which shall be judicially noticed. At the first meeting of the Commission, which shall be held in the city of Raleigh on or before the first day of July, 1947, it shall elect one of its members as chairman and one of its members as vice-chairman; thereafter, at the meeting held in January, 1948, and annually thereafter, the Commission shall elect one of its members as chairman and one of its members as vice-chairman; such officers to hold office for a period of one year. (1947, c. 263, s. 7.)

§ 143-244. Location of offices.—The Board of Public Buildings and Grounds shall provide the Commission with offices in the city of Raleigh, North Carolina. (1947, c. 263, s. 8.)

§ 143-245. Compensation of commissioners.—The members of the Commission shall receive not more than ten dollars ($10.00) per diem and actual travel expenses while in attendance of meetings of the Commission or engaged in the business of the Commission; all travel expenses shall be paid in accordance with the provisions of the Executive Budget Act, article 1, chapter 143 of the General Statutes of North Carolina. (1947, c. 263, s. 9.)

§ 143-246. Executive Director; appointment, qualifications, duties, oath of office, and bonds.—The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission, and said Director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Before entering upon the duties of his office, the Executive Director shall take the oath of office as prescribed for public officials and shall execute and deposit with the State Treasurer a bond in the sum of ten thousand dollars ($10,000.00), to be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of his duties of office. The said Executive Director shall be clothed and vested with all powers, duties, and responsibilities heretofore exercised by the Commission of Game and Inland Fisheries relating to wildlife resources. (1947, c. 263, s. 10; 1957, c. 541, s. 17.)

Cross Reference.—As to duties respecting hunting and fishing license agents, see § 113-81.8.

Editor's Note.—Prior to the 1957 amendment the salary of the Director was subject to the approval of the Wildlife Resources Commission.

§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.—All duties, powers, jurisdiction, and responsibilities now vested by statute in and heretofore exercised by the Department of Conservation and Development, the Board of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, the Commissioner of Game and Inland Fisheries, or any predecessor organization, board, commission, commissioner or official relating to or pertaining to the wildlife resources of North Carolina, exclusive of commercial fish and fisheries, are hereby transferred to and vested by law in the North Carolina Wildlife Resources Commission hereby created, subject to the provisions of this article. The powers, duties, jurisdiction, and responsibilities hereby transferred shall be vested in the Commission immediately upon its organization under the provisions of this article. Provided however, that no provision of this article shall be construed as transferring to or conferring upon the North Carolina Wildlife Resources Commission, herein created, jurisdiction over the administration of any laws regulating the pollution of streams or public waters in North Carolina. (1947, c. 263, s. 11.)

Cross Reference.—As to power to acquire land for game farms or game refuges, see note to § 113-84. For powers and duties of Wildlife Resources Commission as to agents for distribution and sale of hunting, fishing and trapping licenses, see § 113-81.4 et seq.

§ 143-248. Transfer of lands, buildings, records, equipment, and other properties.—There is hereby transferred to the North Carolina Wildlife Resources Commission all lands, buildings, structures, records, reports, equipment, vehicles, supplies, materials, and other properties, and the possession and use thereof, which have heretofore been acquired or obtained and now remain in the possession of, or which are now and heretofore have been used or intended for use by the Department of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, and the Commission of

Game and Inland Fisheries, and any predecessor organization or division or official of either, for the purpose of protecting, propagating, and developing game, fur-bearing animals, game fish, inland fisheries, and all other wildlife resources, exclusive of commercial fish or fisheries, which heretofore have been used or held by them in connection with any program conducted for said purposes, whether said lands or properties were acquired, purchased, or obtained by deed, gift, grant, contract, or otherwise; the said lands and other properties hereby transferred, subject to the limitations hereinafter set forth to the said Wildlife Resources Commission shall be held and used by it subject to the provisions of this article and other provisions of law in furtherance of the intents, purposes, and provisions of this article and other provisions of law in such manner and for such purposes as may be determined by the Commission. In the event that there shall arise any conflict in the transfer of any properties or functions as herein provided, the Governor of the State is hereby authorized and empowered to issue such executive order, or orders, as may be necessary clarifying and making certain the issue, or issues, thus arising: Provided, further, nothing herein contained shall be construed to transfer any of the State parks or State forests to the North Carolina Wildlife Resources Commission: Provided, further, title to the property transferred by virtue of the provisions of this article shall be held by the State of North Carolina for the use and benefit of the North Carolina Wildlife Resources Commission and the use, control and sale of any of such property shall be governed by the general law of the State affecting such matters. (1947, c. 263, s. 12.)

§ 143-249. Transfer of personnel.—Upon the effective date of this article the Division of Game and Inland Fisheries of the North Carolina Department of Conservation and Development shall cease to exist and all employees of said Division shall continue as employees of the Commission at their option or until further action by the Commission. (1947, c. 263, s. 13.)

§ 143-250. Wildlife Resources Fund.—All monies in the game and fish fund or any similar State fund when this article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such monies in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources, exclusive of commercial fish and fisheries, shall also be transferred to the Wildlife Resources Fund.

On and after July 1, 1947, all monies derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this article. The Wildlife Resources Fund herein created shall be subject to the provisions of the Executive Budget Act, chapter 143, article 1 of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, chapter 143, article 2 of the General Statutes of North Carolina as amended.

All monies credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this article.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14.)

§ 143-251. Co-operative agreements.—In furtherance of the purposes of this article the Commission is hereby authorized and empowered to enter into co-operative agreements pertaining to the management and development of the wildlife resources with federal, state, and other agencies, or governmental subdivisions. (1947, c. 263, s. 15.)

§ 143-252. Article not applicable to commercial fish or fisheries.—None of the provisions of this article shall be construed to apply to commercial fish or fisheries, or to repeal or modify any existing laws or regulations governing commercial fish or fisheries. (1947, c. 263, s. 16.)

§ 143-253. Jurisdictional questions.—In the event of any question arising between the Department of Conservation and Development and the North Carolina Wildlife Resources Commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or regulations or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor of the State and his determination shall be binding on each of said bodies. (1947, c. 263, s. 17.)

§ 143-254. Conflicting laws; regulations of Department continued.—All laws and clauses of laws in conflict with the provisions of this article are hereby modified and amended so as to conform with the provisions of this article; and all laws and clauses of laws pertaining to the wildlife resources, as herein defined, not in conflict with the provisions thereof are to remain and continue in full force and effect.

Provided further, that all rules and regulations now in force with respect to wildlife resources as herein defined, promulgated by the Department of Conservation and Development under chapter 113 of the General Statutes of North Carolina, shall continue in full force and effect until altered, modified, amended, or rescinded by the Commission created under this article, or repealed or modified by law. (1947, c. 263, s. 18.)

Editor's Note.—Session Laws 1957, c. 1423, amending §§ 113-91 and 113-141, provides that the act shall not be construed to repeal any of the provisions of this article as they modify said sections.

§ 143-254.1. Assent to act of Congress providing aid in fish restoration and management projects.—Assent is hereby given to the provisions of the act of Congress entitled "An Act to Provide that the United States shall aid the States in Fish Restoration and Management Projects, and for other Purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of co-operative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by fishermen shall be diverted for any other purpose than the administration of the Wildlife Resources Commission and for the protection, propagation, preservation, and investigation of fish and game.

Nothing in this section shall be construed to prohibit the exercise of any of the powers granted to the Wildlife Resources Commission under the provisions of this article. (1951, cc. 316, 405.)

ARTICLE 25.

National Park, Parkway and Forests Development Commission.

§ 143-255. Commission created; members appointed.—There is hereby created a commission to be known as the North Carolina National Park, Parkway and Forests Development Commission, which Commission, in addition to the duties hereafter specified, shall succeed to the general functions heretofore exercised by

those commissions and agencies referred to in former §§ 113-78 to 113-81 and in repealed chapter 48 of the Public Laws of 1927. The Commission hereby created shall consist of seven members, one member of which shall be a resident of Buncombe county, one member a resident of Haywood county, one member a resident of Jackson county, one member a resident of Swain county, three members residents of counties adjacent to or affected by the development or completion of the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala national forests. The chairman of the State Highway Commission and the Director of the Department of Conservation and Development, shall be ex officio members of the Commission. There shall be transferred to the Commission herein created all records, documents, accounts, funds, appropriations and all other properties and interests whatsoever heretofore owned or held by any commission or agency under the provisions of article 6 of chapter 113 of the General Statutes of North Carolina, as amended, or chapter 48 of the Public Laws of 1927, as amended, and the Commission herein created is hereby authorized to receive, hold, use, convey and expend the same, subject to the approval of the Director of the Budget, and in furtherance of the purposes of this article. (1947, c. 422, s. 3.)

Editor's Note.—By virtue of G. S. 136-1.1, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

§ 143-256. Appointment of commissioners; term of office.—On or before July 1st, 1947, the Governor of North Carolina shall appoint seven members of the original Commission, two to serve for two years, two to serve for four years, and three to serve for six years, and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the Commission to serve for terms of six years. Members of the Commission shall be eligible for reappointment. The Governor shall also accept the resignation of members of the Commission and shall appoint members to serve the unexpired terms caused by the resignation or death of any of the members of the Commission. (1947, c. 422, s. 4.)

§ 143-257. Meetings; election of officers.—The Commission shall at its first meeting elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Commission, but the secretary need not be a member of the Commission. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be re-elected. In case of vacancies by resignation or death, the office shall be filled by the Commission for the unexpired term of said officer. The Commission shall meet monthly at the time and place designated by its chairman, or upon order duly made by the Commission it shall meet only upon call of its chairman. The Commission shall adopt such other rules, regulations and bylaws governing the operation of the Commission as it shall deem necessary. Five members of the Commission shall constitute a quorum for the transaction of business. (1947, c. 422, s. 5.)

§ 143-258. Duties of the Commission.—The Commission shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah national forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway, or the Pisgah or Nantahala national forests. It shall be the duty of the Commission to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissions and officials of the federal government and governments of ad-

joining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas, but shall not in any manner take over or supplant these agencies in their work in this area, except in so far as expressly provided in this article in respect to those commissions and agencies provided for in article 6 of chapter 113 of the General Statutes of North Carolina, as amended, or chapter 48 of the Public Laws of 1927, as amended. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out over-all programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the National Park Service of the federal government, and the North Carolina State Highway Commission. (1947, c. 422, s. 6.)

Editor's Note.—By virtue of G. S. 136-1.1, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

§ **143-259. The Commission to make reports.**—The Commission shall make a biennial report to the Governor covering its work up to January 1st preceding each session of the General Assembly. It shall also file any such suggestions or recommendations as it deems proper with the Department of Conservation and Development and the State Highway Commission in respect to such matters as might be of interest to, or affect such Department or Commission. (1947, c. 422, s. 7.)

Editor's Note.—By virtue of G. S. 136-1.1, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

§ **143-260. Compensation of commissioners.**—The members of the Commission shall receive their necessary traveling expenses incurred while attending meetings of the Commission and also such additional traveling expenses in connection with the business of the Commission as shall be approved by the Director of the Budget. (1947, c. 422, s. 8.)

Article 25A.

Historic Sites Commission; Historic and Archeological Sites.

§§ **143-260.1 to 143-260.5:** Repealed by Session Laws 1955, c. 543, s. 5.

Editor's Note.—The repealed sections were derived from Session Laws 1953, c. 1197, ss. 1-5, creating the former Historic Sites Commission and providing for the acquisition and administration of historic and archeological sites. These matters now come under the jurisdiction of the Department of Archives and History. See § 121-1 et seq.

Article 26.

State Education Commission.

§ **143-261. Appointment and membership; duties.**—The Governor of North Carolina is hereby authorized to appoint a commission to be known as the State Education Commission, consisting of eighteen members, six of whom shall be selected from educational groups within the State, and twelve of whom shall be selected from the agricultural, business, industrial, and professional life of the State. It shall be the duty of this Commission to study all educational problems to the end that a sound overall educational program may be developed in North Carolina, and to report their findings and make recommendations to the Governor and the General Assembly of 1949. (1947, c. 724, s. 1.)

§ 143-262. Organization meeting; election of officers; status of members.—After their appointment, the Commission shall meet in the office of the Governor of North Carolina not later than the 15th of May, 1947, and upon the recommendation of the Governor, elect a chairman and a full time executive secretary. The secretary may or may not be a member of the Commission. Membership on the Commission herein authorized shall not constitute public office but shall be considered as a commissioner for a special purpose; and the Governor may appoint as ex officio member, or members, on said Commission any public official without violating the provisions of article XIV, § 7, of the State Constitution. (1947, c. 724, s. 2.)

§ 143-263. Comprehensive study of education problems.—This Commission shall make a comprehensive study of organization, administration, finance, teacher education, supervision, curriculum, standardization, consolidation, transportation, buildings, personnel, a merit rating system for teachers, vocational education, and any other problems related to the overall educational program of the State. (1947, c. 724, s. 3.)

§ 143-264. Per diem and travel allowances.—Each member of the Commission shall be entitled to per diem and travel the same as is paid to the State Board of Education, when attending any meeting of the Commission or while engaged in the performance of any duties of the Commission. (1947, c. 724, s. 4.)

§ 143-265. Salary of executive secretary.—The Commission is authorized to set the salary of a full time executive secretary, with the approval of the Director of the Budget. (1947, c. 724, s. 5.)

§ 143-266. Powers of executive secretary.—The executive secretary of the Commission shall have the authority and power to subpoena witnesses and compel their attendance to testify and/or produce records at any hearing before the Commission, or any committee thereof, under the same provisions of the law as now apply to attendance of witnesses before legislative committees. (1947, c. 724, s. 6.)

ARTICLE 27.

Settlement of Affairs of Certain Inoperative Boards and Agencies.

§ 143-267. Release and payment of funds to State Treasurer; delivery of other assets to Director of the Division of Purchase and Contract.—Whenever the statutes creating, or granting authority to, any licensing, regulatory, or examining board or agency have been or are hereafter repealed, or declared unconstitutional or invalid by the Supreme Court of North Carolina, every officer or other person responsible for or having control or custody of any funds, records, equipment or any other assets held or owned by any such board or agency which was theretofore authorized by any such statute to exercise licensing or regulatory powers or conduct examinations in respect to the right to practice any profession or engage in any trade, business, craft or calling, shall forthwith release and deliver all such funds to the State Treasurer of North Carolina, and shall forthwith release and deliver all other assets of every nature whatsoever to the Director of the Division of Purchase and Contract for the State of North Carolina. (1949, c. 740, s. 1.)

§ 143-268. Official records turned over to Department of Archives and History; conversion of other assets into cash; allocation of assets to State agency or department.—The Director of the Division of Purchase and Contract shall receive all such assets so delivered and, after they have served their purpose in the liquidation of the affairs of such board or agency, shall turn over all official records of such board or agency to the Department of Archives and History, to be held pursuant to the statutes relating to such Department. The Director of the Division of Purchase and Contract shall proceed to convert all other such assets into cash by public sale to the highest bidder, and shall deposit the net proceeds of any such

sale with the State Treasurer: Provided, that the Director of the Division of Purchase and Contract, in his discretion, may allocate to any State agency or department, the whole or any part of such assets, the sale of which is not required to discharge the obligations of the board or agency being liquidated. (1949, c. 740, s. 2.)

§ **143-269. Deposit of funds by State Treasurer.**—The State Treasurer shall receive all funds delivered to him under this article and shall deposit the same in a special fund for the account of the board or agency whose affairs are being liquidated, to be held and applied as hereinafter provided. (1949, c. 740, s. 3.)

§ **143-270. Statement of claims against board or agency; time limitation on presentation.**—Any person having any claim or cause of action against any board or agency whose affairs are being liquidated under this article, may present a verified statement of the same to the Director of the Division of Purchase and Contract, who shall investigate and approve or disapprove such claim; any claim not presented to the Director of the Division of Purchase and Contract within one year from the time such board or agency becomes inoperative by law shall be barred, and no claim shall be approved or paid which is barred by any statute of limitation or any statutory prohibition in respect to the payment of any claim, or the refund of any deposit, dues, assessment, or examination or license fee. (1949, c. 740, s. 4.)

§ **143-271. Claims certified to State Treasurer; payment; escheat of balance to University of North Carolina.**—The Director of the Division of Purchase and Contract shall certify to the State Treasurer a schedule of all claims approved or disapproved, and after one year from the time at which the board or agency became inoperative under the law, the State Treasurer shall, out of the funds in his hands for the account of such board or agency, pay all approved claims in full, or if such funds are insufficient for full payment, then he shall equally prorate said claims and make partial payment in so far as funds are available. Should any balance remain in the hands of the Treasurer after the payment of all approved claims, such balance shall escheat and be paid over to the University of North Carolina, to be held in accordance with the statutes governing escheats. (1949, c. 740, s. 5.)

§ **143-272. Audit of affairs of board or agency; payment for audit and other expenses.**—Irrespective of the provisions of § 143-271 of this article, the State Treasurer is specifically authorized, in his discretion, to cause an audit to be made of the affairs of any such board or agency, and to immediately pay the cost of such audit, together with the expenses of transferring records and assets, and other necessary costs of liquidation, out of the first funds coming into his hands for the account of such board or agency. (1949, c. 740, s. 6.)

ARTICLE 28.

Communication Study Commission.

§ **143-273. Creation of Commission.**—There is hereby created an agency to be known as the North Carolina Communication Study Commission, which shall function for four years pursuant to the provisions of this article. (1949, c. 1077, s. 1.)

§ **143-274. Definitions.**—As used in this article:

(1) "Commission" means the North Carolina Communication Study Commission.

(2) "Committee" means the Advisory Communication Committee of the North Carolina Communication Study Commission.

(3) "Communication" is defined as those methods, namely radio, motion pictures, still photography, slides, film strips, models, maps, charts, illustrated publications, facsimile and television, by means of which activities and materials of an educational nature are disseminated to the people of North Carolina at pre-school, primary, secondary, college, and adult levels. (1949, c. 1077, s. 2.)

§ 143-275. Membership of Commission; term.—(a) The Commission shall consist of the Governor, Superintendent of Public Instruction, and Director of the Department of Conservation and Development, as members ex officio, together with seven members appointed by the Governor.

(b) In making appointment to the Commission, the Governor shall choose three persons who understand the entire educational program of the State, two persons from the field of radio and two persons who shall represent business in the State. The Commission shall elect with the approval of the Governor one member to act as chairman. A majority of the Commission shall constitute a quorum.

(c) The seven members appointed by the Governor shall serve for a term of four years, from July 1, 1949, through June 30, 1953.

(d) Any appointed member of the Commission may be removed by the Governor.

(e) Vacancies in the Commission shall be filled by the Governor for the unexpired term.

(f) The Commission shall meet quarterly, in January, April, July, and October, on a date to be fixed by the chairman. The Commission may be convened at such other times as the Governor or chairman may deem necessary.

(g) Members of the Commission shall be paid seven dollars ($7.00) per day for each day required in attendance on meetings of the Commission and going to and returning from meetings and the same subsistence and travel allowance for attendance at meetings as is provided for State employees. (1949, c. 1077, s. 3.)

§ 143-276. Duties of Commission.—It shall be the duty of the Commission:

(1) To survey, study and appraise the need in North Carolina for an overall plan in the use of all methods of educational communication at all levels of education in North Carolina;

(2) To survey, study and appraise the potential uses of these educational communication methods in North Carolina's program of conservation and development of natural, industrial and human resources;

(3) To survey, study and appraise the potentialities which might lead to more effective co-operation among the communication industries and between the communication industries and the educational institutions;

(4) To survey, study and appraise the need and procedure for setting up facilities to train communication specialists and to train teachers in the use of communication equipment and materials in the classroom;

(5) To survey, study and appraise the educational use of radio, television, motion pictures and any other methods of educational communication which may come to the attention of the Commission;

(6) To guide the growth and development of educational communication in North Carolina as it relates to the education, health, economy and general welfare of the people of North Carolina;

(7) To co-operate in the promotion of local, regional and State-wide use of all methods of educational communication as they relate to the education, health, economy and general welfare of the people of North Carolina;

(8) To establish and promote educational communication standards;

(9) To co-operate with state and federal communication agencies, the Communication Advisory Committee, and with commercial communication interests in the promotion of educational opportunities through the methods of educational communication;

(10) To recommend biennially on the basis of its surveys, studies and appraisals specific actions to the General Assembly;

(11) To submit a biennial report of its activities to the Governor and the General Assembly. (1949, c. 1077, s. 4.)

§ 143-277. Powers of Commission.—The Commission is hereby authorized:

(1) To make rules and regulations for the proper administration of its duties;

(2) To accept any grant of funds made by the United States or any agency thereof for the purpose of carrying out its functions;

(3) To accept gifts, bequests, devises and endowments. The funds, if given as an endowment, shall be invested in such securities as designated by the donor, or, if there is no designation, in those in which the State Sinking Fund may be invested. All such gifts, bequests, devises, and all proceeds from such invested endowments shall be used for carrying out the purpose for which they are made;

(4) To administer all funds available to the Commission;

(5) To act jointly when advisable with any other State agency, institution, department or commission in order to carry out the Commission's objectives and responsibilities. No activity of the Commission, however, shall be allowed to interfere with the work of any other State agency; provided, however, that the work of the Commission shall, to the extent possible, be co-ordinated with the work and objectives of the Department of Education.

(6) To employ, with the approval of the Governor, an executive director, and upon the recommendation of the executive officer, such other persons and/or companies as may be needed to carry out the provisions of this article. The executive director shall act as secretary to the Commission;

(7) To do any and all other things reasonably necessary to carry out the purposes of this article. (1949, c. 1077, s. 5.)

§ 143-278. Advisory Committee.—The Governor shall name a Communication Advisory Committee consisting of thirty members who shall serve for a term of two years, from July 1, 1949, to July 1, 1951, and their successors shall be appointed for a term of two years beginning July 1, 1951, and ending June 30, 1953. The Governor shall name one member to act as a chairman of the Committee. Vacancies occurring on the Committee shall be filled by the Governor for the unexpired term. Members of the Committee shall be representative in so far as possible of North Carolina education in general, the communication industries of North Carolina, and all other groups who might derive benefit from or be beneficial to education in North Carolina.

The Committee shall meet at least once each year with the Commission at times and places to be fixed by the Governor. Members of the Committee shall serve without compensation, but shall be paid the same subsistence and travel allowance for attendance at meetings as is provided for State employees.

The Committee shall act in an advisory capacity to the Commission. It shall help the Commission in every way possible by means of suggestion, discussions, and knowledge of educational needs throughout the State in the advancement of educational opportunities through the methods of communication. (1949, c. 1077, s. 6.)

Article 29.

Commission to Study the Care of the Aged and Handicapped.

§ 143-279. Establishment and designation of Commission.—A Commission is hereby established for the study of the problems relating to the care of the aged with especial reference to those failing mentally and the intellectually or physically handicapped of all ages and this Commission shall be known as "the Commission for the Study of Problems of the Care of the Aged and Intellectually or Physically Handicapped." (1949, c. 1211, s. 1.)

§ 143-280. Membership.—The Commission shall consist of one member from the North Carolina State Department of Mental Health, one member from the State Board of Health, one member from the State Board of Public Welfare, one member from the boards of county commissioners, one county superintendent of

public welfare, one local health director, one clerk of the superior court. (1949, c. 1211, s. 2; 1957, c. 1357, s. 12; 1963, c. 1166, s. 10.)

Editor's Note.—The 1917 amendment substituted "local health director" for "county health officer" near the end of the section. Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 143-281. Appointment and removal of members.—The Governor shall appoint the members of this Commission, and may remove any member; he shall not be required to give any reason for the removal of any member. (1949, c. 1211, s. 3.)

§ 143-282. Duties of Commission; recommendations.—This Commission shall study the problems relating to the care of the aged with especial reference to those failing mentally and shall inquire into the methods of meeting and handling this problem in other states. It shall make a similar study of the problem of the care of the feeble-minded, with especial attention to the custodial care of intellectually handicapped persons not teachable or trainable. It shall make a study of the problems relating to the care of the physically handicapped with a special reference to those whose physical handicap renders them incapable of self-support and shall inquire into the methods of meeting and handling this problem in other states.

It shall make recommendations to the Governor offering plans for dealing with the problem of the care needed for this group, and means of clarification of the responsibility of the State and respective counties. (1949, c. 1211, s. 4.)

§ 143-283. Compensation.—The members of the Commission shall receive for each day in actual performance of duties under this article, a per diem of seven dollars ($7.00), and necessary travel and subsistence expenses, to be paid out of the contingency and emergency fund. (1949, c. 1211, s. 5.)

Article 29A.

Governor's Committee on Employment of the Handicapped.

§ 143-283.1. Short title.—This article may be cited as "The Governor's Committee on Employment of the Handicapped Act." (1961, c. 981.)

Editor's Note.—Former Article 29A entitled "Commission on Employ the Physically Handicapped" and inserted by Session Laws 1953, c. 1224, ss. 1-5 was rewritten by Session Laws 1961, c. 981, effective July 1, 1961, to appear as the present article.

§ 143-283.2. Purpose of article; cooperation with President's Committee.—The purpose of this article is to carry on a continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating State-wide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field. The Governor's Committee shall work in close cooperation with the President's Committee on Employment of the Physically Handicapped to more effectively carry out the purpose of this article, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (1961, c. 981.)

§ 143-283.3. Celebration of National Employ the Physically Handicapped Week.—The Governor's Committee shall, by proclamation, designate the first full week in October of each year as "National Employ the Physically Handicapped Week." The committee shall promote and encourage the holding of appropriate ceremonies throughout the State during said week, the purpose of which ceremonies shall be to enlist public support for and interest in the employment of the physically handicapped. The Governor shall, in his proclamation designating National Employ the Physically Handicapped Week, invite the mayors of all cities, heads of other instrumentalities of government, leaders of industry and business, educational and

religious groups, labor, veterans, women, farm, scientific and professional, and all other organizations and individuals having an interest to participate in said ceremonies. (1961, c. 981.)

§ 143-283.4. Governor's Committee; how constituted.—The Governor's Committee shall consist of members composed of State leaders and representatives of industry, business, agriculture, labor, veterans, women, religious, educational, civic, fraternal, welfare, scientific, and medical and other professions, and all other interested groups or individuals who are approved by the Governor's Executive Committee, hereinafter provided for. (1961, c. 981.)

§ 143-283.5. Governor's Executive Committee; how constituted.—There is hereby also created the Governor's Executive Committee on the Employment of the Handicapped, consisting of fifteen members to be appointed by the Governor, five of whom shall be initially appointed for a term of one year, five for two years, and five for three years. Thereafter as their terms expire, their successors shall be appointed for terms of three years each. Vacancies shall be filled by appointment by the Governor for the unexpired term. In addition to the fifteen appointed members, the Governor, the Commissioner of Labor, the Commissioner of Insurance, the Chairman of the Employment Security Commission and the Director of Vocational Rehabilitation shall serve ex officio as members of the Executive Committee. The Governor shall be honorary chairman of the Executive Committee. (1961, c. 981.)

§ 143-283.6. Organization of Governor's Executive Committee; meetings; powers.—The Governor's Executive Committee shall formulate policies and goals, not inconsistent with this article, for promoting the employment of the handicapped citizens; and its Executive Committee is authorized to appoint such administrative personnel as are necessary to carry out this article, who shall be subject to all the provisions of the State Personnel Act. The Executive Committee of the Governor's Committee shall elect from its membership, a chairman, vice chairman, secretary and a treasurer. The officers shall be elected for a term of one year, but may succeed themselves. The administrative powers and duties of the Governor's Committee shall be vested in the Governor's Executive Committee. An organizational meeting shall be held within sixty days after ten members of the Executive Committee have been appointed and qualified. The Executive Committee shall meet quarterly in regular sessions but special meetings may be called by six members of the Executive Committee.

The Governor's Executive Committee shall call a meeting at least once a year inviting the members of the Governor's Committee to attend in order to properly inform them of work during the year and program for the ensuing year. (1961, c. 981.)

§ 143-283.7. Funds, expenses and gifts; reports.—There is hereby created in the State treasury a special revolving fund to be known as "Employment of the Handicapped Revolving Fund." The fund shall consist of all monies received by the committee, or in behalf of the committee, from the United States, any federal or State agency or institution, gifts, contributions, donations and requests, but not excluding any other source of revenue for the purpose of promoting the employment and rehabilitation of handicapped citizens of North Carolina. The Executive Committee may use said revolving fund to pay the salaries, and general expenses of the administrative office, personnel, materials, supplies, equipment, travel, provide awards, citations, scholarships, but not excluding other purposes for the promoting of the employment and rehabilitation of handicapped citizens. All expenditures from said fund shall be subject to the provisions of the Executive Budget Act.

Any monies remaining in said revolving fund at the end of any fiscal year or biennium shall not revert to the general fund or any other fund but shall continue to remain in said revolving fund to be expended for the purposes of this article.

The Governor's Executive Committee shall accept, hold in trust, and authorize the use of any grant or devise of land, or any donation or bequests of money or other personal property made to the Committee or Executive Committee so long as the terms of the grant, donation, bequest or will are carried out. The Governor's Executive Committee may invest and reinvest any funds and money, lease, or sell any real or personal property, and invest the proceeds for the purpose of promoting the employment and rehabilitation of the handicapped unless prohibited by the terms of the grant, donation, bequest, gift, or will. If, due to circumstances, the requests of the person or persons making the grant, donation, bequest, gift, or will, cannot be carried out, the Executive Committee shall have the authority to use the remainder thereof for the purpose of this article. Said funds shall be deposited in the revolving fund to carry out the provisions of this article. Such gifts, donations, bequests or grants shall be exempt for tax purposes. The committee shall report annually to the Governor all monies and properties received and expended by virtue of this section.

All funds and properties in the hands of the North Carolina Commission on Employ the Physically Handicapped on July 1, 1961, shall be transferred to the Governor's Executive Committee created by this article for use in furtherance of the purposes of this article. (1961, c. 981.)

§ 143-283.8. Governor's Committee nonpartisan and nonprofit.—The Governor's Committee shall be nonpartisan, nonprofit, and shall not be used for the dissemination of partisan principles, nor for the promotion of the candidacy of any person seeking public office or preferment. (1961, c. 981.)

§ 143-283.9. Executive Committee a governmental agency; oaths of members; compensation; bonds.—The Executive Committee is hereby constituted an agency of the State of North Carolina and the exercise by the Executive Committee of the power and duties conferred by this article shall be deemed to be an exercise of the governmental functions of the State. Members of the Executive Committee shall execute the oath or oaths of offices prescribed by the Constitution and statutes of the State of North Carolina. Members of the Executive Committee shall not receive compensation or expenses for services rendered.

Bond premiums for any bonds which may be required shall be paid by the Executive Committee from its revolving fund. (1961, c. 981.)

§ 143-283.10. Allocations from Contingency and Emergency Fund.—The Governor, with the approval of the Council of State, is hereby authorized to allocate to the Executive Committee from the State's Contingency and Emergency Fund from time to time such sum as may be deemed wise and expedient to be used for the salaries and expenses of employees, including travel, supplies, materials, equipment, citations, and all other purposes necessary to carry out the provisions of this article. (1961, c. 981; 1963, c. 1210.)

Editor's Note.—The 1963 amendment deleted the words "not exceeding twenty-five hundred dollars ($2,500.00) per fiscal year" formerly following the word "expedient" near the middle of the section.

Article 30.

John H. Kerr Reservoir Development Commission.

§ 143-284. Commission created; membership; terms of office; vacancies.—There is hereby created a commission to be known as the "John H. Kerr Reservoir Development Commission." The Commission hereby created shall consist of 12 members to be appointed by the Governor. One member of said Commission shall be a resident of Vance County; one member shall be a resident of Granville County and one member shall be a resident of Warren County and four members shall be appointed as members at large, one member shall be appointed from the membership of the Wildlife Resources Commission, one member shall be appointed from the

membership of the Board of Conservation and Development, and one member shall be appointed from the membership of the North Carolina Recreation Commission. The members appointed from the Board of Conservation and Development, and the Wildlife Resources Commission and the North Carolina Recreation Commission shall serve as ex officio members of the Commission created by this article, and shall serve on this Commission in such capacity only during the tenure of their terms as members of the Board of Conservation and Development and the Wildlife Resources Commission and the North Carolina Recreation Commission respectively. Of the other seven members to be appointed to this Commission two shall serve for two years, two shall serve for four years, and three shall serve for six years and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the Commission to serve for terms of six years. The Governor shall accept resignations of members of the Commission and shall appoint members to serve the unexpired terms of those caused by resignation, death or otherwise. Members of the Commission created by this article shall be appointed by the Governor on or before the first day of July, 1951.

Upon the expiration of the terms of the present incumbents, in lieu of the one member now serving from each of the counties of Granville, Vance and Warren, and the four members now serving at large, the Governor shall appoint two members of the Commission who shall be residents of Granville County, two members who shall be residents of Vance County, two members who shall be residents of Warren County, and three members at large. Two members shall be appointed by the Governor in accordance with the above provisions on July 1, 1961, for terms of six years each. It is provided, however, that nothing in this paragraph shall affect the terms of the present incumbents. (1951, c. 444, s. 1; 1953, c. 1312, s. 2; 1961, c. 650.)

Editor's Note.—The 1953 amendment substituted "John H. Kerr Reservoir Development Commission" for "Buggs Island Development Commission" in the first sentence.

Session Laws 1953, c. 1312, s. 1, substituted the present title of this article for "Buggs Island Development Commission."

Session Laws 1953, c. 1312, s. 2, provides: "Whenever the words 'Buggs Island Development Commission' are used or appear in any other statute of this State the same shall be stricken out and the words 'John H. Kerr Reservoir Development Commission' inserted in lieu thereof."

The 1961 amendment substituted 12 for 10 in the second sentence, deleted "from the eastern section of North Carolina" formerly following the words "appointed" in the third sentence, and added the second paragraph.

§ 143-285. Officers of Commission; meetings; rules, regulations and bylaws; quorum.—The Commission shall at its first meeting elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Commission, but the secretary need not be a member of the Commission. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be re-elected. In case of vacancies by resignation or death, the office shall be filled by the Commission for the unexpired term of said officer. The Commission shall meet at such times and places as may be designated by its chairman and may also be called at such times as may be requested by any three members of the Commission. The Commission shall adopt such other rules, regulations and bylaws governing the operation of the Commission as it shall deem necessary. Five members of the Commission shall constitute a quorum for the transaction of business. (1951, c. 444, s. 2.)

§ 143-286. Powers and duties generally; employees as special peace officers.—The Commission shall endeavor to promote the development of the John H. Kerr area situated in northeastern North Carolina, and it shall be the duty of the Commission to study the development of this area and to initiate and carry out policies that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation. It shall confer with the various department, agencies, commissions and officials of the federal government and the governments of the adjoining states in connection with the

development of this John H. Kerr area. It shall also advise and confer with any other State officials or agencies or departments in the State of North Carolina that may be directly or indirectly concerned in the development of the resources of this area, but it shall not in any manner take over or supplant any agencies in their work in this area except so far as is expressly provided for in this article. It shall also advise and confer with various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall have full power and authority to confer with any similar commission created or acting in that part of the area lying in the state of Virginia for the purpose of working out uniform practices and plans affecting the entire area in both states.

Upon application by the John H. Kerr Reservoir Development Commission, the Governor is hereby authorized and empowered to commission as special officers such of the employees of the John H. Kerr Reservoir Development Commission as the Commission may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of parks, lakes, reservations and other lands or waters under the control or supervision of the John H. Kerr Reservoir Development Commission. Such employees shall receive no additional compensation for performing the duties of special peace officers. Employees so commissioned special peace officers as herein provided shall have the same powers of arrest, give bond, and be required to take an oath as provided for special police officers under G. S. 113-28.2, 113-28.3 and 113-28.4. (1951, c. 444, s. 3; 1953, c. 1312, s. 3; 1961, c. 214; 1963, c. 612, s. 1.)

Editor's Note.—The 1953 amendment substituted "John H. Kerr" for "Buggs Island" in the present first paragraph.

The 1961 amendment added the second paragraph.

The 1963 amendment substituted in the first sentence "initiate and carry out" for "recommend to the Department of Conservation and Development and the Wildlife Resources Commission and the North Carolina Recreation Commission."

§ **143-286.1. Nutbush Conservation Area.**—The Board of Conservation and Development is hereby authorized to enter into lease agreements with the proper agencies of the federal government covering the marginal land area of the John H. Kerr Reservoir or so much thereof as may be necessary or desirable in order to develop said area for park purposes and to carry on a program of conservation, forestry development and wildlife protection. The area so obtained shall be known as the Nutbush Conservation Area. The John H. Kerr Reservoir Development Commission is hereby authorized to control and develop the area so leased and to enter into sublease agreements on terms as may be authorized in the original lease agreement. All proceeds obtained from any sublease agreement shall be used exclusively for the further development of the Nutbush Conservation Area. (1953, c. 1312, s. 4; 1963, c. 612, s. 2.)

Editor's Note.—The 1963 amendment rewrote the third sentence.

§ **143-287. Biennial report; suggestions and recommendations.**—The Commission shall make a biennial report to the Governor covering its work up to January 1st preceding each session of the General Assembly. It shall also file any such suggestions or recommendations as it deems proper with the Department of Conservation and Development, the Wildlife Resources Commission and the North Carolina Recreation Commission in respect to such matters as might be of interest to or affect such Department or Commission. (1951, c. 444, s. 4.)

§ **143-288. Expenses.**—The actual travel and subsistence expenses incurred by the ex officio members of the Commission shall be paid from the funds of the respective agencies. The other members of the Commission shall receive their necessary traveling expenses incurred while attending meetings of the Commission

and also such additional traveling expenses in connection with the business of the Commission as shall be approved by the Director of the Budget, which expenses shall be paid from funds of the Commission created by this article when such funds have been provided from the sources hereinafter referred to. (1951, c. 444, s. 5.)

§ 143-289. Contributions from certain counties and municipalities authorized; other grants or donations.—The boards of county commissioners of the counties of Granville, Vance and Warren and the municipalities within these counties are authorized and empowered in their discretion to make annual contributions to the Commission for the purpose of defraying the necessary expenses of operation and the Commission is authorized and empowered to accept grants or donations from any interested citizens or from any state or federal agency. (1951, c. 444, s. 6.)

§ 143-290. Requests for funds.—The John H. Kerr Reservoir Development Commission is authorized and empowered to include in its budget request for funds to aid and support the work of the Commission. (1951, c. 444, s. 7; 1963, c. 612, s. 3.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 143-290.1. Responsibility and duties of Department of Conservation and Development.—The Department of Conservation and Development shall continue to have the responsibility of, and perform the routine duties with respect to, preparation of materials relating to the payroll of the Commission, issuing checks and other bookkeeping or keeping of records in the same manner and to the same extent as before the enactment of the 1963 amendments to this article. (1963, c. 612, s. 4.)

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages.—The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the State Highway Commission, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of ten thousand dollars ($10,000.00). (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361.)

Editor's Note.—Section 13 of the act inserting this article lists numerous claims against the various State departments, institutions and agencies, which "shall be heard and determined by the Industrial Commission as provided in this act, and each claimant upon request shall furnish the Industrial Commission the information provided for" in § 143-297.

Chapter 400 of the 1955 Session Laws, as amended by chapter 1361, omitted the provision added by the 1953 amendment

and extended the scope of this section to include negligent acts of officers and involuntary servants or agents. And chapter 1102 of the 1955 Session Laws increased the maximum amount of damages that can be awarded from $8,000 to $10,000. Section 1½ of chapter 400 provides that the act shall not apply to any claim arising prior to March 31, 1955.

By virtue of G. S. 136-1.1, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

For comment on this article, see 29 N. C. Law Rev. 416.

For note on the right of subrogation under the provisions of this article, see 32 N. C. Law Rev. 242. For note on the distinction between intentional and negligent conduct under this article, see 35 N. C. Law Rev. 564. For a note on the distinction between nonfeasance and misfeasance under this article, see 36 N. C. Law Rev. 352. For note on judicial abrogation of the doctrine of municipal immunity to tort liability, see 41 N. C. Law Rev. 290.

Intention of Article Is to Enlarge Rights and Remedies.—The obvious intention of the General Assembly in enacting the Tort Claims Act was to enlarge the rights and remedies of a person injured by the actionable negligence of an employee of a State agency while acting in the course of his employment. Wirth v. Bracey, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

But It Authorizes Claims against State Agencies Only.—The only claim authorized by the Tort Claims Act is a claim against the State agency. Wirth v. Bracey, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Strict Construction.—The State Tort Claims Act is in derogation of the sovereign immunity from liability for torts, and the sounder view is that the Act should be strictly construed, and certainly the Act must be followed as written. Floyd v. North Carolina State Highway, etc., Comm., 241 N. C. 461, 85 S. E. (2d) 703 (1955).

For comment on the construction of this article, see 33 N. C. Law Rev. 613.

Wording in Statute Is Clear.—The wording in the statute is clear, certain and intelligible. Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Legislative Purpose Ascertained from Wording of Statute.—The legislative intent and purpose in enacting the State Tort Claims Act must be ascertained from the wording of the statute, and the rule of liberal construction cannot be applied to enlarge its scope beyond the meaning of its plain and unambiguous terms. Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

The State Tort Claims Act will be construed to effectuate its purpose to waive the sovereign immunity of the State in those instances in which injury is inflicted through the negligence of a State employee and the injured person is not guilty of contributory negligence, giving the injured party the same right to sue as any other litigant. Lyon & Sons, Inc. v. State Board of Education, 238 N. C. 24, 76 S. E. (2d) 553 (1953).

Retroactive Effect of Statute.—The Tort Claims Act, c. 1059, Sess. Laws of 1951, incorporated in this section, was made retroactive as to certain persons named therein. MacFarlane v. North Carolina Wildlife Resources Comm., 244 N. C. 385, 93 S. E. (2d) 557 (1956).

Application of Article to Local Units.—The Tort Claims Act, applicable to the State Board of Education and to the State departments and agencies, except as amended by § 143-300.1, does not include local units such as county and city boards of education. Turner v. Gastonia City Board of Education, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

This article has no application with respect to acts of employees of city or county administrative units. McBride v. North Carolina State Board of Education, 257 N. C. 152, 125 S. E. (2d) 393 (1962).

A county board of education, unless it has duly waived immunity from tort liability, as authorized in § 115-53, is not liable in a tort action or proceeding involving a tort except such liability as may be established under the Tort Claims Act. Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Recovery Must Be Based on Actionable Negligence of Employee.—Recovery, if any, under the Tort Claims Act, must be based upon the actionable negligence of an employee of such agency while acting within the scope of his employment. Wirth v. Bracey, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Meaning of Employee.—The word "employee" as used in the State Tort Claims Act must be given its ordinary meaning in construing the statute. Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Thus it appears basically that a claim, to be recognizable within the purview of the Tort Claims Act, must arise "as a result of a negligent act of a State employee while acting within the scope of his employment." Manifestly, the word "employee" in the connection used, means "one who works for wages or salary in the service of an employer." Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

A person employed by a city board of education to do maintenance work in the city school grounds is not an employee of the State, and demurrer of the State Board of Education is properly sustained in proceedings against it under this section to recover for the negligence of such employee in the discharge of his duties. Turner v. Gastonia City Board of Education, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Personal Liability of Employee.—Prior to the enactment of the Tort Claims Act the Highway Commission, as an agency or instrumentality of the State, enjoyed im-

munity to liability for injury or loss caused by the negligence of its employees. Even so, then as now, an employee of such agency was personally liable for his own actionable negligence. Wirth v. Bracey, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

There is no inconsistency in respect of plaintiff's claims against the Highway Commission and actions against an employee since both are grounded on the actionable negligence of the employee and are cumulative and consistent. Wirth v. Bracey, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Recovery, if any, against the alleged negligent employee must be by common-law action. Wirth v. Bracey, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Claim Not "Another Action Pending" within Meaning of § 1-127.—A claim filed by plaintiffs with the Industrial Commission against the North Carolina Highway Commission to recover for injuries and damages sustained in a collision and filed prior to an action for negligence against a member of the Highway Patrol did not constitute another action pending between the same parties within the meaning of § 1-127 (3). Wirth v. Bracey, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

An action to recover for the wrongful death of a prisoner assigned to work under the supervision of the State Highway and Public Works Commission could be maintained under the State Tort Claims Act, the sole remedy not being under the Workmen's Compensation Act prior to the 1957 amendment to § 97-13 (c). Lawson v. North Carolina State Highway & Public Works Comm'n, 248 N. C. 276, 103 S. E. (2d) 366 (1958). See § 97-13 and note thereto.

The second 1957 amendment to § 97-13 (c) does not bar a prisoner from maintaining an action under this section, for if the legislature intended to withdraw altogether a prisoner's right to pursue a tort claim, the logical procedure would be by amendment to the Tort Claims Act. Ivey v. North Carolina Prison Department, 252 N. C. 615, 114 S. E. (2d) 812 (1960).

Recovery May Be Had Only for Negligent Acts.—No recovery can be had for the intentional shooting of plaintiff's decedent by a state highway patrolman, since the Tort Claims Act does not permit recovery for wrongful and intentional injuries, but limits recovery to negligent acts. Jenkins v. North Carolina Dept. of Motor Vehicles, 244 N. C. 560, 94 S. E. (2d) 577 (1956).

And Not for Negligent Omissions.—The intent of the legislature was to permit recovery under the Tort Claims Act only for the negligent acts of State employees, for the things done by them, not for the things left undone. Thus, recovery cannot be had for injuries in a wreck resulting from the negligent failure or omission of the responsible employees of the Highway Commission to repair a hole in a State highway. Flynn v. North Carolina State Highway & Public Works Comm., 244 N. C. 617, 94 S. E. (2d) 571 (1956).

But Such Acts Need Not Be Sole Proximate Cause of Injury.—It was not the intent of the legislature to limit liability under the Tort Claims Act to situations where the negligence of an employee was the sole proximate cause of the injury or damages inflicted. Branch Banking & Trust Co. v. Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Since State Agency Regarded as Private Person.—The legal limitation on the right to allow a claim under the provisions of this section is limited to the same category with respect to tort claims against the agency covered as if such agency were a private person and such private person would be liable under the laws of North Carolina. Branch Banking & Trust Co. v. Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Claimant Must be Free of Contributory Negligence.—The Tort Claims Act does not authorize recovery unless the claimant is free from contributory negligence. Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Effect of Compromise and Settlement in Suit against State Employee.—Where a person injured by the alleged negligence of a State employee while engaged in the discharge of his duties as such brought suit against the employee before the passage of the Tort Claims Act, and a compromise was effected in the suit, whereby the employee, or his insurer, paid the plaintiff $9,715 and the plaintiff released the employee and his insurer for all claims arising out of the accident, a subsequent action by the plaintiff against the State under the Tort Claims Act was properly dismissed, because (1) plaintiff had recovered from the employee an amount in excess of the maximum he could be awarded against the State, and (2) plaintiff had released the employee, the active tort-feasor, from further liability. MacFarlane v. North Carolina Wildlife Resources Comm., 244 N. C. 385, 93 S. E. (2d) 557 (1956), wherein the plaintiff had been named in the Tort Claims Act as one whose claim should be heard and determined by the Industrial Commission, and the amount of his claim had been listed in the Act as $25,000.

Prisoner Detained at State Penal Institution.—A prisoner detained at a State penal institution is not an employee of the State within the meaning of the State Tort Claims Act, and the State may not be held liable under that statute for negligent injury inflicted by such prisoner while his services are made use of, which is the meaning of the word "employed" as used in G. S. 148-49.3. Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Waiver of Governmental Immunity to Suit.—The State may prescribe such terms and conditions as it sees fit, subject to constitutional limitations, in waiving its governmental immunity to suit for negligence, and

the State Tort Claims Act permits recovery against the State only for such injuries as are proximately caused by negligence of a State employee while acting within the scope of his employment when there is no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted. Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

Industrial Commission and Superior Court Are Bound by Law of Negligence. —The legislature intended that the Industrial Commission on the original hearing and the superior court on the hearing on appeal should each be bound by the law of negligence, both substantive and adjective, as such common-law rules and doctrines appear in the numerous decisions of the Supreme Court, subject only to the limitations stipulated in the Act. MacFarlane v. North Carolina Wildlife Resources Comm., 244 N. C. 385, 93 S. E. (2d) 557 (1956).

The right of subrogation exists under the provisions of this article against State departments and agencies. Lyon & Sons, Inc. v. State Board of Education, 238 N. C. 24, 76 S. E. (2d) 553 (1953).

Applied in Greene v. Mitchell County Board of Education, 237 N. C. 336, 75 S. E. (2d) 129 (1953); Gould v. North Carolina State Highway & Public Works Comm., 245 N. C. 350, 95 S. E. (2d) 910 (1957); Gordon v. North Carolina State Highway & Public Works Comm., 250 N. C. 645, 109 S. E. (2d) 376 (1959); Gay v. Wake County Board of Education, 254 N. C. 622, 119 S. E. (2d) 460 (1961).

Stated in Bradshaw v. State Board of Education, 244 N. C. 393, 93 S. E. (2d) 434 (1956).

Cited in Lowe v. Department of Motor Vehicles, 244 N. C. 353, 93 S. E. (2d) 448 (1956); Eller v. Board of Education, 242 N. C. 584, 89 S. E. (2d) 144 (1955); General Ins. Co. of America v. Faulkner, 259 N. C. 317, 130 S. E. (2d) 645 (1963).

§ 143-291.1. Costs.—The Industrial Commission is authorized by such order to tax the costs against the loser in the same manner as costs are taxed by the superior court in civil actions. The State department, institution or agency concerned is authorized and directed to pay such costs as may be taxed against it, including all costs heretofore taxed against such department, agency or institution. (1955, c. 1102, s. 2.)

§ 143-292. Notice of determination of claim; appeal to full Commission.—Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have seven days after receipt of such notice within which to file notice of appeal with the Industrial Commission. Such appeal, when so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on the basis of the record in the matter and upon oral argument of the parties, and said full Commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of fact and conclusions of law. Upon determination of said claim by the Industrial Commission, sitting as a full Commission, the Commission shall notify all parties concerned in writing of its decision. Such determination by the Industrial Commission, sitting as a full Commission, upon claims in an amount of five hundred dollars ($500.00) or less, shall be final as to the State or any of its departments, institutions or agencies, and no appeal shall lie therefrom by the State or any of its departments, institutions or agencies. (1951, c. 1059, s. 2; 1955, c. 770.)

Editor's Note.—The 1955 amendment added the last sentence.

Stated in Bradshaw v. State Board of Education, 244 N. C. 393, 93 S. E. (2d) 434 (1956).

§ 143-293. Appeals to superior and Supreme Courts.—Either the claimant or the State may, within 30 days of the date of the decision and award of the full Commission or within 30 days after receipt of such decision and award, to be sent by registered mail but not thereafter, appeal from the decision of the Commission to the superior court of the county in which the claim arose. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them: Provided, the Commission shall have 60 days after receipt of notice of appeal, properly served on the opposing party and the Industrial Commission, within which to prepare and furnish to the appellant or his attorney a certified transcript of the record in the case for filing in

the superior court, and the time for docketing said appeal shall not begin to run until this transcript has been furnished to the appellant or his attorney. Either party may appeal from the decision of the superior court to the Supreme Court as in ordinary civil actions. (1951, c. 1059, s. 3.)

Commission Bound by Order of Superior Court.—Where, in a proceeding under the Tort Claims Act, the superior court on appeal adjudicates that certain findings of the Commission were not supported by evidence, and remands the cause, the Commission is bound by the order unless and until it is set aside on further appeal to the Supreme Court, and the Commission may not merely rephrase the original findings and adopt them as so rephrased. Johnson v. Cleveland County Board of Education, 241 N. C. 56, 84 S. E. (2d) 256 (1954).

Exceptions Should Be Filed before Hearing in Superior Court.—If the appellants desire to enter exceptions to the findings of fact made by the Industrial Commission, they should file prior to the hearing in the superior court. Whether the judge should interrupt the hearing and call in the court reporter so that specific exceptions can be taken to certain findings of fact and conclusions of law of the Commission rests in his sound discretion. Greene v. Mitchell County Board of Education, 237 N. C. 336, 75 S. E. (2d) 129 (1953).

Necessity for Exceptions and Taking of Appeal.—Where the record failed to show any exception to the findings, conclusions and order of the Industrial Commission dismissing plaintiff's claim or an appeal taken as permitted by this section, the superior court was without jurisdiction to hear plaintiff's claim. McBride v. North Carolina State Board of Education, 257 N. C. 152, 125 S. E. (2d) 393 (1962).

Finding of Commission Conclusive if Supported by Competent Evidence.—Where the Industrial Commission has found as a fact and concluded as a matter of law that there was no negligence on the part of the employee, bus driver, of the State, resulting in damages to the claimant within the purview of §§ 143-291 to 143-300, and the superior court is unable to find that there is no evidence to support the finding of the Commission, the judgment of the superior court affirming the decision and order of the Commission is proper. Bradshaw v. State Board of Education, 244 N. C. 393, 93 S. E. (2d) 434 (1956).

If there is any competent evidence to support findings of fact by the Industrial Commission, such findings are conclusive, and on appeal are not subject to review by the superior court or the Supreme Court even though there is evidence that would support a finding to the contrary. English Mica Co. v. Avery County Board of Education, 246 N. C. 714, 100 S. E. (2d) 72 (1957); Gordon v. North Carolina State Highway & Public Works Comm., 250 N. C. 645, 109 S. E. (2d) 376 (1959); Jordan v. State Highway Comm., 256 N. C. 456, 124 S. E. (2d) 140 (1962).

Applied in Lyon & Sons, Inc. v. State Board of Education, 238 N. C. 24, 76 S. E. (2d) 553 (1953); Gay v. Wake County Board of Education, 254 N. C. 622, 119 S. E. (2d) 460 (1961).

Quoted in Tucker v. State Highway & Public Works Comm'n, 247 N. C. 171, 100 S. E. (2d) 514 (1957); Adams v. State Board of Education, 248 N. C. 506, 103 S. E. (2d) 854 (1958).

§ 143-294. Appeal to superior court to act as supersedeas.—The appeal from the decision of the Industrial Commission to the superior court shall act as a supersedeas, and the State department, institution or agency shall not be required to make payment of any judgment until the questions at issue therein shall have been finally determined as provided in this article. (1951, c. 1059, s. 4.)

§ 143-295. Settlement of claims.—Any claim hereinafter listed, or any other claim hereinafter filed with the Industrial Commission, may be settled upon agreement between the claimant and the department, institution, or agency of the State involved without a formal hearing. Such settlements shall be subject to approval, however, by the office of the Attorney General of North Carolina with reference to all claims against all departments, institutions, and agencies of the State other than the State Highway Commission, and settlements of claims against the State Highway Commission shall be subject to approval by the chief counsel of that department, and all settlements shall be subject to approval by the North Carolina Industrial Commission. (1951, c. 1059, s. 5.)

Editor's Note.—By virtue of G. S. 136-1.1, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

§ 143-296. Powers of Industrial Commission; deputies.—The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas,

administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workmen's Compensation Act when assigned to do so by the Industrial Commission. (1951, c. 1059, s. 6.)

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.—In all claims listed in § 13 of chapter 1059 of the Session Laws of 1951, and all claims which may hereafter be filed against the various departments, institutions, and agencies of the State, the claimant or the person in whose behalf the claim is made shall file with the Industrial Commission an affidavit in duplicate, setting forth the following information:

(1) The name of the claimant;
(2) The name of the department, institution or agency of the State against which the claim is asserted, and the name of the State employee upon whose alleged negligence the claim is based;
(3) The amount of damages sought to be recovered;
(4) The time and place where the injury occurred;
(5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

Upon receipt of such affidavit in duplicate, the Industrial Commission shall enter the case upon its hearing docket and shall hear and determine the matter in the county where the injury occurred unless the parties agree that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard.

Immediately upon docketing the case, the Industrial Commission shall forward one copy of plaintiff's affidavit to the office of the Attorney General of North Carolina if the claim is asserted against any department, institution, or agency of the State other than the State Highway Commission. If the claim is asserted against the State Highway Commission, one copy of said affidavit shall be forwarded to the chief counsel for that department.

The department, institution or agency of the State against whom the claim is asserted shall file answer, demurrer or other pleading to the affidavit within thirty (30) days after receipt of copy of same setting forth any defense it proposes to make in the hearing or trial, and no defense may be asserted in the hearing or trial unless it is alleged in such answer, except such defenses as are not required by the Code of Civil Procedure or other laws to be alleged. (1951, c. 1059, s. 9; 1963, c. 1063.)

Editor's Note.—By virtue of G. S. 136-1.1, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

The 1963 amendment added the last paragraph.

How Jurisdiction Invoked.—It is only necessary in order to invoke the jurisdiction of the Industrial Commission for the claimant, or person in whose behalf the claim is made, to file with the Industrial Commission an affidavit in duplicate setting forth the material facts, as required by this section. Branch Banking & Trust Co. v. Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

This section does not require the use of legal, technical or formal language. Branch Banking & Trust Co. v. Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Nor formal pleadings.—Branch Banking & Trust Co. v. Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

But Claim Must State Sufficient Facts.—Adherence to formal rules of pleading is not required under this section but the claim should state facts sufficient to identify the agent or employee and a brief statement of the negligent act that caused the injury. Turner v. Gastonia City Board of Education, 250 N. C. 456, 109 S. E. (2d) 211 (1959); Branch Banking & Trust Co. v.

Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

And Defective Claim May be Challenged by Demurrer.—If a claim, upon its face, shows that the state department or agency sought to be charged is not liable, the Commission may end the proceeding, and a proper way to take advantage of the defect is by demurrer. Turner v. Gastonia City Board of Education, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

The purpose of this section in requiring the negligent employee to be named is to enable the department of the State against which the claim is made to investigate, not all of its employees, but the particular ones actually involved. Tucker v. North Carolina State Highway & Public Works Comm'n, 247 N. C. 171, 100 S. E. (2d) 514 (1957).

Identification of Employee and Statement of Negligent Act or Acts.—A claim under the State Tort Claims Act must identify the employee of the State whose negligence is asserted, and set forth the act or acts on his part which are relied upon. Floyd v. North Carolina State Highway, etc., Comm., 241 N. C. 461, 85 S. E. (2d) 703 (1955).

Stipulation Obviates Error in Naming Employee in Affidavit and Claim.—Where, prior to the hearing, the parties stipulate the name and position of the State employee charged with negligence, such stipulation meets the requirements of this section that the negligent employee be named and obviates error in naming the employee in the affidavit and claim, and the allowance of an amendment to this effect on appeal to the superior court is immaterial. Tucker v. North Carolina State Highway & Public Works Comm'n, 247 N. C. 171, 100 S. E. (2d) 514 (1957).

Showing Negligence and Freedom from Contributory Negligence.—In order for claimant to prevail in a proceeding under the State Tort Claims Act, he must show not only injury resulting from negligence of a designated State employee, but also that claimant was not guilty of contributory negligence. Floyd v. North Carolina State Highway, etc., Comm., 241 N. C. 461, 85 S. E. (2d) 703 (1955).

Sufficiency of Evidence.—Evidence held to support sole conclusion that State employee was not guilty of negligence. Floyd v. North Carolina State Highway, etc., Comm., 241 N. C. 461, 85 S. E. (2d) 703 (1955).

§ 143-298. Duty of Attorney General; expenses.—It shall be the duty of the Attorney General to represent all departments, institutions, and agencies of the State other than the State Highway Commission in connection with claims asserted against them and to attend all hearings in connection therewith where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance. In the event the amount appropriated to the Attorney General's office for travel and subsistence is insufficient to take care of the additional expense incident to attending these hearings, the Governor and Council of State are authorized to pay such additional travel expenses from the contingency and emergency fund. (1951, c. 1059, s. 10.)

Editor's Note.—By virtue of G. S. 136-1.1, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

§ 143-299. Limitation on claims.—All claims against any and all State departments, institutions, and agencies, except the claims enumerated in § 13 of chapter 1059 of the Session Laws of 1951, shall be forever barred unless a claim be filed with the Industrial Commission within two years after the accident giving rise to the injury and damage, and if death results from the accident, the claim for wrongful death shall be forever barred unless a claim be filed by the personal representative with the Industrial Commission within two years after such death. (1951, c. 1059, s. 11.)

Quoted in Lyon & Sons, Inc. v. State Board of Education, 238 N. C. 24, 76 S. E. (2d) 553 (1953).

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.—Contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted shall be deemed to be a matter of defense on the part of the State department, institution or agency against which the claim is asserted, and such State department, institution or agency shall have the burden of proving that

the claimant or the person in whose behalf the claim is asserted was guilty of contributory negligence. (1955, c. 400, s. 1¼.)

Cited in Tucker v. State Highway & Public Works Comm'n, 247 N. C. 171, 100 S. E. (2d) 514 (1957).

§ 143-300. Rules and regulations of Industrial Commission; destruction of records.—The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this article. When any case or claim under this article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the discretion of the Industrial Commission with and by the authorization of the North Carolina Department of Archives and History, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 21 years. (1951, c. 1059, s. 12; 1957, c. 311.)

Editor's Note.—The 1957 amendment added the second sentence.

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.—(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged negligent act or omission of the driver of a public school bus or school transportation service vehicle when the salary of such driver is paid from the State Nine Months School Fund who is an employee of the county or city administrative unit of which such board is the governing board, and which driver was at the time of such alleged negligent act or omission operating a public school bus or school transportation service vehicle in the course of his employment by such administrative unit or such board. The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by § 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made. It shall thereupon be the duty of such superintendent to deliver such affidavit promptly to the attorney for such county or city board of education. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is the governing board.

(b) The Attorney General shall not be charged with any duty with reference to tort claims against such county or city board of education, but it shall be the duty of the attorney of such board to perform for such board with reference to such claims all duties which the Attorney General is required by this article to perform in respect to tort claims against the State Board of Education.

(c) In the event that the Industrial Commission shall make any award of damages against any county or city board of education pursuant to this section,

such county or city board shall draw a requisition upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall then have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the nine months school term. It shall be the duty of the county or city board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the county or city board of education, the county or city administrative unit, nor the tax levying authorities for the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such requisition by the State Board of Education: Provided, that in all claims made hereunder in which the award made by the North Carolina Industrial Commission is in excess of one thousand dollars ($1,000.00) the State Board of Education shall not honor or pay any requisition drawn upon it for such award unless the county or city board of education involved shall have contested and defended against such claim in good faith and with the services of its attorney, and if said county or city board of education does not so contest and defend them the county or city board of education against which the claim was filed shall pay the award: Provided, further, that nothing herein shall prohibit the attorney for any such board of education, after due investigation, from negotiating for and entering into a settlement of such claim if such settlement is approved by the board of education concerned and the North Carolina Industrial Commission.

(d) Neither the State Board of Education nor any other department, institution or agency of the State shall be liable for the payment of any tort claim arising out of the operation of any public school bus or for school transportation service vehicle, or for the payment of any award made pursuant to the provisions of this article on account of any such claim. (1955, c. 1283; 1961, c. 1102, ss. 1-3.)

Editor's Note.—The 1961 amendment inserted the references to "school transportation service vehicle" in subsections (a) and (d). It also added the provisos at the end of subsection (c).

If an award is made it must be based on the negligent act or omission of the driver of a public school bus who was employed at the time by the county or city administrative unit of which such board was the governing body. Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

And Not on Act or Omission of Principal or Board of Education.—An award against a county board of education under the provisions of the Tort Claims Act may not be predicated on the negligent act or omission of a school principal or the county board of education. Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

State Board of Education Relieved of Responsibility as to School Buses.—The General Assembly relieved the State Board of Education from all responsibility in connection with the operation and control of school buses in this State by the enactment of § 115-180 et seq., which authorizes county and city boards of education to operate buses for the transportation of pupils enrolled in the public schools of such county or city administrative units. Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Applied in English Mica Co. v. Avery County Board of Education, 246 N. C. 714, 100 S. E. (2d) 72 (1957).

Quoted in Branch Banking & Trust Co. v. Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Stated in Turner v. Gastonia City Board of Education, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Cited in McBride v. North Carolina State Board of Education, 257 N. C. 152, 125 S. E. (2d) 393 (1962).

ARTICLE 32.

Payroll Savings Plan for State Employees.

§ 143-301. Authority of Governor.—The Governor may, with the approval of the Council of State, authorize any or all of the departments, institutions, and agencies of the State to establish a voluntary payroll deduction plan for the purchase of United States savings bonds by State employees, and to set up the necessary machinery for carrying out the purposes of this article. (1951, c. 1020, s. 1.)

§ 143-302. Expenses.—Funds may be allotted out of the contingency and emergency appropriation to defray the necessary expenses incurred by departments, institutions and agencies financed out of the general fund of the State, and departments, institutions and agencies financed out of special funds or entirely from receipts shall defray the necessary expenses incurred without expense to the general fund of the State. (1951, c. 1020, s. 2.)

§ 143-303. Agreements of employees with heads of departments, etc.—Any of the employees of the State of North Carolina may voluntarily enter into written agreement with heads of the department or institution or agency where employed, which has adopted the payroll savings plan, to authorize deductions from his or her salary of certain designated sums to be invested in United States savings bonds of the kind and type specified in such agreement. (1951, c. 1020, s. 3.)

§ 143-304. Salary deductions and purchase of bonds authorized.—Upon the execution of such agreement by any State employee with the State department, institution or agency where employed, the department, institution or agency is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee, and to show deduction on all pay rolls similar to withholding tax, retirement, insurance, hospitalization, etc. Such sums shall be held until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sum shall be invested in United States savings bonds, for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practical. Provided that no coercion of any sort shall be exercised to require any person to participate. (1951, c. 1020, s. 4.)

§ 143-305. Cancellation of agreements.—Such agreement may be cancelled by the employee executing the same upon giving written notice to the head of the department, institution or agency where employed not later than the 15th day of the month in which he or she desires such agreement to be terminated, and the head of the department, institution or agency may cancel any agreement, herein provided for, upon giving ten days' written notice to the affected employee. Upon the termination of the agreement the head of the department, institution or agency is hereby authorized to refund any amount of money held for the employee. (1951, c. 1020, s. 5.)

ARTICLE 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§ 143-306. Definitions.—As used in this article the terms

(1) "Administrative agency" or "agency" shall mean any State officer, committee, authority, board, bureau, commission, or department authorized by law to make administrative decisions, except those agencies in the legislative or judicial branches of government, and except those whose procedures are governed by chapter 150 of the General Statutes, or whose administrative decisions are made subject to judicial review under some other statute or statutes containing adequate procedural provisions therefor.

(2) "Administrative decision" or "decision" shall mean any decision, order, or determination rendered by an administrative agency in a proceeding in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an opportunity for agency hearing. (1953, c. 1094, s. 1.)

Cross Reference.—See note to § 105-241.2.

Editor's Note.—For comment on this article, see 31 N. C. Law Rev. 378, 382.

For note on determination of validity of rules and regulations before their application in specific cases, see 36 N. C. Law Rev. 473.

The Tax Review Board is an "administrative agency" within the purview of this

section. It is an agency of the executive branch of the State government, has no authority or duties with respect to the granting or revocation of licenses, and its decisions are not subject to review under any statute or statutes other than this article. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

Applied in Boyd v. Allen, 246 N. C. 150, 97 S. E. (2d) 864 (1957).

Cited in State v. Warren, 252 N. C. 690, 114 S. E. (2d) 660 (1960).

§ 143-307. Right to judicial review.—Any person who is aggrieved by a final administrative decision, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this article, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this article. (1953, c. 1094, s. 2.)

Statute Providing for Review "by Proceedings in Nature of Certiorari."—While § 160-178 provides expressly for a review "by proceedings in the nature of certiorari," this is an "adequate procedure for judicial review" within the meaning of this section only if the scope of review is equal to that under this chapter. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Section Inapplicable to Order Revoking Real Estate Broker's or Salesman's License.—Section 39A-6, regulating real estate brokers and salesmen, provides adequate procedure for judicial review of an order of the Real Estate Licensing Board revoking a license, and this section does not apply. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Necessity for Exhaustion of Administrative Remedies.—Only those who have exhausted their administrative remedies can seek the benefit of this section. Sinodis v. State Board of Alcoholic Control, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

Meaning of "Person Aggrieved."—The expression "person aggrieved" has no technical meaning. What it means depends on the circumstances involved. It has been variously defined: "Adversely or injuriously affected; damnified, having a grievance, having suffered a loss or injury, or injured; also having cause for complaint. More specifically the word(s) may be employed meaning adversely affected in respect of legal rights, or suffering from an infringement or denial of legal rights." In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

When Appeals by Public Officials and Governmental Units Allowed.—Where statutes exist permitting appeals by persons aggrieved, appeals by public officials and governmental units are usually allowed in cases involving questions of law relating to taxation and public funds. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

One may be aggrieved when he is affected only in a representative capacity. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

Administrative Agency as Person Aggrieved.—An administrative agency cannot be a person aggrieved by its own order, but it may be an aggrieved party to secure judicial review of a decision of an administrative reviewing agency. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

Appeal by Commissioner of Revenue from Decision of Tax Review Board.—The Tax Review Board is an administrative agency of the State within the purview of § 143-306, and the Commissioner of Revenue is entitled to appeal under this section from a decision of the Board reversing in part an assessment of taxes made by the Commissioner. Section 105-241.3 does not impliedly amend this section so as to preclude the right of the Commissioner to appeal, but the two statutes must be construed together and effect given the provisions of both. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

§ 143-308. Right to judicial intervention when agency unreasonably delays decision.—Unreasonable delay on the part of any agency in reaching a final administrative decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency. (1953, c. 1094, s. 3.)

§ 143-309. Manner of seeking review; time for filing petition; waiver.—In order to obtain judicial review of an administrative decision under this chapter the person seeking review must file a petition in the Superior Court of Wake County; except that where the original determination in the matter was made by a county agency or county board and appealed to the State Board, the petition may be filed in the superior court of the county where the petitioner resides. Such petition may

be filed at any time after final decision, but must be filed not later than thirty days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail, return receipt requested. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the administrative decision under this chapter notwithstanding such waiver. (1953, c. 1094, s. 4.)

Applied in Boyd v. Allen, 246 N. C. 150, 97 S. E. (2d) 864 (1957); Thomas v. State Board of Alcoholic Control, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

§ **143-310. Contents of petition; copies served on all parties.**—The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within ten 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 agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within ten days after receipt of the copy of the petition. (1953, c. 1094, s. 5.)

Applied in Thomas v. State Board of Alcoholic Control, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

§ **143-311. Record filed by agency with clerk of superior court; contents of record; costs.**—Within thirty days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1953, c. 1094, s. 6.)

§ **143-312. Stay of board order.**—At any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. (1953, c. 1094, s. 7.)

Applied in Thomas v. State Board of Alcoholic Control, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

§ **143-313. Procedure for taking newly discovered evidence.**—At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be heard. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision. (1953, c. 1094, s. 8.)

§ **143-314. Review by court without jury on the record.**—The review of administrative decisions under this chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregu-

larities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear the matter de novo. (1953, c. 1094, s. 9.)

Review of Order of Real Estate Board.—Under § 93A-6, review of an order of the Real Estate Licensing Board suspending or revoking a license is de novo in the superior court in all cases, and this article does not apply regardless of whether the board has made a record of its proceedings. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

§ 143-315. Scope of review; power of court in disposing of case.—The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or
(2) In excess of the statutory authority or jurisdiction of the agency; or
(3) Made upon unlawful procedure; or
(4) Affected by other error of law; or
(5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
(6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1953, c. 1094, s. 10.)

Findings Based on Unsworn Statements.—Absent stipulations or waiver, a zoning board of adjustment may not base critical findings of fact as to the existence or nonexistence of a nonconforming use on unsworn statements. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Review of Order of Real Estate Board.—See note to § 143-314.

Review of Order of State Board of Assessment.—Upon review of an order of the State Board of Assessment, the superior court is without authority to make findings at variance with the findings of the Board when the findings of the Board are supported by material and substantial evidence. In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

Evidence held incompetent to sustain a finding of the State Board of Alcoholic Control that a licensee sold beer to a minor or failed to give his licensed premises proper supervision. Thomas v. State Board of Alcoholic Control, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

§ 143-316. Appeal to Supreme Court; obtaining stay of court's decision.—Any party to the review proceedings, including the agency, may appeal to the Supreme Court from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court. (1953, c. 1094, s. 11.)

ARTICLE 34.

Board of Water Commissioners; Water Conservation and Education; Emergency Allocations.

§§ 143-317 to 143-328: Repealed by Session Laws 1959, c. 779, s. 2.

ARTICLE 35.

Youth Service Commission.

§ 143-329. Appointment by Governor; duration.—The Governor of North Carolina is hereby authorized to appoint a commission of five members to be known as the Governor's Youth Service Commission. This Commission, when appointed, shall continue until June 30, 1957. (1955, c. 904, s. 1.)

§ **143-330. Purposes, powers and duties.**—The purposes, powers and duties of the Commission are as follows:

(1) The Commission shall advise the Governor on all matters pertaining to the prevention, correction and control of juvenile delinquency.

(2) The Commission, no later than July 1, 1956, shall make recommendations to the Governor of North Carolina as to necessary legislation for the prevention and control of juvenile delinquency, and the supervision, training, care, correction and treatment of juvenile delinquents.

(3) The Commission shall establish standards for juvenile court judges and shall transmit these recommended standards to the several boards of county commissioners and municipal governing boards in the State, who shall be guided by these standards.

(4) The Commission shall be available to consult with the officials of counties and cities for the purpose of encouraging regional detention homes, juvenile courts and other facilities for the treatment of juvenile delinquency.

(5) The Commission shall cooperate with all agencies with programs designed to curb, control and correct juvenile delinquency and help promote coordination of said programs.

(6) The Commission shall encourage the development of programs within counties and cities by local agencies, governments, organizations, groups, and individuals, designed to curb, control and correct juvenile delinquency. (1955, c. 904, s. 2.)

§ **143-331. Chairman.**—The chairman of the Commission shall be designated by the Governor. (1955, c. 904, s. 3.)

§ **143-332. Per diem and travel allowance.**—The members of the Commission shall receive the payment necessary per diem and travel allowance as is prescribed by law for the officers and employees of the State. (1955, c. 904, s. 4.)

§ **143-333. Funds to pay necessary expenses.**—The Governor, with the approval of the Council of State, is authorized to allocate funds from the contingency and emergency fund to pay necessary expenses in carrying out the purposes of this article. (1955, c. 904, s. 5.)

Article 36.

Department of Administration.

§ **143-334. Short title.**—This article may be cited as the Department of Administration Act. (1957, c. 269, s. 1.)

§ **143-335. Department of Administration created.**—There is hereby created the Department of Administration. (1957, c. 269, s. 1.)

§ **143-336. Definitions.**—As used in this article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Department" means the Department of Administration, unless the context otherwise requires.

"Director" means the Director of Administration, unless the context otherwise requires.

"Division" means a division of the Department of Administration, unless the context otherwise requires.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, and bridge structures.

But under no circumstances shall this article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 269, s. 1; 1963, c. 1, s. 6.)

Editor's Note.—The 1963 amendment inserted "except the State Legislative Building" in the definition of "State buildings."

§ **143-337. Structure and organization of the Department.**—(a) The Department of Administration is under the direction and control of the Director of Administration, who is responsible to the Governor for the administration of the Department.

(b) There shall be a Budget Division and a Purchase and Contract Division in the Department. The Director, with the approval of the Governor, may, if he deems it necessary or convenient for the efficient performance of the duties and functions of the Department, establish within the Department additional divisions, including but not limited to an Architecture and Engineering Division, a Property Control and Disposition Division, an Administrative Analysis Division, and a Long-Range Planning Division. The Director, with the approval of the Governor, may abolish any division within the Department except the Budget Division and the Purchase and Contract Division if he deems such action necessary or convenient for the efficient performance of the duties and functions of the Department, and reassign the duties and functions of the abolished division to any other division, officer or employee of the Department.

(c) Each division is under the immediate supervision and control of a division head, who is responsible to the Director for the administration of his division. (1957, c. 269, s. 1.)

§ **143-338. Appointment and salary of Director and Acting Director.**—(a) The Director of Administration is appointed by the Governor and serves at the pleasure of the Governor.

(b) The salary of the Director is fixed by the Governor, with the approval of the Advisory Budget Commission.

(c) The Governor may appoint an Acting Director to serve during the absence or disability of the Director, or pending appointment to fill a vacancy in the office of Director, and may fix his salary, with the approval of the Advisory Budget Commission. (1957, c. 269, s. 1.)

§ **143-339. Appointment and salary of division heads.**—The head of each division of the Department is appointed by the Director, with the approval of the Governor, and is removable at the will of the Director, with the approval of the Governor. The head of each division is selected on the basis of his experience, training, competence, and other qualifications appropriate to the position to which he is appointed. The head of each division is paid a salary which is fixed by the Governor, with the approval of the Advisory Budget Commission. (1957, c. 269, s. 1.)

§ **143-340. Powers and duties of Director.**—The Director of Administration has the following powers and duties:

(1) To administer the Department of Administration.

(2) With the approval of the Governor, to organize and reorganize the Department and its several divisions.

(3) To assign and reassign the duties and functions of the Department to the several divisions, division heads, and other officers and employees of the Department, in such manner as he determines to be necessary or convenient to the efficient performance of those duties and functions.

(4) To perform all duties, exercise all powers, and assume and discharge all responsibilities vested by law in the Department, except as otherwise expressly provided by statute.

(5) To delegate to any division chief or to any other officer or employee of the Department any of the powers and duties given the Director or the Department by statute or by the rules, regulations, and procedures established pursuant to this article.

(6) To appoint, with the approval of the Governor, the head of each division of the Department; and to remove at will the head of any division, with the approval of the Governor.

(7) To appoint all subordinate officers and employees of the Department, upon recommendation of the head of the division to which such officers or employees are to be assigned and in accordance with the State Personnel Act.

(8) To transfer employees from one division of the Department to another, either temporarily or permanently, when he determines that such transfer is necessary to expedite the work of the Department as a whole.

(9) To adopt, with the approval of the Governor, such reasonable rules, regulations, and procedures as he deems necessary or convenient concerning the organization, administration, and operation of the Department, and the conduct of its relations and business with other agencies of the State.

(10) To require reports from any State agency at any time upon any matters within the scope of the responsibilities of the Director or the Department.

(11) To exercise all of the powers and perform all of the duties which were, at the time of the ratification of this article, given by statute to the former Assistant Director of the Budget or the former Director of Purchase and Contract. All statutory references to the "Assistant Director of the Budget" or the "Director of Purchase and Contract" shall be deemed to refer to the Director of Administration.

(12) To enter the premises of any State agency; to inspect its property; and to examine its books, papers, documents, and all other agency records and copy any of them; and any State agency shall permit such entry, examination, and copying, and upon demand shall produce without unnecessary delay all books, papers, documents, and other records in its office and furnish information respecting its records and other matters pertaining to that agency and related to the responsibilities of the Department.

(13) To have legal custody of all books, papers, documents, and other records of the Department and its division. (1957, c. 269, s. 1.)

§ 143-341. Powers and duties of Department.—The Department of Administration has the following powers and duties:

(1) Budget:

a. To exercise those powers and perform those duties which are delegated or assigned to it by the Director of the Budget pursuant to the Executive Budget Act.

b. To exercise those powers and perform those duties which were, at the time of the ratification of this article, conferred by statute upon the former Budget Bureau.

(2) Purchase and Contract:

a. To exercise those powers and perform those duties which were, at the time of the ratification of this article, conferred by statute upon the former Division of Purchase and Contract.

(3) Architecture and engineering:

a. To examine and approve all plans and specifications for the construction or renovation of all State buildings, prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the construction or renovation of all State buildings.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

(4) Real property control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, metes and bounds description, source of title, condition, current value, and current use of all land (including swamp lands or marsh lands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys shall be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land shall be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space, condition, floor plans, and current value of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes

of this chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

e. To make all sales of real property (including marsh lands or swamp lands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G. S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamp lands or marsh lands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State. Provided, that the authority granted in this paragraph shall not apply to the State Legislative Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer re-indexed, where necessary, to show the State of North Carolina as grantor or grantee, as the case may be, and the cost of such re-indexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or

railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to chapter 146 of the General Statutes.

(5) Administrative analysis:

a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.

b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.

c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.

(6) Long-range planning:

a. To assist the Director of the Budget in reviewing the capital improvements needs, plans, and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.

b. In cooperation with State agencies and other appropriate public or private agencies, to collect, analyze, and keep up to date comprehensive information regarding basic matters such as population trends, industrial and agricultural developments, income, urbanization, natural resources, and other matters affecting the economy of the State.

c. To make special studies of technological trends, industrial location, transportation, land use, and related matters, when requested by the Governor to do so, and to submit to the Governor recommended courses of action for the maintenance of a sound economy.

d. To assist operating agencies, upon their request, by providing assistance and basic information needed by such agencies in preparing their long and short range programs. (1957, c. 269, s. 1; 1959, c. 683, ss. 2-4; 1963, c. 1, s. 5.)

Editor's Note.—The 1959 amendment changed subdivision (4) by rewriting paragraphs d through f, inserting the last sentence of paragraph i, and adding paragraph l.

The 1963 amendment added the last sentence in paragraph g of subdivision (4).

§ **143-342. Rules governing allocation of property and space.**—The Governor, with the approval of the Council of State, shall adopt such reasonable rules, regulations, and procedures as he deems necessary concerning the allocation and reallocation by the Department of land, buildings, and space within buildings to and among the several State agencies. (1957, c. 269, s. 1.)

§ **143-343. General Services Division.**—If the Governor and Council of State at any time determine, pursuant to § 129-11, that the General Services Division should be made a part of the Department of Administration, the powers and duties

given the Director of General Services by statute shall thereafter be deemed a part of the statutory powers and duties of the Director of Administration, and the powers and duties given the General Services Division by statute shall thereafter be deemed a part of the statutory powers and duties of the Department of Administration. The head of the General Services Division shall thereafter be appointed and removed, and his salary shall be fixed, in the same manner prescribed for other division heads. Upon the accomplishment of such transfer, the General Services Division shall thereafter be in all respects a part of the Department of Administration and subject to the supervision and control of the Director of Administration. (1957, c. 269, s. 1.)

§ **143-344. Transfer of functions, property, records, etc.**—(a) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Budget Bureau are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Budget Bureau" or the "Bureau of the Budget" shall be deemed to refer to the Department of Administration.

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Purchase and Contract are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Division of Purchase and Contract" or the "Purchase and Contract Division" shall be deemed to refer to the Department of Administration.

(c) The transfers directed by subsections (a) and (b) above, shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to such transfers.

(d) Insofar as practical the expenses necessary to carry out the provisions of this article shall, during the 1957-1959 biennium, be provided out of appropriations made to the presently existing agencies the functions of which will be transferred to the Department of Administration; and in the event additional funds are necessary to carry out the provisions of this article the Governor with the approval of the Council of State and the Advisory Budget Commission is hereby authorized to appropriate such additional necessary expenses from the Contingency and Emergency Fund. (1957, c. 269, s. 1.)

§ **143-345. Saving clause.**—No transfer of functions to the Department of Administration provided for in this article shall affect any action, suit, proceeding, prosecution, contract, lease, or other business transaction involving such a function which was initiated, undertaken, or entered into prior to or pending the time of the transfer, except that the Department shall be substituted for the agency from which the function was transferred, and so far as practicable the procedure provided for in this article shall be employed in completing or disposing of the matter. (1957, c. 269, s. 1.)

Article 37.

Salt Marsh Mosquito Advisory Commission.

§ **143-346. Commission created; membership.**—There is hereby created a commission to be known as "The Salt Marsh Mosquito Advisory Commission" to be composed of six members, four of whom shall be appointed by the Governor, one of whom shall be appointed by the Director of the Department of Conservation and Development as a representative of that Department, and one of whom shall be appointed by the Director of the Wildlife Resources Commission as a representative of that Department. The members appointed by the Director of the Department of Conservation and Development and the Director of the Wildlife Resources Commission shall serve ex officio as members of the Commission. All members shall serve at the pleasure of the appointing authority, and shall serve without pay.

In order to make available to the State the benefit of the two years of study by the Salt Marsh Mosquito Study Commission created by chapter 1197, Session Laws of 1955, all members appointed by the Governor initially shall be from the membership of that Study Commission. Vacancies may be filled by the appointing authority. (1955, c. 1197, s. 1; 1957, c. 831, s. 1.)

§ **143-347. Commission to advise State Board of Health.**—It shall be the duty of the Commission to advise the State Board of Health concerning all aspects of the salt marsh mosquito problem in North Carolina. (1955, c. 1197, s. 2; 1957, c. 831, s. 2.)

Article 38.

Department of Water Resources.

§ **143-348. Short title.**—This article may be cited as the Department of Water Resources Act. (1959, c. 779, s. 1.)

§ **143-349. Department of Water Resources created.**—There is hereby created the Department of Water Resources. (1959, c. 779, s. 1.)

§ **143-350. Definitions.**—Definitions as used in this article:

"Board" means the Board of Water Resources unless the context otherwise requires.

"Department" means the Department of Water Resources, unless the context otherwise requires.

"Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country. (1959, c. 779, s. 1.)

§ **143-351. Declaration of policy.**—It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent of which they are capable. (1959, c. 779, s. 1.)

§ **143-352. Purpose of article.**—The purpose of this article is to create a State agency to coordinate the State's water resource activities; to devise plans and policies and to perform the research and administrative functions necessary for a more beneficial use of the water resources of the State, in order to insure improvements in the methods of conserving, developing and using those resources. (1959, c. 779, s. 1.)

§ **143-353. Board of Water Resources; composition, powers, appointment of Director.**—(a) The Department shall be governed by a Board of Water Resources to consist of seven members to be appointed by the Governor. Except as otherwise expressly provided in this article, the Board shall direct the exercise of all the functions of the Department. Of the initial appointees, three shall serve terms of two years each; two, terms of four years each; and two, terms of six years each. Thereafter all appointments shall be for six-year terms. The Governor shall designate a chairman from among the members of the Board and, by appointment to the unexpired term, shall fill all vacancies occurring otherwise than by expiration of term.

(b) Within thirty days after the appointment of the initial Board members, the Governor shall call an organizational meeting of the Board. At such meeting and annually thereafter the Board shall elect one of its members to serve as secretary. Each Board member, while in performance of the duties of his office shall receive for his services ten dollars ($10.00) per day and regular State travel expenses.

The Board shall meet regularly, at least once every six months, at places and dates to be determined by the Board. Special meetings may be called by the chair-

man on his initiative, and must be called by him at the request of two or more members of the Board. All the members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum.

(c) With approval of the Governor, the Board shall appoint a full-time Director to serve at the pleasure of the Board. The salary of the Director shall be set by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve as administrative officer of the Board; shall direct and supervise the work of the Department in accordance with the policies of the Board; shall appoint all employees of the Department in accordance with the provisions of the State Personnel Act and Executive Budget Act; may employ consultants as he deems necessary subject to the Executive Budget Act and approval of the Board; and shall perform such other functions as are delegated to him by the Board.

(d) The Board shall organize the work of the Department into two or more divisions and other units. These shall include:

(1) A Division of Water Pollution Control as provided for in G. S. 143-356;

(2) A Division of Navigable Waterways to perform the administrative and staff work incidental to the carrying out of the provisions of G. S. 143-355 (b) and (d) of this article; and

(3) Such other divisions and units as the Board deems necessary.

The Board may appoint one or more advisory committees whose membership may include, among others, representatives from other State Departments and agencies. The members of any such advisory committee shall serve without compensation but shall receive regular State subsistence and travel expenses during performance of their duties. (1959, c. 779, s. 1.)

§ 143-354. Ordinary powers and duties of the Board.—(a) Powers and Duties in General.—Except as otherwise specified in this article, the powers and duties of the Board shall be as follows:

(1) The Board shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State.

(2) The Board shall advise the Governor as to how the State's present water research activities might be coordinated.

(3) The Board, based on information available, shall notify any municipality or other governmental unit of potential water shortages or emergencies foreseen by the Board affecting the water supply of such municipality or unit together with the Board's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or unit. Failure reasonably to follow such recommendations shall make such municipality or other governmental unit ineligible to receive any emergency diversion of waters as hereinafter provided.

(4) The Board is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Board.

(5) Recognizing the complexity and difficulties attendant upon the recommendation to the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Board shall solicit from the various water interests of the State their suggestions thereon.

(6) The Board may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.

(7) All recommendations for proposed legislation made by the Board shall be available to the public.

(8) The Board shall adopt such rules and regulations as may be necessary to carry out the purposes of this article.

(9) Any member of the Board or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.

(b) Declaration of Water Emergency.—Upon the request of the governing body of a county, city or town the Board shall conduct an investigation to determine whether the needs of human consumption, necessary sanitation and public safety require emergency action as hereinafter provided. Upon making such determination, the Board shall conduct a public hearing on the question of the source of relief water after three days' written notice of such hearing has been given to any persons having the right to the immediate use of water at the point from which such water is proposed to be diverted. After determining the source of such relief water the Board shall then notify the Governor and he shall have the authority to declare a water emergency in an area including said county, city or town and the source or sources of water available for the relief hereinafter provided; provided, however, that no emergency period shall exceed thirty days but the Governor may declare any number of successive emergencies upon request of the Board.

(c) Water Emergency Powers and Duties of the Board.—Whenever, pursuant to this article, the Governor has declared the existence of a water emergency within a particular area of the State, the Board shall have the following duties and powers to be exercised only within said area and only during such time as the Governor has, pursuant to this article, designated as the period of emergency:

(1) To authorize any county, city or town in which an emergency has been declared to divert water in the emergency area sufficient to take care of the needs of human consumption, necessary sanitation and public safety. Provided, however, there shall be no diversion of waters from any stream or body of water pursuant to this article unless the person controlling the water or sewerage system into which such waters are diverted shall first have limited and restricted the use of water in such water or sewerage system to human consumption, necessary sanitation and public safety and shall have effectively enforced such restrictions. Diversion of waters shall cease upon the termination of the water emergency or upon the finding of the Board that the person controlling the water or sewerage system using diverted waters has failed to enforce effectively the restrictions on use to human consumption and necessary sanitation and public safety. In the event waters are diverted pursuant to this article, there shall be no diversion to the same person in any subsequent year unless the Board finds as fact from evidence presented that the person controlling the water or sewerage system has made reasonable plans and acted with due diligence pursuant thereto to eliminate future emergencies by adequately enlarging such person's own water supply.

(2) To make such reasonable rules and regulations governing the conservation and use of diverted waters within the emergency area as shall be necessary for the health and safety of the persons who reside within the emergency area; and the violation of such rules and regulations during the period of the emergency shall constitute a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year or both within the discretion of the court; provided, however, that before such rules and regulations shall become effective, they shall be published in not less than two consecutive issues of not less than one newspaper generally circulated in the emergency area.

(d) Temporary Rights of Way.—When any diversion of waters is ordered by the Board pursuant to this article, the person controlling the water or sewerage

system into which such waters are diverted is hereby empowered to lay necessary temporary water lines for the period of such emergency across, under or above any and all properties to connect the emergency water supply to an intake of said water or sewerage system. The route of such water lines shall be prescribed by the Board.

(e) Compensation for Water Allocated During Water Emergency and Temporary Rights of Way.—Whenever the Board, pursuant to this article has ordered any diversion of waters, the person controlling the waters or sewerage system into which such waters are diverted shall be liable to all persons suffering any loss or damage caused by or resulting from the diversion of such waters or caused by or resulting from the laying of temporary water lines to effectuate such diversion. The Board, before ordering such diversion, shall require that the person against whom liability attaches hereunder to post bond with a surety approved by the Board in an amount determined by the Board and conditioned upon the payment of such loss or damage. (1959, c. 779, s. 1.)

§ 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Conservation and Development and of the Director of said Department.—(a) Transfer Generally.—There are hereby transferred to the Department of Water Resources those powers, duties, functions and responsibilities relating to water resources now vested in the Department of Conservation and Development of the State of North Carolina, and the Director thereof.

(b) Functions to Be Performed.—It shall be the duty of the Department of Water Resources to perform the following functions:

(1) To request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control and shore-erosion prevention.

(2) To initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) To prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) To make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects; and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) To cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.

(6) To cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) To cooperate with the United States Army Corps of Engineers in planning and developing navigation, flood-control, hurricane-protection, and shore-erosion-prevention projects.

(8) To provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) To discuss, with federal, State, and municipal officials and other inter-

ested persons, a program of development of rivers, harbors, and related resources.

(10) To make investigations and render reports requested by the Governor and the General Assembly.

(11) To participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State Governments, the Conservation Foundation, and other National agencies concerned with conservation and development of water resources.

(12) To prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) To formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) To include in the biennial budget the cost of performing the additional functions indicated above.

(c): Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State.—The Department of Water Resources is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights of way for the Intra-Coastal Waterway; or to authorize the Department of Water Resources to represent the State in connection with such duties.

(e) Registration with Department of Water Resources Required; Registration Periods.—Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, shall register annually with the North Carolina Department of Water Resources on forms to be furnished by the said Department. The registration required hereby shall be made during the period from July 1 to July 31 or during the period from January 1 to January 31 of each year.

(f) Samples of Cuttings to Be Furnished the Department of Water Resources When Requested; Requirements for Samples; Analysis of Samples; Furnishing Information with Regard to Analysis.—Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department of Water Resources samples of cuttings from such depths as the Department may require from all wells drilled or constructed by said person, firm or corporation, when such samples are required specifically from any well by the Department of Water Resources. These samples shall be approximately one-half pound in weight and shall be shipped to the Department of Water Resources by express or parcel post collect in sample bags to be furnished by said Department. The Department of Water Resources shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed and shall report on such copy to said owner the presence of all minerals and petroleums in said samples; the Department of Water Resources shall not report the presence of any such minerals to any other person whatsoever until more than one year after said report shall have been furnished to the owner of said property.

(g) Additional Information to Be Furnished Department of Water Resources by Drillers When Requested; Copy of Report to Be Furnished Landowner.—Each person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, when requested by the Department of Water Resources, furnish to said De-

partment on forms to be provided by the said Department, information as to the size, depth, yield (measured in gallons per minute), method of testing, length of test, drawdown in feet, number of feet of casing used, and how the well is finished (whether screened or with open end). The information required to be submitted under this section shall be submitted when a well is completed, but only if said information is requested by the Department of Water Resources specifically from the driller. The person, firm or corporation making such report to the Department of Water Resources shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(h) Drilling for Petroleum and Minerals Excepted.—The provisions of this article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation.—Any person violating the provisions of subsections (e), (f) and (g) of § 143-355 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of fifty dollars ($50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties.—There are also transferred to the Department of Water Resources the duties of the Board of Conservation and Development, as set forth in G. S. 113-8, to make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well drilling law the Department of Conservation and Development shall, if requested by the Department of Water Resources, prepare analyses of well cuttings for mineral and petroleum content. (1959, c. 779, s. 3; 1961, c. 315.)

Editor's Note.—The 1961 amendment repealed subsection (c).

§ 143-356. Continuation of Stream Sanitation Committee, Division of Water Pollution Control and Director of Division within Department of Water Resources.—(a) The State Stream Sanitation Committee as provided for by article 21, chapter 143 G. S., as amended is hereby transferred to and continued within the State Department of Water Resources without change in its powers, duties, responsibilities and functions.

(b) The Division of Water Pollution Control of the State Board of Health and the office of Director of such Division as provided for in G. S. 143-214 are hereby transferred to and continued within the Department of Water Resources as the Division of Water Pollution Control of the Department of Water Resources. The Board of Water Resources may transfer additional functions to the said Division and Director and may revise their titles appropriately to reflect any such transfer of functions.

(c) The Department of Water Resources as Administrative Agent of State Stream Sanitation Committee.—The Department of Water Resources through its Division of Water Pollution Control, shall be the administrative agent of the State Stream Sanitation Committee, and subject to the general policies of the Committee, shall make such inspections, conduct such investigations, and do such other things as may be necessary to carry out the provisions of article 21 of chapter 143 of the General Statutes. The Attorney General shall act as attorney for the Committee, and shall initiate actions in the name of, and at the request of, the Committee.

(d) Division of Water Pollution Control.—The Division of Water Pollution Control shall be responsible for administering the provisions of article 21 of chapter 143 and shall be responsible for performing such other duties relating to the control of municipal, institutional, and industrial sewerage and waste collection and disposal systems as may be assigned to it by the Board of Water Resources. The Director of such Division shall be selected by the Board of Water Resources from nominees acceptable to both the Board and the Committee. He shall be a well-

qualified sanitary engineer, fully trained and experienced in the field of waste disposal. He shall:

(1) Serve as administrative officer and secretary of the Committee and shall attend all meetings of the Committee, without voting power, and shall keep an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work, and shall make these records available for public inspection at all reasonable times;

(2) Review and approve plans, specifications and other such documents as may be required in connection with applications filed for certificates of approval, permits, or other documents of approval under the provisions of this article; and

(3) Perform such other related duties as the Committee or Board of Water Resources may from time to time direct. (1959, c. 779, s. 4.)

§ 143-357. Transfer of property, records, and appropriations.—(a) In connection with the transfers made by G. S. 143-354, 143-355 and 143-356 all records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments and executory contracts of the State Board of Water Commissioners, the State Stream Sanitation Committee, the Division of Water Pollution Control of the State Board of Health and of the affected divisions of the Department of Conservation and Development are hereby transferred to the Department of Water Resources, effective July 1, 1959. In the case of the Division of Water Pollution Control the records transferred shall include, among other things, all plans and specifications upon the basis of which documents of approval have been issued under the authority of article 21 of this chapter. The transfers directed by this subsection shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences and disputes arising incident to such transfers.

(b) Insofar as practical the expenses necessary to carry out the provisions of this article shall, during the 1959-1961 biennium, be provided out of appropriations made to the presently existing agencies whose functions are to be transferred to the Department of Water Resources; and in the event additional funds are necessary to carry out the provisions of this article, the Governor, with the approval of the Council of State, is hereby authorized to appropriate such additional funds from the Contingency and Emergency Fund.

(c) No transfer of functions to the Department of Water Resources provided for in this article shall affect any action, suit, proceeding, prosecution, contract, lease or other transaction involving such a function which was initiated, undertaken or entered into prior to or pending the time of the transfer, but (except in the case of the Stream Sanitation Committee) the Department shall be substituted for the agency from which the function was transferred and so far as practicable the procedure provided for in this article shall be employed in completing or disposing of the matter. (1959, c. 779, s. 5.)

§ 143-358. Cooperation of State officials and agencies.—All State agencies and officials shall cooperate with and assist the State Board of Water Resources in enforcing and carrying out the provisions of this article and the rules, regulations and policies adopted by the Board pursuant thereto. (1959, c. 779, s. 6.)

§ 143-359. Biennial reports of Board of Water Resources.—The Board shall file with the Governor and the General Assembly a biennial report summarizing the activities of the Department for the preceding two years and recommending changes deemed necessary in laws, policies and administrative organization for a more beneficial use of the State's water resources. (1959, c. 779, s. 7.)

Article 39.

U. S. S. North Carolina Battleship Commission.

§ 143-360. Title.—This article shall be known and may be cited as the "Battleship U. S. S. North Carolina Act." (1961, c. 158.)

§ 143-361. Definitions.—As used in this article unless the context clearly requires otherwise:

(1) The word "Battleship" shall mean the Battleship U. S. S. North Carolina.

(2) The word "Commission" shall mean the U. S. S. North Carolina Battleship Commission.

(3) The word "funds" shall mean any funds appropriated by any municipality, county or State governing body, or received from the United States of America; any gifts, bequests, donations or grants from any organization, firm, corporation or individual, or any other moneys or securities made available for the purpose of acquiring, transporting, berthing, equipping or maintaining the Battleship U. S. S. North Carolina.

(4) The word "site" shall mean the location either temporary or permanent, of the Battleship U. S. S. North Carolina, at which it shall be secured and maintained as a memorial and exhibit available to inspection by the general public. (1961, c. 158.)

§ 143-362. Statement of purpose.—The purpose of this article is to create a separate State agency to be known as the "U. S. S. North Carolina Battleship Commission," the function, purpose and duty of which shall be to assist in acquiring, transporting, berthing, equipping, maintaining and exhibiting the Battleship U. S. S. North Carolina, as a permanent memorial commemorating the heroic participation of the men and women of North Carolina in the prosecution and victory of the Second World War, and to provide for establishment of appropriate activities to encourage interest in, and to perpetuate the memory of, North Carolinians who gave their lives in the course of that participation, and in the events in which the Battleship was a participant. (1961, c. 158.)

§ 143-363. Battleship Commission created; membership; duration.—There is hereby created a Commission to be known as the "U. S. S. North Carolina Battleship Commission." The Commission shall consist of not more than fifteen (15) competent and qualified citizens of North Carolina, including as ex officio member, at least one person from the board or staff of the North Carolina Department of Conservation and Development. Members shall be appointed by the Governor within ten (10) days after April 4, 1961, for terms of two years, provided that any member of the Commission may be removed by the Governor for cause. Vacancies in the Commission shall be filled by the Governor by appointment of a competent and qualified person for the unexpired term. Upon the expiration of the terms of the initial members, the Governor shall appoint qualified members for terms of two years, or until the Commission shall cease to exist by act of the General Assembly. The Commission shall continue in existence until the General Assembly shall otherwise provide.

It is specifically provided that members of the Commission are commissioners for a special purpose, within the meaning of Article XIV, section 7 of the Constitution of North Carolina. (1961, c. 158; 1963, c. 52.)

Editor's Note.—The 1963 amendment inserted the last two sentences of the first paragraph in lieu of the former last sentence, which read: "The Commission shall cease to exist at the expiration of the terms of the initial members unless the General Assembly shall otherwise provide."

§ 143-364. Meetings of Commission; organization.—The Commission shall hold at least two meetings annually at the site of the Battleship, and five members of the Commission shall constitute a quorum for the transaction of business. Addi-

tional meetings may be held at such times and places within the State as may be deemed necessary. The Commission may hold additional meetings at the call of the chairman or on call of three members of the Commission. The Commission shall determine its own organization and procedure in accordance with the provisions of this article and shall have an official seal. Officers of the Commission shall be provided by it at the site. The Commission shall elect, at its first meeting, a chairman, vice-chairman, secretary, and treasurer, such officers to hold office for a period of one year and shall be authorized to require the treasurer to be bonded. (1961, c. 158.)

§ **143-365. Compensation of commissioners.**—The members of the Commission shall receive no compensation for their services other than per diem, subsistence and travel allowed by law for State boards and commissions generally while such members are in attendance at meetings of the Commission or engaged in authorized business of the Commission, all such per diem and travel expenses to be paid from the funds of the Commission as hereinafter provided in this article. (1961, c. 158.)

§ **143-366. Duties of Commission.**—The Commission shall have the duty and authority to select an appropriate site for the permanent berthing of the Battleship U. S. S. North Carolina, taking into consideration factors including, but not limited to, the accessibility, location in relation to roads and highways, scenic attraction, protection from hazards of weather, fire and sea, cost of site and berthing, cooperation of local governmental authorities in securing, equipping, and maintaining appropriate areas surrounding the site, and others which may affect the suitability of such site for establishment of the ship as a permanent memorial and exhibit; to accept gifts, grants, and donations for the purposes of this article; to transport to, and berth the ship at the site; to ready the ship for visitation by the public; to establish and provide for a proper charge for admission to the ship, and for safekeeping of funds; to maintain and operate the ship as a permanent memorial and exhibit, and to allocate funds for the fulfillment of the duties and authority herein provided as may be necessary and appropriate for the purpose of this article. (1961, c. 158.)

§ **143-367. Funds.**—The Commission shall establish and maintain a "Battleship Fund" composed of the moneys which may come into its hands from admission or inspection fees, gifts, donations, grants, or bequests, which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial; such records and books shall be available for audit at any time by the State Auditor of North Carolina, and shall be annually audited by him in the same manner as audits are made of other State agencies and departments. The Commission shall establish a reserve fund to be maintained and used for contingencies and emergencies beyond those occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina. (1961, c. 158.)

§ **143-368. Employees.**—The Commission is hereby authorized to hire laborers, artisans, caretakers, stenographic and administrative employees, and other personnel, in accordance with the provisions of the State Personnel Act, as may be necessary in carrying out the purposes and provisions of this article, and to maintain the ship in a clean, neat, and attractive condition satisfactory for exhibition to the public. Employees shall be residents of the State of North Carolina except as may, in emergency conditions, be necessary for the procurement of specially trained or specially skilled employees. Any materials used for any purpose in maintaining and operating the ship for the purposes of this article shall be, in so far as practicable,

North Carolina materials. The Commission is hereby authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division for the procurement of materials and supplies, in accordance with the provisions of article 3, chapter 143 of the General Statutes. (1961, c. 158.)

§ **143-369. Employees not to have interest.**—It shall be unlawful for any member of the Commission or for any employee thereof to charge, receive, or obtain, directly or indirectly, any fee, commission, retainer or brokerage other than established salaries to be fixed by the Commission, and no member of the Commission or employee thereof shall have any interest in any land, materials, commissions or contracts sold to or made with the Commission, or with any member or employee thereof. Violation of any provisions of this section shall be a misdemeanor and upon conviction shall be punishable by removal from membership or employment and by a fine of not less than one hundred dollars ($100.00) or by imprisonment not to exceed six months or both, in the discretion of the court. (1961, c. 158.)

ARTICLE 40.

Advisory Commission for State Museum of Natural History.

§ **143-370. Commission created; membership.**—There is hereby created an Advisory Commission for the Museum of Natural History which shall determine its own organization. It shall consist of at least nine (9) members, which shall include the Director of the Museum of Natural History, the Commissioner of Agriculture, the State Geologist and State Forester of the Department of Conservation and Development, the Director of the Institute of Fisheries Research of the University of North Carolina, the Director of the Wildlife Resources Commission, the Superintendent of Public Instruction, or qualified representative of any or all of the above-named members, and at least three (3) persons representing the East, the Piedmont, the Western areas of the State. Members appointed by the Governor shall serve for terms of two (2) years with the first appointments to be made effective September 1, 1961. Any member may be removed by the Governor for cause. (1961, c. 1180, s. 1.)

§ **143-371. Duties of Commission; meetings, formulation of policies and recommendations to Governor and General Assembly.**—It shall be the duty of the Advisory Commission for the Museum of Natural History to meet at least twice each year, to formulate policies for the advancement of the said Museum, to make recommendations to the Governor and to the General Assembly concerning the Museum, and to assist in promoting and developing wider and more effective use of the Museum of Natural History as an educational, scientific and historical exhibit. (1961, c. 1180, s. 2.)

§ **143-372. No compensation of members; reimbursement for expenses.**—Members of the Advisory Commission shall serve without compensation and shall be reimbursed for actual expenses incurred while in attendance at meetings of the Commission at the same rate as that established for reimbursement of State employees. Payment for such reimbursement for actual expense shall be made from the Contingency and Emergency Fund. (1961, c. 1180, s. 3.)

§ **143-373. Reports to General Assembly.**—The Commission shall prepare and submit to the 1963 General Assembly, and to each succeeding General Assembly, a report outlining the needs of the State Museum of Natural History, and their recommendation for improvement of the effectiveness of the said State Museum of Natural History for the purpose hereinabove set forth. (1961, c. 1180, s. 4.)

Article 41.

Space and Technology Research Center.

§ **143-374. Creation of Center.**—There is hereby created the "North Carolina Space and Technology Research Center" at the Research Triangle. (1963, c. 846, s. 1.)

§ **143-375. Administration by Board of Space and Technology.**—The activities of the North Carolina Space and Technology Research Center will be administered by the North Carolina Board of Space and Technology. (1963, c. 846, s. 2.)

§ **143-376. Acceptance of funds.**—The North Carolina Space and Technology Research Center is authorized and empowered to accept funds from private sources and from governmental and institutional agencies to be used for construction, operation and maintenance of the Center. (1963, c. 846, s. 4.)

§ **143-377. Applicability of Executive Budget Act.**—The North Carolina Space and Technology Research Center is subject to the provisions of article 1, chapter 143, of the General Statutes of North Carolina. (1963, c. 846, s. 5.)

Article 42.

Board of Space and Technology.

§ **143-378. Creation; purpose.**—There is hereby created the North Carolina Board of Space and Technology herein referred to as "the Board." The purpose of the Board shall be, through the exercise of its powers and performance of the duties set forth in this article, to encourage, promote, and support the scientific, engineering, and industrial research and applications in North Carolina to the end that the State will benefit from, and contribute to, economic and technical developments resulting from advances in the space and related sciences. (1963, c. 1006, s. 1.)

§ **143-379. Members; appointment; terms of office; qualifications; vacancies.**—The Board shall consist of fifteen members, and the Governor, who shall serve as chairman. On the first day of July, 1963, the Governor shall appoint the fifteen members of the Board. Seven members shall be appointed to serve for terms of two (2) years each; eight members shall be appointed for terms of four (4) years each; and upon the expiration of the respective terms of the original members, the successor shall be appointed by the Governor for terms of four (4) years each thereafter. Two members shall be from the University of North Carolina at Chapel Hill; two members shall be from North Carolina State College at Raleigh; two members shall be from Duke University; one member shall be from the membership of the Governor's Scientific Advisory Committee; one member shall be from the membership of the North Carolina Advisory Committee on Atomic Energy; three members shall be from the membership of the General Assembly; three members shall be from industry within the State; and one member shall be appointed upon nomination by the executive committee of the Board of the Research Triangle Institute. The members appointed from the University of North Carolina at Chapel Hill and from North Carolina State College at Raleigh shall be nominated by the President of the University of North Carolina. The members appointed from Duke University shall be nominated by the President of Duke University. All members appointed to the Board shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board because of death, resignation, or otherwise, shall be filled by the Governor for the unexpired term of such member. Appointees to the Board shall have demonstrated their interest in, and ability to contribute to, the fulfillment of the purpose of the Board. (1963, c. 1006, s. 2.)

§ **143-380. Powers and duties.**—The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of article 1, chapter 143 of the General Statutes:

(1) The Board shall be responsible for the allocation of funds for, but not necessarily limited to, such objects as grants for scientific engineering or technological projects, the support of scientific or research personnel, the purchase of equipment or supplies, the construction or modification of facilities, and the employment of consultants. In general, such allocations will be made for the support of activities, equipment and facilities in the space and associated science fields relevant to the objectives of the Board which are associated with the existing public or private agencies in the State, such as the public and private institutions of higher education, the Research Triangle Institute and similar entities.

(2) The Board shall be responsible for the review of the expenditure of all funds allocated by the Board, subject to the provisions of the Executive Budget Act.

(3) The Board's activities shall be centered in the Research Triangle, and will be closely allied to the Research Triangle Institute.

(4) The Board shall encourage liaison between industry, educational institutions, the Research Triangle of North Carolina, and federal agencies, such as the National Aeronautics and Space Administration, the Atomic Energy Commission, the Department of Defense, the National Science Foundation, and the National Institute of Health.

(5) The Board shall hold regular meetings to inform industry of the possible space and nuclear applications which can accelerate the growth of the North Carolina industrial economy.

(6) The Board shall encourage the cooperation of the State's industrial community, to the end that industry shall assist in screening and identifying research results for possible industrial applications.

(7) The Board will from time to time, arrange to have seminars, short courses, visits and practical demonstrations held to foster interest in the results of research as a means of achieving economic progress. (1963, c. 1006, s. 4.)

§ **143-381. Facilities; employees.**—In order to effectuate the provisions of this article, the Board shall be furnished suitable facilities at the Research Triangle, and shall, within the limits of funds provided by law, appoint such employees as shall be sufficient to carry out the provisions of this article, such employees being subject to the provisions of article 2, chapter 143 of the General Statutes, entitled "State Personnel Department." (1963, c. 1006, s. 5.)

§ **143-382. Per diem and expense allowances of members.**—Members of the Board shall receive no compensation for their services other than such per diem allowances and allowance for travel expenses as may be provided in each biennial appropriation act for such members. (1963, c. 1006, s. 6.)

§ **143-383. Budget.**—The necessary expenditures of the Board shall be provided in a budget subject to the provisions of article 1, chapter 143 of the General Statutes, entitled "The Executive Budget Act." (1963, c. 1006, s. 7.)

Article 43.

North Carolina Seashore Commission.

§ **143-384. Commission created; members; chairman.**—There is hereby created a commission to be known as the "North Carolina Seashore Commission," to consist of twenty members and a chairman, all of whom shall be appointed by the Governor, and ex officio members as hereinafter set forth. (1963, c. 989, s. 2.)

Editor's Note.—The act adding this article became effective Aug. 31, 1963.

§ 143-385. Appointment and terms; vacancies.—On or before September 1, 1963, the Governor shall appoint twenty members of the original Commission, ten to serve for two (2) years, and ten to serve for four (4) years, and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the Commission to serve for terms of four (4) years. Members of the Commission shall be eligible for reappointment. The Governor shall accept the resignation of members, and shall appoint members to serve the unexpired terms caused by resignation or death of any of the members of the Commission. Terms of the original members shall commence on September 1, 1963, and members shall continue to hold office until their successors are appointed and qualified. The Governor shall appoint a chairman of the Commission to serve at the pleasure of the Governor. (1963, c. 989, s. 3.)

§ 143-386. Vice-chairman; secretary; meetings; rules, regulations and bylaws; quorum.—At its first meeting, the Commission shall elect a vice-chairman and a secretary. The vice-chairman shall be a member of the Commission, but the secretary need not but may be a member of the Commission. The Commission shall meet upon call of the chairman, and shall adopt such rules, regulations, and bylaws governing its operation as it shall deem necessary. Twelve members of the Commission shall constitute a quorum for the transaction of business. (1963, c. 989, s. 4.)

§ 143-387. Ex officio members.—Ex officio members to advise, assist and help coordinate matters in which the Commission is concerned, shall include the following: The chairman, Board of Water Resources; the Property Control Officer of the Department of Administration; the Director, North Carolina Recreation Commission; a member of the Wildlife Resources Commission; a member of the State Highway Commission; the chairman of the State Parks Committee, of the Board of Conservation and Development; the Director of North Carolina Civil Defense. (1963, c. 989, s. 5.)

§ 143-388. Powers and duties.—The Commission shall have the duty, authority and responsibility to:

(1) Assist in the development of plans to achieve preservation of the shore line of the State of North Carolina;

(2) Assist in the sound development of the seacoast areas of the State, giving emphasis to the advancement and development of the travel attractions and facilities for accommodating travelers in these areas;

(3) Assist in planning, promoting and developing recreational and industrial developments in these areas, with emphasis upon making the seashore areas of North Carolina attractive to visitors and to permanent residents;

(4) Coordinate the activities of local governments, agencies of the State and agencies of the federal government in planning and development of the seacoast areas for the purpose of attracting visitors and new industrial growth, and to develop and implement plans for preservation of the coastal areas of North Carolina.

It shall be the duty of the Commission to study the development of the seacoast areas and to recommend policies which will promote preservation of the seacoast, and development of the coastal area, with particular emphasis upon the development of the scenic and recreational resources of the seacoast. It shall advise and confer with various interested individuals, organizations and agencies which are interested in development of the seacoast area and shall use its facilities and efforts in planning, developing, and carrying out overall programs for the development of the area as a whole. It shall act as liaison between agencies of the State, local government, and agencies of the federal government concerned with development of the seacoast region. (1963, c. 989, s. 6.)

§ 143-389. Reports; recommendations and suggestions.—The Commission shall make an annual report to the Governor covering its work during the preceding twelve (12) months, and shall make such other reports as the Governor may request from time to time. It shall file such recommendations or suggestions as it may deem proper with other agencies of the State, local, or federal governments. (1963, c. 989, s. 7.)

§ 143-390. Expenses and per diem.—The members of the Commission shall receive their necessary travel and subsistence expense, at the rate being currently paid to other State boards and commissions, and shall receive a per diem of seven dollars ($7.00) per day for each day engaged in official duties of the Commission. All such expenses of the Commission shall be paid from the Contingency and Emergency Fund upon application in the manner prescribed in G. S. 143-12. (1963, c. 989, s. 8.)

§ 143-391. Board of Water Resources to provide staff assistance and facilities.—The Board of Water Resources shall provide staff assistance and facilities as may be necessary in carrying out the provisions of this article. (1963, c. 989, s. 9.)

Chapter 144.

State Flag, Motto and Colors.

§ **144-1. State flag.**—The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one-third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one-third more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th, 1775," and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th, 1776." (1885, c. 291; Rev., s. 5321; C. S., s. 7535.)

§ **144-2. State motto.**—The words "esse quam videri" are hereby adopted as the motto of this State, and as such shall be engraved on the great seal of North Carolina and likewise at the foot of the coat-of-arms of the State as a part thereof. On the coat-of-arms, in addition to the motto, at the bottom, there shall be inscribed at the top the words, "May 20th, 1775." (1893, c. 145; Rev., s. 5320; C. S., s. 7536.)

§ **144-3. Flags to be displayed on public buildings and institutions.**—The board of trustees or managers of the several State institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any State officer or any prominent citizen the flag shall be put at half-mast until the burial of such person has taken place. (1907, c. 838, s. 2; C. S., s. 7537.)

§ **144-4. Flags to be displayed at county courthouses.**—The boards of county commissioners of the several counties in this State shall likewise authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top or draped behind the judge's stand, in each and every courthouse in the State, and the State flag shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper. (1907, c. 838, s. 3; C. S., s. 7538.)

§ **144-5. Flags to conform to law.**—No State flag shall be allowed in or over any building here mentioned unless such flag conforms to the description of the State flag contained in this chapter. (1907, c. 838, s. 4; C. S., s. 7539.)

§ **144-6. State colors.**—Red and blue, of shades as adopted and appearing in the North Carolina State flag and the American flag, shall be, and hereby are, declared to be the official State colors for the State of North Carolina.

The use of such official State colors on ribbons attached to State documents with the great seal and/or seals of State departments is permissive and discretionary but not directory. (1945, c. 878.)

Chapter 145.

State Flower, Bird and Tree.

§ **145-1. Dogwood adopted as official flower.**—The Dogwood is hereby adopted as the official flower of the State of North Carolina. (1941, c. 289.)

§ **145-2. Cardinal declared official State bird.**—The Cardinal is hereby declared to be the official State bird of North Carolina. (1943, c. 595.)

§ **145-3. Pine adopted as official State tree.**—The Pine is hereby adopted as the official State tree of the State of North Carolina. (1963, c. 41.)

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of subchapter.—It is the purpose and intent of this subchapter to vest in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State as hereinafter provided, responsibility for the management, control and disposition of all vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands, title to which is vested in the State or in any State agency, to be exercised subject to the provisions of this subchapter. (1959, c. 683, s. 1.)

Editor's Note.—Session Laws 1959, c. 683, repealed former chapter 146 and enacted the provisions of this chapter in lieu thereof. Former chapter 146 contained §§ 146-1 through 146-113. The new chapter contains §§ 146-1 through 146-83.

§ 146-2. Department of Administration given control of certain State lands; general powers.—The power to manage, control, and dispose of the vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands is hereby vested in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State, and subject to the provisions of this subchapter. The Department of Administration shall have the following general powers and duties with respect to those lands:

(1) To take such measures as it deems necessary to establish, protect, preserve, and enhance the interest of the State in those lands, and to call upon the Attorney General for legal assistance in performing this duty.

(2) Subject to the approval of the Governor and Council of State, to adopt such rules and regulations at it may deem necessary to carry out its duties under the provisions of this subchapter. (1959, c. 683, s. 1.)

Article 2.

Dispositions.

§ 146-3. What lands may be sold.—Any State lands may be disposed of by the State in the manner prescribed in this chapter, with the following exceptions:

(1) No submerged lands may be conveyed in fee, but easements therein may be granted, as provided in this subchapter.

(2) No natural lake belonging to the State or to any State agency on January 1, 1959, and having an area of fifty acres or more, may be in any manner disposed of, but all such lakes shall be retained by the State for the use and benefit of all the people of the State and administered as provided for other recreational areas owned by the State. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; Rev., s. 1693; 1911, c. 8; C. S., ss. 7540, 7544; 1929, c. 165; G. S., ss. 146-1, 146-7, 146-12; 1959, c. 683, s. 1.)

§ 146-4. Sales of certain lands; procedure; deeds; disposition of proceeds.—The Department of Administration may sell the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every deed conveying any part of those lands in fee shall be executed in the manner required by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required. The net proceeds of all such sales of those lands shall be paid into the State Literary Fund. Whenever negotiations are begun by the Department for the purpose of selling swamp land or the timber thereon, the Department shall promptly notify the State Board of Education of that fact. If the Board deems the proposed sale inadvisable, it may so inform the Governor and Council of State, who may give due consideration to the representations of the Board in determining whether to approve or disapprove the proposed transaction. (R. C., c. 66, s. 12; 1872-3, c. 194, s. 2; Code, ss. 2514, 2515, 2529; 1889, c. 243, s. 4; Rev., s. 4049; C. S., s. 7621; G. S., s. 146-94; 1959, c. 683, s. 1.)

§ 146-5. Reservation to the State.—In any sale of the vacant and unappropriated lands or swamp lands by the State, the following powers may be expressly reserved to the State, to be exercised according to law:

(1) The State may make any reasonable and expedient regulations respecting the repair of the canals which have been cut by the State, or the enlargement of such canals.

(2) The State may impose taxes on the lands benefited by those canals for their repair, and they shall not be closed.

(3) The navigation of the canals shall be free to all persons, subject to a right in the State to impose tolls.

(4) All landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by law in such cases.

(5) The roads along the banks of the canals shall be public roads. (1872-3, c. 118; Code, s. 2534; Rev., s. 4050; C. S., s. 7622; G. S., s. 146-95; 1959, c. 683, s. 1.)

§ 146-6. Title to land raised from navigable water.—(a) If any land is, by any process of nature or as a result of the erection of any pier, jetty or breakwater,

raised above the high water mark of any navigable water, title thereto shall vest in the owner of that land which, immediately prior to the raising of the land in question, directly adjoined the navigable water. The tract, title to which is thus vested in a riparian owner, shall include only the front of his formerly riparian tract and shall be confined within extensions of his property lines, which extensions shall be perpendicular to the channel, or main watercourses.

(b) If any land is, by act of man, raised above the high water mark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the Governor and Council of State shall have previously approved, in the manner provided in subsection (c) of this section, the commission of the act which caused the raising of the land in question.

(c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such riparian owner shall have thirty days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The granting by the State of the permit or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied with all requisite conditions precedent to the issuance of such permit or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefor to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(d) If an island is, by any process of nature or by act of man, formed in any navigable water, title to such island shall vest in the State and the island shall become a part of the vacant and unappropriated lands of the State. Provided, however, that if in any process of dredging, by either the State or federal government, for the purpose of deepening any harbor or inland waterway, or clearing out or creating the same, a deposit of the excavated material is made upon the lands of any owner, and title to which at the time is not vested in either the State or federal government, or any other person, whether such excavation be deposited with or without the approval of the owner or owners of such lands, all such additions to lands shall accrue to the use and benefit of the owner or owners of the land or lands on which such deposit shall have been made, and such owner or owners shall be deemed vested in fee simple with the title to the same.

(e) The Governor and Council of State may, upon proof satisfactory to them that any land has been raised above the high water mark of any navigable water by any process of nature or by the erection of any pier, jetty or breakwater, and that this, or any other provision of this section vests title in the riparian owner thereof, whenever it may be necessary to do so in order to establish clear title to such land in the riparian owner, direct execution of a quitclaim deed thereto, conveying to such owner all of the State's right, title, and interest in such raised land. (1959, c. 683, s. 1.)

§ 146-7. Sale of timber rights; procedure; instruments conveying rights; disposition of proceeds.—The Department of Administration may sell timber rights in the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying timber rights shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of all sales of timber from those lands shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

Cited in Williams v. McSwain, 248 N. C. 13, 102 S. E. (2d) 464 (1958).

§ 146-8. Disposition of mineral deposits in State lands under water.—The State, acting at the request of the Department of Conservation and Development, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Conservation and Development, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Conservation and Development, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Conservation and Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 285; G. S., s. 113-26; 1959, c. 683, s. 1.)

Cited in Williams v. McSwain, 248 N. C. 13, 102 S. E. (2d) 464 (1958).

§ 146-9. Disposition of mineral deposits in State lands not under water.—The Department of Administration may sell, lease, or otherwise dispose of mineral rights or deposits in the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, not lying beneath the waters of the State, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying such rights shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of dispositions of all such mineral rights or deposits shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

§ 146-10. Leases.—The Department of Administration may lease or rent the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, at such times, upon such consideration, in such portions, and upon such terms as it may deem proper. Every lease or rental of such lands by the Department shall be approved by the Governor and Council of State, or by the agency designated by the Governor and Council of State to approve such leases and rentals. (1959, c. 683, s. 1.)

§ 146-11. Easements, rights-of-way, etc.—The Department of Administration may grant easements, rights-of-way, dumping rights and other interests in State lands, for the purpose of

(1) Cooperating with the federal government,
(2) Utilizing the natural resources of the State, or
(3) Otherwise serving the public interest.

The Department shall fix the terms and consideration upon which such rights may be granted. Every instrument conveying such interests shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such interests. (1959, c. 683, s. 1.)

§ 146-12. Easements in lands covered by water.—The Department of Administration may grant, to adjoining riparian owners, easements in lands covered by navigable waters or by the waters of any lake owned by the State for such purposes and upon such conditions as it may deem proper, with the approval of the Governor and Council of State. The Department may, with the approval of the Governor and Council of State, revoke any such easement upon the violation by the grantee or his assigns of the conditions upon which it was granted.

Every such easement shall include only the front of the tract owned by the riparian owner to whom the easement is granted, shall extend no further than the deep water, and shall in no respect obstruct or impair navigation.

When any such easement is granted in front of the lands of any incorporated town, the governing body of the town shall regulate the line on deep water to which wharves may be built. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; 1889, c. 555; 1891, c. 532; 1893, cc. 4, 17, 349; 1901, c. 364; Rev., s. 1696; C. S., s. 7543; G. S., s. 146-6; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-6.

In State v. Eason, 114 N. C. 787, 19 S. E. 88 (1894), it was held that a city whose limits extended to a navigable stream has jurisdiction only to the low-water mark. In view of this case it would seem that a city can only regulate the deep water line, for the purpose of entry when the stream is in the city, and it has not the power of regulating the deep water line when it extends only to the stream, unless so provided by its charter or express legislation.

Entry by Riparian Owner.—Navigable waters may be entered to the deep water line, for wharfage purposes. Barfoot v. Willis, 178 N. C. 200, 100 S. E. 303 (1919), but this right of entry is restricted to a riparian owner, and applies only to his immediate water front. Bond v. Wood, 107 N. C. 139, 12 S. E. 281 (1890).

A grant to a riparian owner of land covered by navigable water conveys only an easement therein, and a deed of the land adjoining the navigable water conveys the easement in the land covered by the water. Shephard's Point Land Co. v. Atlantic Hotel, 132 N. C. 517, 44 S. E. 39 (1903).

Regulating Deep Water Line by Mandamus.—Mandamus will lie by the riparian owner of land lying within the limits of an incorporated town, or city, to compel the town or city to "regulate the deep water line to which wharves may be built" as required by this section. Wool v. Edenton, 115 N. C. 10, 20 S. E. 165 (1894).

Prior to this case the court had held, because of the former wording of the statute, that a riparian owner in a city could not make an entry and the Secretary of State could not issue a grant until the line of deep water had been regulated by the municipal corporation. Wool v. Saunders, 108 N. C. 729, 13 S. E. 294 (1891).

Rights Go with Land.—Riparian rights being incident to land abutting on navigable water cannot be conveyed without a conveyance of such land, and lands covered by navigable water are subject to entry only by the owner of the land abutting thereon. Zimmerman v. Robinson, 114 N. C. 39, 19 S. E. 102 (1894); Land Co. v.

Hotel, 134 N. C. 397, 46 S. E. 749 (1904). An adjacent riparian owner acquires only an easement in the bed of navigable waters in front of his shore lots for the purpose of building a wharf. Atlantic, etc., R. Co. v. Way, 172 N. C. 774, 90 S. E. 937 (1916).

Same—Fishing Rights.—The right to build a wharf in front of riparian property does not give the riparian owner exclusive fishing privilege in the navigable part of the stream on which his property fronts. But the riparian owner will be protected from wrongful interference. Beil v. Smith, 171 N. C. 116, 87 S. E. 987 (1916).

Erroneous Survey of the Deep Water Line.—In case the line marked out is not the deep water line a riparian owner has a right to have the error corrected, and he will not be estopped because of a grant had under the erroneous survey. Wool v. Edenton, 117 N. C. 1, 23 S. E. 40 (1895).

§ **146-13. Erection of piers on State lakes restricted.**—No person, firm, or corporation shall erect upon the floor of, or in or upon, the waters of any State lake, any dock, pier, pavilion, boathouse, bathhouse, or other structure, without first having secured a permit to do so from the Department of Administration, or from the agency designated by the Department to issue such permits. Each permit shall set forth in required detail the size, cost, and nature of such structure; and any person, firm, or corporation erecting any such structure without a proper permit or not in accordance with the specifications of such permit shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not exceeding thirty days. The State may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3; G. S., s. 146-10; 1959, c. 683, s. 1.)

§ **146-14. Proceeds of dispositions of certain State lands.**—The net proceeds of all sales, leases, rentals, or other dispositions of the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, and all interests and rights therein, shall be paid into the State Literary Fund, except as otherwise provided in this chapter. (1959, c. 683, s. 1.)

§ **146-15. Definition of net proceeds.**—For the purposes of this subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G. S. 105-296.1 if any; and
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten per cent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this subchapter, no service charge shall be paid into the State Land Fund from proceeds derived from the sale of land or products of land owned or held for the use of the Wildlife Resources Commission, or purchased or acquired with funds of the Wildlife Resources Commission. (1959, c. 683, s. 1.)

Article 3.

Discovery and Reclamation.

§ **146-16. Department of Administration to supervise.**—The Department of Administration shall be responsible for discovering, inventorying, surveying, and reclaiming the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, and shall take all measures necessary to that end. All expenses incurred in the performance of these activities shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

§ 146-17. Mapping and discovery agreements.—The Department of Administration, acting on behalf of the State, for the purpose of discovering State lands, may, with the approval of the Governor and Council of State, enter into agreements with counties, municipalities, persons, firms, and corporations providing for the discovery of State land by the systematic mapping of the counties of the State and by other appropriate means. All expenses incurred by the Department incident to such mapping and discovery agreements shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

Article 4.

Miscellaneous Provisions.

§ 146-18. Recreational use of State lakes regulated.—All recreation, except hunting and fishing, in, upon, or above any or all of the State lakes referred to in this subchapter may be regulated in the public interest by the State agency having administrative authority over these areas. (1933, c. 516, s. 1; G. S., s. 146-8; 1959, c. 683, s. 1.)

§ 146-19. Fishing license fees for nonresidents of counties in which State lakes are situated.—The Wildlife Resources Commission, through its authorized agent or agents, is hereby authorized to require of nonresidents of the county within which a State lake is situated a daily or weekly permit in lieu of the regular "resident State license" for fishing with hook and line or rod and reel within said lake in accordance with the regulations of the Commission relating to said lake. Except for the provisions of this section, the laws and regulations dealing with the issuance of fishing permits by said Commission must be complied with. (1933, c. 516, s. 4; G. S., s. 146-11; 1959, c. 683, s. 1.)

§ 146-20. Forfeiture for failure to register deeds.—All the grants and deeds for swamp lands made prior to November 1, 1883, must have been proved and registered, in the county where the lands are situate, within twelve months from November 1, 1883, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the State; but the provisions of this section shall be applicable only to the swamp lands which have been surveyed or taken possession of by, or are vested in, the State or its agencies. (R. S., c. 67, s. 10; R. C., c. 66, s. 10; Code, ss. 2513, 3866; Rev., s. 4046; C. S., s. 7623; G. S., s. 146-96; 1959, c. 683, s. 1.)

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 5.

General Provisions.

§ 146-21. Intent of subchapter.—It is the purpose and intent of this subchapter to provide for and regulate the acquisition, disposition, and management of all State lands other than the vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands. (1959, c. 683, s. 1.)

Article 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration.—Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-103; 1959, c. 683, s. 1.)

§ 146-23. **Agency must file statement of needs; Department must investigate.**—Any State agency desiring to acquire land, whether by purchase, condemnation, lease, or rental, shall file with the Department of Administration an application setting forth its needs, and shall furnish such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the requested acquisition, including the existence of actual need for the requested property on the part of the requesting agency; the availability of land already owned by the State or by any State agency which might meet the requirements of the requesting agency; the availability, value, and status of title of other land, whether for purchase, condemnation, lease, or rental, which might meet the requirements of the requesting agency; and the availability of funds to pay for land if purchased, condemned, leased, or rented. (1957, c. 584, s. 6; G. S., s. 146-104; 1959, c. 683, s. 1.)

§ 146-24. **Procedure for purchase or condemnation.**—(a) If, after investigation, the Department determines that it is in the best interest of the State that land be acquired, the Department shall proceed to negotiate with the owners of the desired land for its purchase.

(b) If the purchase price and other terms are agreed upon, the Department shall then submit to the Governor and Council of State the proposed purchase, together with a copy of the deed, for their approval or disapproval. If the Governor and Council of State approve the proposed purchase, the Department shall pay for the land and accept delivery of a deed thereto. All conveyances of purchased real property shall be made to "the State of North Carolina," and no such conveyance shall be made to a particular agency, or to the State for the use or benefit of a particular agency.

(c) If negotiations for the purchase of the land are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right of eminent domain and acquire any such land by condemnation in the manner prescribed by chapter 40 of the General Statutes. Upon approval by the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. Approval by no other State agency shall be required as a prerequisite to the exercise of the power of eminent domain by the Department. (1957, c. 584, s. 6; G. S., s. 146-105; 1959, c. 683, s. 1.)

§ 146-25. **Leases and rentals.**—If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be leased or rented for the use of the State or of any State agency, the Department shall proceed to negotiate with the owners for the lease or rental of such property. All lease and rental agreements entered into by the Department shall be promptly submitted to the Governor and Council of State for approval or disapproval. (1957, c. 584, s. 6; G. S., s. 146-106; 1959, c. 683, s. 1.)

§ 146-26. **Donations and devises to State.**—No devise or donation of land or any interest therein to the State or to any State agency shall be effective to vest title to the said land or any interest therein in the State or in any State agency until the devise or donation is accepted by the Governor and Council of State. Upon acceptance by the Governor and Council of State, title to the said land or interest therein shall immediately vest as of the time title would have vested but for the above requirement of acceptance by the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-107; 1959, c. 683, s. 1.)

Article 7.

Dispositions.

§ 146-27. **All sales, leases, and rentals to be made by Department of Administration.**—Every sale, lease, or rental of land owned by the State or by any State

agency shall be made by the Department of Administration and approved by the Governor and Council of State. In no event shall the Department of Administration have authority to initiate any proceeding for the sale, lease, or rental of land heretofore allocated to or used by any State agency. (1957, c. 584, s. 6; G. S., s. 146-108; 1959, c. 683, s. 1.)

§ 146-28. Agency must file application with Department; Department must investigate.—Any State agency desiring to sell, lease, or rent any land owned by the State or by any State agency shall file with the Department of Administration an application setting forth the facts relating to the proposed transaction, and shall furnish the Department with such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the proposed transaction, including particularly present and future State need for the land proposed to be conveyed, leased, or rented. (1957, c. 584, s. 6; G. S., s. 146-109; 1959, c. 683, s. 1.)

§ 146-29. Procedure for sale, lease, or rental.—If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G. S. 146-74 through 146-78. (1957, c. 584, s. 6; G. S., s. 146-110; 1959, c. 683, s. 1.)

§ 146-30. Application of net proceeds.—The net proceeds of any disposition made in accordance with this subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer in a capital improvement account to the credit of the State agency at whose request the disposition was approved, to be used for such specific capital improvement projects or other purposes as are approved by the Director of the Budget and the Advisory Budget Commission.

For the purposes of this subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G. S. 105-296.1, if any; and
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten per cent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. (1959, c. 683, s. 1.)

Article 8.

Miscellaneous Provisions.

§ 146-31. Right of appeal to Governor and Council of State.—The requesting agency, in the event of disagreement with a decision of the Department of Administration regarding the acquisition or disposition of land pursuant to the provisions of this subchapter, shall have the right of appeal to the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-113; 1959, c. 683, s. 1.)

§ 146-32. Exemptions as to leases, etc.—The Governor, acting with the approval of the Council of State, may adopt rules and regulations

(1) Exempting from any or all of the requirements of this subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this chapter. (1959, c. 683, s. 1.)

§ 146-33. State agencies to locate and mark boundaries of lands.—Every State agency shall locate and identify, and shall mark and keep marked, the boundaries of all lands allocated to that agency or under its control. The Department of Administration shall locate and identify, and mark and keep marked, the boundaries of all State lands not allocated to or under the control of any other State agency. The chief administrative officer of every State agency is authorized to contract with the State Prison Department for the furnishing, upon such conditions as may be agreed upon from time to time between the State Prison Department and the chief administrative officer of that agency, of prison labor for use where feasible in the performance of these duties. (1957, c. 584, s. 2; G. S., s. 143-145.1; 1959, c. 683, s. 1.)

§ 146-34. Agencies may establish agreed boundaries.—Every State agency may establish agreed boundaries between lands allocated to it or under its control, and the lands of any other owner, subject to the approval of the Governor and Council of State. The Department of Administration is authorized to establish agreed boundaries between State lands not allocated to or under the control of any other State agency and the lands of any other owner, subject to the approval of the Governor and Council of State. The Attorney General shall represent the State in all proceedings to establish boundaries which cannot be established by agreement. (1957, c. 584, s. 3; G. S., s. 143-145.2; 1959, c. 683, s. 1.)

§ 146-35. Severance approval delegation.—The Governor, acting with the approval of the Council of State, may adopt rules and regulations delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands. Upon such approval of severance, the buildings or timber affected shall be, for the purposes of this chapter, treated as personal property. (1959, c. 683, s. 1.)

§ 146-36. Acquisitions for and conveyances to federal government.—The Governor and Council of State may, whenever they find that it is in the best interest of the State to do so, enter into any contract or other agreement which will be sufficient to comply with federal laws or regulations, binding the State to acquire for and to convey to the United States government land or any interest in land, and to do such other acts and things as may be necessary for such compliance.

The Governor and Council of State may authorize any conveyance to the United States government to be made upon nominal consideration whenever they deem it to be in the best interest of the State to do so. (1959, c. 683, s. 1.)

SUBCHAPTER III. ENTRIES AND GRANTS.

Article 9.

General Provisions.

§ 146-37. Intent of subchapter.—It is the purpose and intent of this subchapter to protect vested rights, titles, and interests acquired under the laws governing entries and grants as they read immediately prior to the ratification of this chapter. (1959, c. 683, s. 1.)

§ 146-38. Pending entries.—All entries which have been filed with entry-takers within one year prior to the ratification of this chapter, or filed more than one year prior to the ratification of this chapter but still pending due to the filing of protest to the entry, shall be processed pursuant to the provisions of chapter 146 of the General Statutes as it read immediately prior to the ratification of this chapter. Every such entry shall be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event it shall be paid for within one year after final judgment on the protest; and all entries not thus paid for shall become null and void, and shall not be subject to renewal. It shall be the duty of both the enterer and protestant to conclude, within twelve months from the date of ratification of this chapter, all actions wherein a protest has been filed, and such cases shall be given preference on the dockets of the courts of the State. Any action not so concluded shall be deemed a lapse as to enterer and protestant. It is not the intent of this proviso to void any previous grant of the State of North Carolina, or to divest any vested right, but to terminate all rights accrued on account of an entry wherein no grant has been made. Provided that the resident judge of the superior court or the judge holding the superior courts of the district where the land lies, may, for good cause shown, extend the time within which an action in which a protest has been filed is required by this section to be concluded; but no single extension shall exceed one year in duration. A copy of this section shall be mailed by the Secretary of State to all parties to actions wherein protests have been filed as may be determined by records available in his office, and to all clerks of the superior court of the State. (1959, c. 683, s. 1.)

§ 146-39. Void grants; not color of title.—Every entry made and every grant issued for any lands not authorized by G. S. 146-1 through 146-77, as those sections read immediately prior to the ratification of this chapter, to be entered or granted shall be void.

Every grant of land issued since March 6, 1893, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this State, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person. (R. C., c. 42, s. 2; Code, s. 2755; 1893, c. 490; Rev., s. 1699; C. S., s. 7545; G. S., s. 146-13; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-13.

In General.—Where there are two or more conflicting titles derived from the State, the elder shall be preferred, upon the familiar maxim that he who is prior in time shall be prior in right and shall be adjudged to have the better title. Berry v. Lumber Co., 141 N. C. 386, 54 S. E. 278 (1906).

Under the express provisions of this statute where land in controversy has been previously granted to plaintiff's predecessor in title, a subsequent grant of the same land, under which defendants claimed title, was void for all purposes. Johnston v. Kramer Bros. & Co., 203 F. 733 (1913).

The State's grant of land was held not invalid under this section where land conveyed by the grant had not been covered by any previous grant. Peterson v. Sucro, 101 F. (2d) 282 (1939).

State Not Interested in Conflicting Grants.—A protest to the entry raises the issue of title solely between the enterer and protestant, in which the State is not in-

terested, the burden being on the enterer to prove the protestant's grant does not cover the land described in his entry. Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

Title by Adverse Possession.—Where upon protest to the entry of the State's lands it is ascertained that the lands described in the entry are not contained in the former grant, the protestant may show that the lands are not vacant and unappropriated by sufficient adverse possession to take the title out of the State and vest it in himself. Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

Title to Lappage by Adverse Possession.—To mature a title under the junior grant, there must be shown adverse and exclusive possession of the lappage, or the law will presume possession to be in the true owner as to all that portion of the lappage not actually occupied by the junior claimant. McLean v. Smith, 106 N. C. 172, 11 S. E. 184 (1890); Boomer v. Gibbs, 114 N. C. 76, 19 S. E. 226 (1894); Currie v. Gilchrist, 147 N. C. 648, 61 S. E. 581 (1908); Blue Ridge Land Co. v. Floyd, 167 N. C. 686, 83 S. E. 687 (1914); Carolina Central Land Co. v. Potter, 189 N. C. 56, 127 S. E. 343 (1925).

Application to Grants Since March 6, 1893.—This section providing that a junior grant shall not be color of title so far as it covers land previously granted, applies by its terms only to grants issued since March 6, 1893. Weaver v. Love, 146 N. C. 414, 59 S. E. 1041 (1907); Land Co. v. Western, 177 N. C. 248, 98 S. E. 706 (1919).

Article 10.

Surveys.

§ 146-40. Record of surveys to be kept.—The county commissioners of the several counties of the State shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. Such record shall have an alphabetical and numerical index, the numerical index to run consecutively. It shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the date such survey was made. (1905, c. 242; Rev., s. 1722; C. S., s. 7570; G. S., s. 146-39; 1959, c. 683, s. 1.)

Vague Record Not Good against Junior Enterer.—Prior to this section an entry of the State's vacant and unappropriated lands too vague to give notice of the boundaries of the land intended to be entered was not sufficient notice to a second enterer who has perfected his grant in ignorance of the first; and the mere running of the lines of the lands by survey or the making of a map by the first enterer which he could keep in his possession, or the warrant to the county surveyor, necessarily no more definite than the original entry, did not remedy the defective description of the entry. This section provides for notice of all surveys and such will not hereafter arise. Lovin v. Carver, 150 N. C. 710, 64 S. E. 775 (1911), cited under former § 146-39.

§ 146-41. Former surveys recorded.—Where any ex-surveyor of a county is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in the Record of Surveys, and the county commissioners shall pay for such services ten cents (10¢) for each survey so recorded and indexed. (1905, c. 242, s. 2; Rev., s. 1725; C. S., s. 7571; G. S., s. 146-40; 1959, c. 683, s. 1.)

§ 146-42. What record must show; received as evidence.—All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee; and shall be duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry and in the name of the assignee if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided that if such record differs from the original certificates of survey heretofore made or on file in the office of the Secretary of State, such original or certified copy of the certificate in the Secretary of State's office shall control. (1905, c. 242, ss. 2, 3, 6; Rev., s. 1723; C. S., s. 7572; G. S., s. 146-41; 1959, c. 683, s. 1.)

Article 11.

Grants.

§ 146-43. Cutting timber on land before obtaining a grant.—If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a misdemeanor. Any person found guilty under the provisions of this section shall further pay to the State double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (1903, c. 272, s. 4; Rev., s. 3741; C. S., s. 7582; G. S., s. 146-51; 1959, c. 683, s. 1.)

§ 146-44. Card index system for grants.—The Secretary of State shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

..... County ..... Acres
Name .....
Grant No. ..... Issued .....
Grant Book ..... Page .....
Entry No. ..... Entered .....
File No. .....
Location .....
Remarks .....

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the Secretary of State shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made. (1909, c. 505, ss. 1, 2, 3; C. S., s. 7584; G. S., s. 146-53; 1959, c. 683, s. 1.)

§ 146-45. Grant of Moore's Creek Battlefield authorized.—In conjunction with an act of Congress relating to the establishment of the Moore's Creek National Military Park (June 2, 1926, c. 448, s. 2, 44 Stat. 684; U. S. Code, Title 16, ss. 422-422(d)), the Governor of the State of North Carolina is hereby authorized to execute to the United States government a deed vesting the title to Moore's Creek Battlefield, Pender County, in said United States government on behalf of the State of North Carolina, to preserve the same as an historical battlefield: Provided that the consent of the State of North Carolina to such acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such battlefield as that all civil and criminal processes issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given: Provided further, that the title to said battlefield so conveyed to the United States shall revert to the State of North Carolina unless said land is used for the purpose for which it is ceded. (1925, c. 40; 1927, c. 56; G. S., s. 146-54; 1959, c. 683, s. 1.)

Article 12.

Correction of Grants.

§ 146-46. When grants may issue.—In any case where, under the provisions of this subchapter, the Secretary of State is authorized to issue a grant or a duplicate grant to correct an error in a prior grant, the grant of correction shall be authenticated by the Governor, countersigned by the Secretary of State, and recorded in the office of the Secretary of State. The date of the entry and the number of the survey from the certificate of survey upon which the grant is founded shall be inserted in every such grant, and a copy of the plot shall be attached to the grant.

(1777, c. 114, s. 10, P. R.; 1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. C., c. 42, ss. 12, 22; Code, ss. 2769, 2779; 1889, c. 522; Rev., ss. 1729, 1734, 1735; C. S., s. 7578; G. S., s. 146-47; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-47.

Grants under State Seal.—A grant without the Great Seal of the State affixed does not show title under that grant, as it is mandatory that the Seal be affixed to authenticate the signature of the Governor and Secretary of State. Howell v. Hurley, 170 N. C. 798, 83 S. E. 699 (1914).

A paper signed by the Governor and countersigned by the Secretary of State, although not bearing the Great Seal of the State, is admissible in evidence to show title. Howell v. Hurley, 170 N. C. 401, 87 S. E. 107 (1915).

Secretary of State Must Sign.—A grant of land if not signed by the Secretary of State is void. Hunter v. Williams, 8 N. C. 221 (1820).

Deputy Signing.—It is necessary that the Secretary of State sign the grant, and if he signs it, it is valid no matter if there has been an attempt to sign by one of the deputies. Fowler v. Development Co., 158 N. C. 48, 73 S. E. 488 (1911).

Place of Signature Immaterial.—It is not necessary that the Secretary of State countersign at any especial place on the grant to make it valid. Richards v. Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911).

Secretary of State Must Issue.—Where the claimant has complied with the law, and it appears from the warrant and survey that the entry-taker and surveyor have discharged their duties, the Secretary must issue the grant, and has no discretion in the matter. Wool v. Saunders, 108 N. C. 729, 13 S. E. 294 (1891).

§ 146-47. Change of county line before grant issued or registered.—All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor or the registration of the grants, by the change of former county lines or the establishment of new lines, the lands so entered were placed in a county or in counties different from that in which they were situated, and the grants were registered in the county where the entries were made, shall be good and valid, and the registration of the grant shall have the same force and effect as if they had been registered in the county where the lands were situated. All persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the Secretary of State, or from the office of the register of deeds when they had been erroneously registered, recorded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties. (1897, c. 37; Rev., s. 1736; C. S., s. 7585; G. S., s. 146-55; 1959, c. 683, s. 1.)

When the entry and survey are made in one county, the registering of the deed in that county gives good title although a new county may have been organized including the land granted before the grant was registered. McMillan v. Gombill, 106 N. C. 359, 11 S. E. 273 (1890); Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740 (1899), cited under former § 146-55.

§ 146-48. Entries in wrong county.—Whereas many citizens of the State, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the State or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon. (1805, c. 675, P. R.; 1834, c. 17; R. C., c. 42, s. 27; Code, s. 2784; Rev., s. 1737; C. S., s. 7586; G. S., s. 146-56, 1959, c. 683, s. 1.)

Applied and discussed in Harris v. Norman, 96 N. C. 59, 2 S. E. 72 (1887). See Avery v. Strother, 1 N. C. 558 (1802); Lunsford v. Bostion, 16 N. C. 483 (1830); cited under former § 146-56.

§ 146-49. Errors in surveys of plots corrected.—Whenever there may be an error by the surveyor in plotting or making out the certificate for the Secretary's

office, or whenever the Secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so that such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto. The court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the Secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the Secretary of State, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition, unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law. (1790, c. 326, P. R.; 1798, c. 504, P. R.; 1804, c. 655, P. R.; 1814, c. 876, P. R.; R. C., c. 42, s. 28; Code, s. 2785; Rev., s. 1738; C. S., s. 7587; G. S., s. 146-57; 1959, c. 683, s. 1.)

§ **146-50. Resurvey of lands to correct grants.**—Persons who have entered vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors In every case where the purchase money has been paid into the State treasury within the time prescribed by law after entry, and the survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the register of deeds of the county where the land lies, and have his entry surveyed as is directed by existing laws. On presenting a certificate of survey and two fair plots thereof to the Secretary of State within six months after the payment of the purchase money, the party making such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the Secretary of State to issue to him, the proper grant for the lands so entered. (1901, c. 734; Rev., s. 1739; C. S., s. 7588; G. S., s. 146-58; 1959, c. 683, s. 1.)

§ **146-51. Lost seal replaced.**—In all cases where the seal annexed to a grant is lost or destroyed, the Governor may, on the certificate of the Secretary of State that the grant was fairly obtained, cause the seal of the State to be affixed thereto. (1807, c. 727, P. R.; R. C., c. 42, s. 24; Code, s. 2781; Rev., s. 1740; C. S., s. 7589; G. S., s. 146-59; 1959, c. 683, s. 1.)

§ **146-52. Errors in grants corrected.**—If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the Secretary of State has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded, the Secretary of State shall, upon the application of any party interested and the pay-

ment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, the Secretary of State shall make the former correspond with the latter as the true facts may require. In case the party interested shall prefer it, the Secretary of State shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded, he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the State as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases. (1889, c. 460; Rev., s. 1741; C. S., s. 7590; G. S., s. 146-60; 1959, c. 683, s. 1.)

Power to Correct Errors Not Judicial.—The power conferred upon the Secretary of State to correct errors in grants of State's land, by supplying omissions, or correcting the names of grantees, material words or figures, etc., confers on him only a ministerial authority and not a judicial power. Herbert v. Union Development Co., 179 N. C. 662, 103 S. E. 380 (1920), cited under former § 146-60.

§ 146-53. Irregular entries validated.—Wherever persons have, prior to January 1, 1883, irregularly entered lands and have paid the fees required by law to the Secretary of State, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made. (1868-9, c. 100, s. 4, c. 173, s. 6; 1874-5, c. 48; Code, s. 2761; Rev., s. 1743; C. S., s. 7591; G. S., s. 146-61; 1959, c. 683, s. 1.)

Section Cures Irregularities.—Irregularities in receiving grants from the State are cured by this section. Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740 (1899), cited under former § 146-61.

§ 146-54. Grant signed by deputy Secretary of State validated.—Where State grants have heretofore been issued and the name of the Secretary of State has been affixed thereto by his deputy or chief clerk, or by anyone purporting to act in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights. (1905, c. 512; Rev., s. 1744; C. S., s. 7592; G. S., s. 146-62; 1959, c. 683, s. 1.)

This section does not interfere with vested rights, and therefore a grant countersigned by a clerk is not valid if it conflicts with a prior grant, but is valid as between the State and the grantee, if there was no prior grant. Richard v. Ritter Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911), cited under former § 146-62.

§ 146-55. Registration of grants.—Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the Secretary of State, which shall have the same effect as if the original had been registered. (1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. S., c. 42, s. 24; R. C., c. 42, s. 22; Code, s. 2779; Rev., s. 1729; C. S., s. 7579; G. S., s. 146-48; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-48.

Grant Not Void for Failure to Register It.—A grant is not void because of failure to record it. A junior grant that is recorded is not valid until there has been seven years' adverse possession. North Carolina Mining Co. v. Westfeldt, 151 F. 290 (1907).

Sufficient Evidence for Registration.—The certificate of the Secretary of State of North Carolina, attached to a grant of land and attested by the Great Seal of the State, is sufficient evidence of its official character to warrant its registration without further proof. Ray v. Stewart, 105 N. C. 472, 11 S. E. 182 (1890); Barcello v. Hapgood, 118 N. C. 712, 24 S. E. 124 (1896); Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740 (1899).

Extension of Time for Registration.—"Prior to 1885 the statutes provided that all grants, deeds, etc., be registered in the county wherein the land was situated within two years from the date thereof. With one or two omissions, the legislature uniformly extended the time for registration for two

years. The Supreme Court with equal uniformity held that such instruments, when registered within two years from their date or within the extended period, were good and valid for all purposes from their date by relation." Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

§ 146-56. Time for registering grants extended.—All grants from the State of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within six years from January 1, 1918, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1893, c. 40; 1901, c. 175; 1905, c. 6; Rev., s. 1747; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. Sess. 1913, cc. 27, 45; 1915, c. 170; 1917, c. 84; C. S., s. 7593; Ex. Sess. 1920, c. 78; 1921, c. 153; G. S., s. 146-63; 1959, c. 683, s. 1.)

Registration against Junior Grant.—Where neither party has possession the senior grant is valid against a junior grant duly recorded no matter how long registration may have been delayed by senior grantee. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

It is not necessary that a grant from the State be registered to make it valid. The retroactive statutes making grants registered after the times prescribed valid, gives good title against a junior grant duly recorded. Dew v. Pyke, 145 N. C. 300, 59 S. E. 76 (1907), cited under former § 146-63.

§ 146-57. Time for registering grants and other instruments extended.—The time is hereby extended until September 1, 1926, for the proving and registering of all deeds of gift, grants from the State, or other instruments of writing heretofore executed and which are permitted or required by law to be registered, and which were or are required to be proved and registered within a limited time from the date of their execution; and all such instruments which have heretofore been or may be probated and registered before the expiration of the period herein limited shall be held and deemed, from and after the date of such registration, to have been probated and registered in due time, if proved in due form, and registration thereof be in other respects valid: Provided that nothing in this section shall be held or deemed to validate or attempt to validate or give effect to any informal instrument; and provided further that this section shall not affect pending litigation: Provided further that nothing herein contained shall be held deemed to place any limitation upon the time allowed for the registration of any instrument where no such limit is now fixed by law. (Ex. Sess. 1924, c. 20; G. S., s. 146-64; 1959, c. 683, s. 1.)

Effect on § 47-26.—Where a mother has made a deed of gift of her lands to her son, who has failed to have it registered in the time required by § 47-26, and it is for that reason void, a latter curative statute extending the time for registration cannot revive the void deed to the son. Under the facts, vested rights thereunder have been acquired. Booth v. Hairston, 193 N. C. 278, 136 S. E. 879, 57 A. L. R. 1186 (1927); (rehearing) 195 N. C. 8, 141 S. E. 480 (1928), cited under former § 146-64.

§ 146-58. Time for registering grants further extended.—The time for the registration of grants issued by the State of North Carolina is hereby extended for a period of two years from January 1, 1925: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1925, c. 97; G. S., s. 146-65; 1959, c. 683, s. 1.)

§ 146-59. Time for registering grants or copies extended.—The time for the registration of grants issued by the State of North Carolina, or copies of such

grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1927, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1927, c. 140; G. S., s. 146-66; 1959, c. 683, s. 1.)

§ 146-60. Further extension of time for registering grants or copies.—The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1947, next ensuing, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1947, c. 99; G. S., s. 146-66.1; 1959, c. 683, s. 1.)

Article 13.

Grants Vacated.

§ 146-61. Civil action to vacate grant.—When any person claiming title to lands under a grant or patent from the King of Great Britain, any of the lords proprietors of North Carolina, or from the State of North Carolina, shall consider himself aggrieved by any grant or patent issued or made since July 4, 1776, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated. (R. C., c. 42, s. 29; Code, s. 2786; Rev., s. 1748; C. S., s. 7594; G. S., s. 146-67; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-67.

Collateral Attack on Grant.—If the land be not subject to entry, the grant is void, and may be attacked collaterally. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

Plaintiff Must Claim an Interest in Land.—An action cannot be had under this section unless it is made to appear that the plaintiff has an interest in the land claimed by the defendant. Jones v. Riggs, 104 N. C. 281, 70 S. E. 465 (1889); Wadsworth v. Cozard, 175 N. C. 15, 94 S. E. 670 (1917).

Where the State has no interest in the land an action to vacate a grant must be brought by the party in interest in his own name and at his own expense. State v. Bland, 123 N. C. 739, 31 S. E. 475 (1898).

Fraud Practiced on the State.—A grant cannot be set aside at the suit of a junior grantee on the ground of fraud practiced on the State. Henry v. McCoy, 131 N. C. 586, 42 S. E. 955 (1902).

Action Where Land in Several Counties.—When it appears in an action for the cancellation of several grants brought under the provisions of this section, some of which lay in a different county from that wherein the action was brought, that the allegation of fraud and false suggestion involve one and the same transaction, affecting each and all the grants, the subject of the litigation, it is unnecessary to bring a separate action in respect to the grants issued in the other county, some of the lands, the subject of the action lying in the county wherein the action was brought. Hardwood v. Waldo, 161 N. C. 196, 76 S. E. 680 (1912).

Only Means of Attacking Grants.—It is

well settled that a grant can only be vacated by proceedings under the statute (former §§ 146-67 to 146-69). Crow v. Holland, 15 N. C. 417 (1834); McNamee v. Alexander, 109 N. C. 242, 13 S. E. 777 (1891); Kimsey v. Munday, 112 N. C. 816, 17 S. E. 583 (1893).

§ 146-62. Judgment recorded in Secretary of State's office.—If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, it may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the Secretary of State's office, where it shall be recorded in a book kept for that purpose; and the Secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office. (R. C., c. 42, s. 30; Code, s. 2787; Rev., s. 1749; C. S., s. 7595; G. S., s. 146-68; 1959, c. 683, s. 1.)

§ 146-63. Action by State to vacate grants.—An action may be brought by the Attorney General in the name of the State for the purpose of vacating or annulling letters patent granted by the State, in the following cases:

(1) When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or

(2) When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or

(3) When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. (C. C. P., s. 367; Code, s. 2788; Rev., s. 1750; C. S., s. 7596; G. S., s. 146-69; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-69.

State Must Be a Party Interested.—The State can only bring action under this section to vacate a grant, when title would vest in the State upon cancellation of the grant. State v. Bland, 123 N. C. 739, 31 S. E. 475 (1898).

Attorney General Must Bring Action.—The right to bring action to set aside a grant because of fraud practiced on the State must be brought by the Attorney General in the name of the State, and cannot be brought by any other person. Henry v. McCoy, 131 N. C. 586, 42 S. E. 955 (1902); Jones v. Riggs, 154 N. C. 281, 70 S. E. 465 (1911).

Grounds for Vacating.—Where a grant has been in strict compliance with the law, rights of property have been acquired which cannot be taken away, even by the State, in the absence of an allegation of fraud or mistake, except after compensation and under the principle of eminent domain. State v. Spencer, 114 N. C. 770, 19 S. E. 93 (1894).

Applicable Only to Land Grants.—A license to sell liquor is not a letter patent to be vacated by quo warranto under this section. Hargett v. Bell, 134 N. C. 394, 46 S. E. 959 (1904).

Proceeding by the Attorney General to vacate a charter of a corporation cannot be brought under this section, or because of any authority vested by this section, but must be brought under chapter 55. Attorney General v. Holly Shelter R. Co., 134 N. C. 481, 46 S. E. 959 (1904).

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-64. Definitions.—As used in this chapter:

(1) "Acquired lands" means all State lands, title to which has been acquired by the State or by any State agency by purchase, devise, gifts, condemnation, or adverse possession.

(2) "Escheated lands" means all State lands, title to which has been acquired by escheat.

(3) "Land" means real property, buildings, space in buildings, timber rights, mineral rights, rights-of-way, easements, and all other rights, estates, and interests in real property.

(4) "Navigable waters" means all waters which are navigable in fact.

(5) "State agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions of the State, county or city boards of education, or other local public bodies. The term "State agency" does not include any private corporation created by act of the General Assembly. In case of doubt as to whether a particular agency, corporation, or institution is a State agency for the purposes of this chapter, the Attorney General, upon request of the Governor and Council of State, shall make a determination of the issue. Upon a finding by the Attorney General that an agency, corporation, or institution is not a State agency for the purpose of this chapter, the Governor and Council of State may execute a deed or other appropriate instrument releasing and quitclaiming all title and interest of the State in the lands of that agency, corporation, or institution.

(6) "State lands" means all land and interests therein, title to which is vested in the State of North Carolina, or in any State agency, or in the State to the use of any agency, and specifically includes all vacant and unappropriated lands, swamp lands, submerged lands, lands acquired by the State by virtue of being sold for taxes, escheated lands, and acquired lands.

(7) "Submerged lands" means State lands which lie beneath

a. Any navigable waters within the boundaries of this State, or

b. The Atlantic Ocean to a distance of three geographical miles seaward from the coastline of this State.

(8) "Swamp lands" means lands too wet for cultivation except by drainage, and includes

a. All State lands which have been or are known as "swamp" or "marsh" lands, "pocosin bay", "briary bay" or "savanna", and which are a part of one swamp exceeding 2,000 acres in area, or which are a part of one swamp 2,000 acres or less in area which has been surveyed by the State; and

b. All State lands which are covered by the waters of any State-owned lake or pond.

(9) "Vacant and unappropriated lands" means all State lands title to which is vested in the State as sovereign, and land acquired by the State by virtue of being sold for taxes, except swamp lands as hereinafter defined. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; 1891, c. 302; Rev., ss. 1693, 1695; C. S., ss. 7540, 7542; G. S., ss. 146-1, 146-4; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former §§ 146-1 and 146-4.

Effect of Grant.—Lands once granted by the State to individual citizens do not become "vacant lands" within the meaning of the statute, where the State subsequently acquires title to them but abandons the actual use to which they were put. State v. Bevers, 86 N. C. 588 (1882).

Swamp lands, within the meaning of this section are those too wet for cultivation except by drainage. Beer v. Whiteville Lumber Co., 170 N. C. 337, 86 S. E. 1024 (1915).

Swamp lands of two creeks may be separate and not subject to the same application of this section though it appears that sometimes during freshets and high water these are all covered with one sheet of water. Beer v. Whiteville Lumber Co., 170 N. C. 337, 86 S. E. 1024 (1915).

A tract of land within the area of swamp lands coming within the meaning of this section need not necessarily be free from knolls or higher and drier places. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912).

Tract Held Not Swamp Land.—See Resort Development Co. v. Parmele, 235 N. C. 689, 71 S. E. (2d) 474 (1952).

Tidelands.—The fact that tidelands con-

veyed by the State Board of Education are thereafter filled in and reclaimed by the purchaser does not divest the title of the purchaser, since the conveyance is of the fee and not an easement in the lands. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

Watercourses Navigable in Fact Are Navigable in Law.—The present North Carolina law as to navigable waters is that all watercourses are regarded as navigable in law that are navigable in fact. Swan Island Club v. White, 114 F. Supp. 95 (1953).

Grant of Land under Navigable Waters Void in Absence of Specific Authority.—In the absence of specific authority from the legislature, the State at no time had the power to grant land under navigable waters and all of such grants are void. Swan Island Club v. White, 114 F. Supp. 95 (1953).

Grant Impeding Navigation.—In respect to navigable waters the State has no right to grant or convey the land under such waters for any purpose which will destroy or materially impede the use of such waters for navigation. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

Governor Not Authorized to Agree to Boundary Line Over Land under Navigable Waters.—The Governor of North Carolina was without authority in 1927 to agree as to a private owner's boundary line over lands under navigable waters, as this section at the time prohibited the grant of or entry upon such lands. Swan Island Club v. White, 114 F. Supp. 95 (1953).

Decrees in Torrens Proceeding Adjudging Ownership in Land under Navigable Water.—Insofar as a decree in a Torrens proceeding adjudged the plaintiff the owner in fee of shoal lands under navigable water, it transcended the power of the court under the law, and, therefore, is open to collateral attack. Swan Island Club v. White, 114 F. Supp. 95 (1953).

Grants to Land Not Subject to Entry.—An entry made to swamp land when the body contains more than 2,000 acres is void, and a grant under such entry is void. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912). See Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

§ **146-65. Exemptions from chapter.**—None of the provisions of chapter 146 shall apply to:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the State Highway Department; or

(2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G. S. 143-216 through G. S. 143-228.1 or to the exercise of all or any of such authority and powers.

Nor shall the provisions of chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement. (1957, c. 584, s. 6; G. S., s. 146-112; 1959, c. 683, s. 1.)

§ **146-66. Voidability of transactions contrary to chapter.**—Any sale, lease, rental, or other disposition of State lands or of any interest or right therein, made or entered into contrary to the provisions of this chapter, shall be voidable in the discretion of the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-111; 1959, c. 683, s. 1.)

§ **146-67. Governor to employ persons.**—The Governor may employ persons to perform such services as may be necessary to carry out the provisions of this chapter, and he shall fix the compensation to be paid for such services. All expenditures for such services shall be paid from the State Land Fund on order of the Director of the Budget, or the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

§ **146-68. Statutes of limitation.**—The provisions of G. S. 1-35, 1-36, and 1-37 are made applicable to this chapter. (1959, c. 683, s. 1.)

§ **146-69. Service on State in land actions.**—In all actions and special proceedings brought by or against the State or any State agency with respect to State land or any interest therein, service of process upon the Director of Administration, with delivery to him of copies for the Attorney General and for the administrative head of each State agency known by the party in whose behalf service is made to have an interest in the land which is the subject of the action or proceeding, shall constitute service upon the State for all purposes. (1959, c. 683, s. 1.)

§ 146-70. Institution of land actions by the State.—Every action or special proceeding in behalf of the State or any State agency with respect to State lands or any interest therein, or with respect to land being condemned by the State, shall be brought by the Attorney General in the name of the State, upon the complaint of the Director of Administration. (1959, c. 683, s. 1.)

Article 15.

State Land Fund.

§ 146-71. State Land Fund created.—The State Land Fund, which is hereby created, shall consist of the moneys required by this chapter to be paid into that fund, together with such amounts as the General Assembly may appropriate thereto. (1959, c. 683, s. 1.)

§ 146-72. Purpose.—The State Land Fund may, in accordance with rules and regulations adopted by the Governor and approved by the Council of State, be used for the following purposes:

(1) To pay any expenses incurred in carrying out the duties and responsibilities created by the provisions of this chapter.

(2) For the acquisition of land, when appropriation is made for that purpose by the General Assembly. (1959, c. 683, s. 1.)

§ 146-73. Administration.—The State Land Fund shall be administered by the Department of Administration, in accordance with rules and regulations adopted by the Governor and approved by the Council of State. All expenditures from the fund shall be made upon order of the Director of the Budget, or of the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

Article 16.

Form of Conveyances.

§ 146-74. Approval of conveyances.—Every proposed conveyance in fee of State lands shall be submitted to the Governor and Council of State for their approval. Upon approval of the proposed conveyance in fee by the Governor and Council of State, a deed for the land being conveyed shall be executed in the manner prescribed in this article. (1957, c. 584, s. 7; G. S., s. 143-147; 1959, c. 683, s. 1.)

§ 146-75. Execution; signature; attestation; seal.—Each such conveyance in fee shall be in the usual form of deeds of conveyance of real property and shall be executed in the name of the State of North Carolina, signed in the name of the State by the Governor, and attested by the Secretary of State; and the great seal of the State of North Carolina shall be affixed thereto. (1929, c. 143, s. 2; G. S., s. 143-148; 1959, c. 683, s. 1.)

§ 146-76. Exclusive method of conveying State lands.—The manner and method of conveying State lands herein set out shall be the exclusive and only method of conveying State lands in fee. Any conveyance thereof by any other person or executed in any other manner or by any other method shall not be effective to convey the interest or estate of the State in such land. (1929, c. 143, s. 4; G. S., s. 143-150; 1959, c. 683, s. 1.)

§ 146-77. Admission to registration in counties.—Each such conveyance shall be admitted to registration in the several counties of the State upon the probate required by law for deeds of corporations. (1929, c. 143, s. 3; G. S., s. 143-149; 1959, c. 683, s. 1.)

§ 146-78. Validation of conveyances of State-owned lands.—All conveyances heretofore made by the Governor, attested by the Secretary of State, and authorized by the Council of State, in the manner provided by G. S. 146-74 and 146-75 of any

lands, the title to which was vested in the State for the use of any State institution, department, or agency, or vested in the State for any other purpose, are hereby ratified and validated. (1917, c. 129; C. S., s. 7524; 1951, c. 18; 1957, c. 584, s. 7; G. S., s. 143-146; 1959, c. 683, s. 1.)

Article 17.

Title in State.

§ 146-79. Title presumed in the State; tax titles.—In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title or the right of possession of any lands claimed by the State or by any State agency under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purported to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this State, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title. (1842-3, c. 36, s. 3; R. C., c. 66, s. 24; Code, s. 2527; 1889, c. 243; Rev., s. 4047; C. S., s. 7617; G. S., s. 146-90; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-90.

Title Presumed in the Board of Education.—When it is shown that the land is swamp land and within a swamp of more than 2,000 acres, the law presumes that the Board of Education is the owner thereof, because grants of such land are void and unauthorized. Board v. Makely, 139 N. C. 31, 51 S. E. 784 (1905); State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912).

Presumption Rebuttable.—The presumption of title in the Board of Education lasts only until good title is shown to be in another party. Shingle Co. v. Lumber Co., 178 N. C. 221, 100 S. E. 332 (1919).

Effect of Presumption as to Title on Interpretation of Deed.—The description "to the high water mark" of nonnavigable arm of the sea, a broad shallow sound, restricts or limits conveyance to correctly located line of mean high water as indicated on the ground, particularly where title to marsh lands was at time lots were laid off held by State subject to disposition by State Board of Education, since title to swamp lands is presumed to be in Board or its assignees until a valid title to such land is shown otherwise. Kelly v. King,

225 N. C. 709, 36 S. E. (2d) 220 (1945).

Presumption That Officers Do Their Duty.—It is entirely proper and competent for the State to provide that the presumption that public officials have done their duty should apply, and throw upon any adverse claimant the burden of proving the contrary. This decision does not, in any way, conflict with the cases of King v. Cooper, 128 N. C. 347, 38 S. E. 924 (1901); Matthews v. Fry, 141 N. C. 582, 54 S. E. 379 (1906); Warren v. Williford, 148 N. C. 474, 62 S. E. 697 (1908), and Rexford v. Phillips, 159 N. C. 213, 74 S. E. 337 (1912), the facts in those cases and this one being very different. State v. Remick, 160 N. C. 562, 76 S. E. 627 (1912).

§ 146-80. Statute of limitations.—No statute of limitations shall affect the title or mar the action of the State, or of any State agency, or of its assigns, unless the same would protect the person holding and claiming adversely against the State. Neither the State nor any State agency, nor its assigns, shall commence any action for the recovery of damages for timber cut and removed from lands owned by the State or by any State agency or for any other act of trespass committed on such lands, more than ten years after the occurrence of such cutting, removal, or other act of trespass. The provisions of this section shall not have the effect of reviving any cause of action which was, at the date of ratification of this chapter, barred by any applicable statute of limitations. (1842, c. 36, s. 5; R. C., c. 66, s. 25; Code, s. 2528; Rev., s. 4048; 1917, c. 287; C. S., s. 7618; G. S., s. 146-91; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-91.

Tillery v. Lumber Co., 172 N. C. 296, 90 S. E. 196 (1916) laid down the rule that this statute was not intended to protect an assignee of the State against the statute of limitations when the action was for damage to timber. By amendment 1917 the part of the section following the semicolon was added making it clear that the statute of limitations was not to be applied in actions for damages to timber.

The purpose of this section was to make applicable to the State Board of Education the same limitations applicable to the State, and the words "or its assigns" were intended to make applicable to assigns of the Board the same limitations applicable to the Board, but only as applied to adverse possession had while title was in the Board. Virginia-Carolina Tie, etc., Co. v. Dunbar, 106 F. (2d) 383 (1939).

Assignee Not Barred by Statute of Limitations.—In an action for land the plaintiff is not barred by the statute of limitations, which does not run in such cases, unless the State would have been barred by adverse possession. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912).

Harmless Error.—In action for damages for alleged trespass in the cutting of timber on swamp land where defendants claimed adverse possession under color of title of land in dispute, and plaintiff claimed title under deeds executed by the State Board of Education to a third party, error, if any, in charging that the 7-year statute of limitations, rather than the 21-year statute, was applicable was harmless to plaintiff where, under defendants' evidence, jury could not have found that defendants and those under whom defendants claimed had been in possession for 7 years without finding that they had been in possession for more than 21 years. Virginia-Carolina Tie, etc., Co. v. Dunbar, 106 F. (2d) 383 (1939).

§ 146-81. Title to lands sold for taxes.—The title to all land acquired by the State by virtue of being sold for taxes is hereby vested in the State of North Carolina. (1917, c. 209; C. S., s. 7615; G. S., s. 146-88; 1959, c. 683, s. 1.)

§ 146-82. Protection of interest in lands sold for taxes.—Whenever any lands in which the State of North Carolina or any State agency has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes or special assessment, or under any lien, the Department of Administration is authorized, if in its judgment it is necessary to protect the interest of the State, to appear at any sale of such lands and to buy the same as any other person would. For the purpose of paying therefor, the Director of the Budget is authorized to draw upon the State Land Fund. (1917, c. 246; C. S., s. 7616; G. S., s. 146-89; 1959, c. 683, s. 1.)

Article 18.

Miscellaneous.

§ 146-83. Vested rights protected.—No provision of this chapter shall be applied or construed to the detriment of vested rights, interests, or estates of any private individual, firm, or corporation, acquired prior to the ratification of this chapter. (1959, c. 683, s. 1.)

Chapter 147.

State Officers.

Article 1.

Classification and General Provisions.

Article 2.

Expenses of State Officers and State Departments.

Article 3.

The Governor.

Article 3A.

Emergency War Powers of Governor.

Article 4.

Secretary of State.

Article 1.

Classification and General Provisions.

§ **147-1. Public State officials classified.**—The public officers of the State are legislative, executive, and judicial. But this classification shall not be construed as defining the legal powers of either class. (1868-9, c. 270, ss. 1, 2; Code, s. 3317; Rev., s. 5323; C. S., s. 7624.)

§ **147-2. Legislative officers.**—The legislative officers are:
(1) Fifty Senators;
(2) One hundred and twenty members of the House of Representatives;
(3) A Speaker of the House of Representatives;
(4) A clerk and assistants in each House;
(5) A doorkeeper and assistants in each House;
(6) As many subordinates in each House as may be deemed necessary. (1868-9, c. 270, s. 3; Code, s. 3318; Rev., s. 5324; C. S., s. 7625.)

§ **147-3. Executive officers.**—(a) Executive officers are either:
(1) Civil;
(2) Military.

(b) Civil executive officers are:
(1) General, or for the whole State;
(2) Special, or for special duties in different parts of the State;
(3) Local, or for a particular part of the State.
(c) The general civil executive officers of this State are as follows:
(1) A Governor;
(2) A Lieutenant Governor;
(3) Private secretary for the Governor;
(4) A Secretary of State;
(5) An Auditor;
(6) A Treasurer;
(7) An Attorney General;
(8) A Superintendent of Public Instruction;
(9) The members of the Governor's Council;
(10) A Commissioner of Agriculture;
(11) A Commissioner of Labor;
(12) A Commissioner of Insurance. (1868-9, c. 270, ss. 24, 25, 26; Code, s. 3319; 1899, c. 54, ss. 3, 4, c. 373; 1901, c. 479, s. 4; Rev., s. 5325; C. S., s. 7626; 1931, c. 312, s. 5; 1943, c. 170.)

§ 147-4. Executive officers; election; term; induction into office.—The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor, who shall be elected for a term of four years, by the qualified electors of the State, at the same time and places, and in the same manner, as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both Houses of the General Assembly. Contested elections shall be determined by a joint ballot of both Houses of the General Assembly in such manner as shall be prescribed by law. On the first Thursday after the convening of the General Assembly, the person duly elected Governor shall, in the presence of a joint session of the two Houses of the General Assembly, take the oath of office prescribed by law and be immediately inducted into the office of Governor. Should the Governor elected not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some Justice of the Supreme Court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in article III, section 1, of the Constitution shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected. (Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; Rev., s. 5326; C. S., s. 7627; 1931, c. 312, s. 5; 1953, c. 2.)

Cross References.—See notes to Art. III, §§ 1 and 3 of the Constitution.

Editor's Note.—The 1953 amendment inserted Commissioner of Agriculture, Commissioner of Insurance and Commissioner of Labor in the first sentence and deleted the reference to such officers formerly appearing in the last sentence. Prior to the amendment the Governor took the prescribed oath on the first Tuesday after the convening of the General Assembly, and in the case of his absence at such time he could thereafter take the oath before a judge of the superior court as well as before a justice of the Supreme Court.

§ 147-5. Executive officers report to Governor; reports transmitted to General Assembly.—It shall be the duty of the officers of the executive department to submit their respective reports to the Governor to be transmitted by him with his message to the General Assembly. (1813, c. 60, s. 2, P. R.; Rev., s. 5373; C. S., s. 7628.)

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-6. Expenses paid by warrants of State Auditor; statements filed.—All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn by the State Auditor on the State Treasurer. The officer of State or the head of any department thereof shall file with the State Auditor an itemized statement of the salaries, bills for purchases of equipment and other expenses of his department, and the State Auditor shall draw warrants on the State Treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of State or head of any department thereof, as evidenced by statements so approved and filed. The State Treasurer is hereby authorized and directed to pay said warrants. (1919, c. 117, s. 2; C. S., s. 7630.)

§ 147-7. Traveling expenses on State's business.—When, to efficiently and properly carry into effect and execute any of the duties imposed by his appointment or by the provision of any statute of this State, and provide for the expenses thereof, it is required that any officer of the State or any employee of any department thereof shall travel from place to place, such traveling and other expenses as shall be required shall be approved by said officer or head of the department whose employee incurs such expenses. (1919, c. 117, s. 3; C. S., s. 7631.)

§ 147-8. Mileage allowance to officers or employees using public or private automobiles.—Where it is provided by any law affecting the State of North Carolina, or any subdivision thereof, whereby any employee or officer of the same is allowed to charge mileage for the use of any motor vehicle when owned by the State or any subdivision thereof or by any such employee or officer of the State or any subdivision thereof, when in the discharge of any duties imposed upon him by reason of his employment or office, the same is hereby repealed to the extent that said charge shall be limited to the actual miles traveled by said motor vehicle and no mileage charge shall be allowed for but one occupant of any motor vehicle so used, and provided further that no such mileage charge shall exceed seven cents per mile. (1931, c. 382, s. 1; 1953, c. 675, s. 20.)

Local Modification.—City of Greensboro: 1959, c. 1137, s. 15; Guilford: 1961, c. 905.

Editor's Note.—The 1953 amendment substituted "seven" for "six" near the end of the section.

§ 147-9. Unlawful to pay more than allowance.—It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any subdivision thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any subdivision thereof or by any person and used in the pursuit of his employment or office in excess of seven cents per mile as set out in § 147-8 and any officer, auditor, bookkeeper, clerk or other employee violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 382, s. 2; 1953, c. 675, s. 21.)

Local Modification.—City of Greensboro: 1959, c. 1137, s. 16.

Editor's Note.—The 1953 amendment substituted "seven" for "six" near the end of the section.

ARTICLE 3.

The Governor.

§ 147-10. Governor to reside in Raleigh; mansion and accessories.—The Governor shall reside in the city of Raleigh during his continuance in office. A convenient and commodious furnished dwelling house, supplied with necessary lights, fuel, and water, shall be provided for his accommodation; and an automobile and driver shall be provided and maintained for the use of the executive mansion.

(1868-69, c. 270, ss. 32, 33; Code, ss. 3325, 3326; 1885, c. 244; Rev., s. 5327; 1919, c. 307; C. S., s. 7635.)

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.—The salary of the Governor shall be twenty-five thousand dollars ($25,000.00) per annum, payable monthly. He shall be paid annually the sum of five thousand dollars ($5,000.00) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1.)

Editor's Note.—The 1929 amendment raised the Governor's annual salary from $6,500 to $10,500, and the 1947 amendment increased it to $15,000 beginning with 1949.

The 1953 amendment increased the Governor's annual expense allowance from $600.00 to $5,000.00 from the time he took the oath of office and began serving the term for which he was elected in 1952.

The 1961 amendment, effective July 1, 1961, added the last sentence.

The 1963 amendment, effective July 1, 1963, increased the annual salary from $15,000.00 to $25,000.00.

§ 147-11.1. Succession to office of Governor; Acting Governor.—(a) Lieutenant-Governor.—

(1) The Lieutenant-Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant-Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant-Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(b) President of Senate, Speaker of the House and Other Officers.—

(1) If, by reason of failure to qualify, death, resignation, or removal from office, there is neither a Governor nor a Lieutenant-Governor to discharge the powers and duties of the office of Governor, then the President of the Senate shall, upon his resignation as President of the Senate and as Senator, become Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Governor, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative, become Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Governor, shall, upon his resignation

of the office which places him in the order of succession, become Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(c) Acting Governor Generally.—

(1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant-Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(d) Governor Serving under Subsection (c).—An individual serving as Acting Governor under subsection (c) of this section shall continue to act for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified, except that:

(1) If his tenure as Acting Governor is founded in whole or in part upon the absence of both the Governor and Lieutenant-Governor from the State, then he shall act only until the Governor or Lieutenant-Governor returns to the State; and

(2) If his tenure as Acting Governor is founded in whole or in part upon the physical or mental incapacity of the Governor or Lieutenant-Governor, then he shall act only until the removal of the incapacity of the Governor or Lieutenant-Governor.

(e) Officers to Which Subsections (b), (c) and (d) Applicable.—Subsections (b), (c), and (d) of this section shall apply only to such officers as are eligible to the office of Governor under the Constitution of North Carolina, and only to officers who are not under impeachment by the House of Representatives at the time they are to become Governor or Acting Governor.

(f) Compensation of Acting Governor.—During the period that any individual serves as Acting Governor under subsection (c) of this section, his compensation shall be at the rate then provided by law in the case of the Governor. (1961, c. 992, s. 1.)

Editor's Note.—Section 3 of the act inserting this section provides: "This act shall take effect upon the certification by the Governor to the Secretary of State that the constitutional amendment proposed by chapter 466 of the Session Laws of 1961 has been ratified by a majority of the qualified voters of the State who vote thereon; and in the event that the proposed amendment is not so ratified and certified by the Governor to the Secretary of State, then this act shall not take effect."

The constitutional amendment proposed by chapter 466 of the Session Laws of 1961 was ratified at the General Election held November 6, 1962. See N. C. Const., Art. III, § 12.

§ 147-12. Powers and duties of Governor.—In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

(1) He is to supervise the official conduct of all executive and ministerial

officers; and when he shall deem it advisable he shall visit all State institutions for the purpose of inquiring into the management and needs of the same, and for the purpose of paying the expenses of such visitation the Auditor is hereby directed to draw an order on the Treasurer in favor of the Governor to pay his expenses for each visitation.

(2) He is to see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the General Assembly therewith.

(3) He is to make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, he may also appoint to fill any vacancy occurring in that office, and the person he appoints shall serve for the unexpired term of the office and until his successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
b. During the continued absence of the regular holder of the office, or
c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead he acts,
b. Upon the return of the officer in whose stead he acts, or
c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as he deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of his office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor with the approval of the Advisory Budget Commission.

(4) He is the sole official organ between the government of this State and other states, or the government of the United States.

(5) He has the custody of the great seal of the State.

(6) If he be apprised by the affidavits of two responsible citizens of the State that there is imminent danger that the statute of this State forbidding prize fighting is about to be violated, he shall use, as far as necessary, the civil and military power of the State to prevent it, and to have the offenders arrested and bound to keep the peace.

(7) He shall annually appoint eight members to the Board of Directors of the North Carolina Railroad, who shall serve for one year until the next annual meeting of stockholders held for the purpose of electing or naming directors.

(8) In carrying out his ex officio duties, he is authorized to designate his personal representative to attend meetings and to act in his behalf as he directs.

(9) He is authorized to appoint such personal staff as he deems necessary to carry out effectively the responsibilities of his office. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C. S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285.)

Cross References.—For sections placing Governor and Council of State in charge of State's interest in railroads, canals and other works of internal improvements, see §§ 124-1 through 124-7. As to Governor's power to appoint, see Constitution, Art. III, §§ 10 and 13; Art. IV, § 25; Art. XIV, § 5. As to investment of surplus State funds, see § 147-69.1.

Editor's Note.—The 1955 amendment added subdivisions (7) to (9).

The 1959 amendment rewrote subdivision (3) and provided that "nothing in this act shall be construed to repeal G. S. 128-39."

Mandamus to Compel Performance of Duties.—Under subdivisions (1) and (2) of this section the Governor has the right to bring mandamus proceedings against the State Auditor to compel the performance of the ministerial duties prescribed by statute which do not involve any official discretion. Russell v. Ayer, 120 N. C. 180, 27 S. E. 133 (1897).

The right of the Governor to appoint officers is limited to constitutional officers and then only when the Constitution expressly provides for such an appointment. Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354 (1914).

As to appointments under subdivision (3) of this section prior to 1959 amendment, see Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354 (1914).

§ **147-13. May convene Council of State.**—The Governor may convene his Council for consultation whenever he may deem it proper. (1868-9, c. 270, s. 40; Code, s. 3335; Rev., s. 5329; C. S., s. 7637.)

§ **147-14. Appointment of private secretary; official correspondence preserved; books produced before General Assembly.**—The Governor shall appoint a private secretary, who shall enter in books kept for that purpose all such letters, written by and to the Governor, as are official and important, and such other letters as the Governor shall think necessary. Such books shall be deposited in the office of the executive by the private secretary, and there carefully preserved, and the Governor shall produce the same before the General Assembly whenever requested. (1868-9, c. 270, ss. 33, 34; Code, ss. 3326, 3327; Rev., s. 5330; C. S., s. 7638.)

§ **147-15. Salary of private secretary.**—The salary of the private secretary to the Governor shall be fixed by the Governor with the approval of the Advisory Budget Commission. (R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Code, ss. 1689, 3721; Pr. 1901, c. 405; 1903, c. 729; Rev., s. 2737; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; C. S., s. 3859; 1921, c. 227; 1929, c. 322, ss. 1, 2; 1945, c. 45; 1953, c. 675, s. 22; 1955, c. 910, s. 4; c. 1313, s. 8; 1961, c. 738, s. 1.)

Editor's Note.—The 1945 amendment increased the salary of the private secretary.

The 1953 amendment struck out the former last sentence of this section.

The first and second 1955 amendments, effective July 1, 1955, made several deletions.

The 1961 amendment rewrote this section which formerly also related to the collection of fees. Now see § 147-15.1.

§ **147-15.1. Fees collected by private secretary.**—The secretary to the Governor shall charge and collect the following fees, to be paid by the person for whom the services are rendered: For the commission of a notary public, seven dollars and fifty cents ($7.50); for the commission of a special policeman, five dollars ($5.00). All fees collected by the secretary shall be paid into the State Treasury. (1961, c. 738, s. 2.)

§ **147-16. Record kept; certain original applications preserved.**—The Governor shall cause to be kept the following records:

(1) A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

(2) An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals, which shall be paid upon the warrant of the Auditor.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the Governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application. (1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; Code, ss. 3322, 3323; Rev., s. 5331; C. S., s. 7639.)

§ 147-17. May employ counsel in cases wherein State is interested; defending suits arising from activities of State employees in course of employment.—No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except by and with the consent and approval of the Governor. In any case, civil or criminal, in any court in the State or in any other state or territory or in any United States court, or in any other matter, thing, or controversy, of whatever nature or kind, in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation as he may fix for their services. The Attorney General, with his assistants, shall be counsel for all such departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State, and whenever the Attorney General shall advise the Governor that it is impracticable for him and his assistants to render legal services to any State agency, institution, commission, bureau or other organized activity, the Governor may employ such counsel as, in his judgment, should be employed to render such services, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation for their services as he may fix, and he may direct that such warrant be paid out of the appropriations to such department, agency, institution, commission, bureau or other organized activity of the State, or out of the contingent fund.

Whenever it shall be made to appear to the Attorney General that a civil action has been commenced against an employee of the State of North Carolina alleging the negligence of said employee as a proximate cause of injuries received by the plaintiff, and the Attorney General shall, upon investigation, determine that the employee at the time of his alleged negligence was acting in the course and scope of his employment as a State employee, the Attorney General shall advise the Governor whether, in his opinion, the defense of such suit by the employee will require the payment of attorney's fees, and shall recommend to the Governor whether counsel should be employed by the employee at State expense to conduct the defense of the employee in such suit. Whenever it shall be made to appear to the Attorney General that a civil action has been commenced against an employee of the State arising out of any action of such employee, taken in good faith in the course and scope of his employment, the Attorney General shall recommend to the Governor that counsel be employed, at State expense, to conduct the defense of the employee in such action. Upon the recommendation of the Attorney General, the Governor may authorize the employment of such counsel, and may direct payment for such services by counsel in the manner hereinabove set forth. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C. S., s. 7640; 1925, c. 207, s. 3; 1961, c. 1007; 1963, c. 1009.)

Editor's Note.—The 1961 amendment added the second paragraph. The 1963 amendment inserted the next-to-last sentence of the second paragraph.

§ 147-18. To designate "Indian Day."—The Governor of North Carolina is hereby empowered to set aside some day which shall be called "Indian Day" on

which Indian lore shall receive emphasis in the public schools of the State and among the citizens of North Carolina. (Resolutions 54, 1937, p. 957.)

§ 147-19. To appoint a day of thanksgiving.—The Governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of solemn and public thanksgiving to Almighty God for past blessings and of supplication for His continued kindness and care over us as a State and a nation. (1868-9, c. 270, s. 39; Code, s. 3334; Rev., s. 5333; C. S., s. 7641.)

§ 147-20: Repealed by Session Laws 1955, c. 867, s. 13.

§ 147-21. Form and contents of applications for pardon.—Every application for pardon must be made to the Governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon. (1869-70, c. 171; 1870-1, c. 61; Code, s. 3336; Rev., s. 5334; C. S., s. 7642.)

Cross Reference.—As to Governor's power to pardon, see Art. III, § 6 of the Constitution.

§ 147-22. Application for pardon to include record.—Any application for the pardon of a prisoner committed to the discharge of the State Highway and Public Works Commission shall include a record of such prisoner since he was committed to the charge of the Commission; and in determining whether or not a parole or pardon shall be granted, consideration shall be given to the record of such prisoner; and the record of such prisoner shall be available to those making the application. (1917, c. 286, s. 20; C. S., s. 7739; 1925, c. 163.)

Cross Reference.—As to transfer to the State Prison Department of the powers and duties respecting the control and management of the State prison system heretofore vested in the former State Highway and Public Works Commission, see § 148-1.

Editor's Note.—It would seem that the word "discharge" near the beginning of the section was inadvertently used by the legislature when "charge" was intended.

§ 147-23. Conditional pardons may be granted.—In any case in which the Governor is authorized by the Constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper. (1905, c. 356; Rev., s. 5335; C. S., s. 7643.)

§ 147-24. Governor's duties when conditions of pardon violated.—If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the Governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The Governor shall examine the case of such prisoner, and if it appears by his own admission or by such evidence as the Governor may require that he has violated the conditions of his pardon, the Governor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. In computing the period of his confinement the time between the conditional pardon and subsequent arrest shall not be taken to be a part of the time of his sentence. If it appears to the Governor that he has not broken the conditions of his conditional pardon he shall be released and his conditional pardon shall remain in force. (1905, c. 356, ss. 2, 3; Rev., s. 5336; C. S., s. 7644.)

Editor's Note.—This section is reviewed in 1 N. C. Law Rev. 47.

Conditional Pardon.—The Governor may grant a pardon upon a condition precedent that the prisoner pay costs of trial; and upon condition subsequent, that he remain

of good character, and be sober and industrious. See Constitution, § 6, Art. III. In re Williams, 149 N. C. 436, 63 S. E. 108 (1908).

Same—Revocation.—After delivery and acceptance of a pardon with conditions precedent and subsequent, it is irrevocable upon the compliance by the prisoner with the condition precedent, unless he shall violate the conditions subsequent by his conduct after the release. In re Williams, 149 N. C. 436, 63 S. E. 108 (1908).

Rearrest of Paroled Prisoner.—Under the provisions of our State Constitution and Statutes, a "parole" granted by the Governor to a prisoner imports a conditional pardon, and the Governor may cause his rearrest either upon his own admissions, or on such evidence as he may require, for violating the conditions which the prisoner has accepted under the terms of the parole. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

Reasonable Conditions Imposed.—The power of the Governor to grant a conditional pardon is generally subject to the limitation that the conditions imposed must not be illegal, immoral or impossible of performance, which does not apply to cases wherein he is only required not to violate the statute law, and remain of good conduct. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

Same—Breach by Prisoner.—Where the prisoner has accepted his freedom upon the terms of the conditional pardon from the Governor, his breach of such conditions voids the pardon and cancels his right to further immunity from punishment. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

The essential part of a sentence for a violation of the criminal law is the punishment for the offense committed, and not the time the sentence shall begin and end; and where the prisoner has accepted a conditional pardon from the Governor and has obtained his freedom, the breaking of the condition after the term would have otherwise expired, affords no legal excuse why he should not be recommitted to serve out the balance of his sentence. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

§ 147-25. Duty of sheriff and clerk on pardon granted.—If a prisoner is pardoned conditionally or unconditionally, or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doing thereon, to the Governor's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return, and the clerk shall file the same in his office and subjoin a brief abstract thereof to the record of the conviction and sentence, and at the next regular term of said court said warrant shall be entered upon the minutes of the court. (1905, c. 356, s. 4; Rev., s. 5337; C. S., s. 7645.)

When Sheriff Cannot Defeat Pardon.—The sheriff, by returning a pardon after its delivery and acceptance by the prisoner, cannot defeat or impair its legal results. In re Williams, 149 N. C. 436, 63 S. E. 108 (1908).

Recovery of Fine Paid before Pardon.—Where one convicted of a crime has paid the fine imposed by the court and then has obtained a pardon from the Governor, it is the duty of the court to return the fine upon his application and presenting the pardon, so long as the money remains in its possession and the rights of third persons have not intervened; but where the fine collected has reached its final destination, it is beyond the reach of executive clemency, and may not be recovered. Bynum v. Turner, 171 N. C. 86, 87 S. E. 975 (1916).

§ 147-26. To procure great seal of State; its description.—The Governor shall procure for the State a seal, which shall be called the great seal of the State of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half-fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of wheat in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out; there shall also be inserted thereon the words "esse quam videri." It shall be the duty of the Governor to file in the office of Secretary of State an impression of the great seal, certified to under his hand and attested by the Secretary of State, which impression so certified the Secretary of State shall carefully preserve among the records of his office. (1868-9, c. 270, s. 35; 1883, c. 392; Code, ss. 3328, 3329; 1893, c. 145; Rev., s. 5339; C. S., s. 7646.)

§ **147-27. Affixing great seal a second time to public papers.**—In all cases where any person may find it necessary to have the great seal of the State put again to any public paper, other than a grant for lands, he may prefer his petition to the Governor and Council, who shall, if they deem the same proper, direct the seal to be put thereto. (1868-9, c. 270, s. 38; Code, s. 3333; Rev., s. 5338; C. S., s. 7647.)

§ **147-28. To procure seals for departments and courts.**—The Governor shall also procure a seal for each department of the State government to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for every court of record in the State, for the purpose of authenticating the papers and records of such court. All such seals shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safekeeping. (1868-9, c. 270, ss. 35, 37; 1883, c. 71; Code, ss. 3328, 3332; Rev., s. 5340; C. S., s. 7648.)

§ **147-29. Seal of Department of State described.**—The seal of the Department of State shall be two inches in diameter and shall be of the same design as the great seal of the State, with the words "State of North Carolina, Department of State," surrounding the figures. (1883, c. 238; Code, s. 3330; Rev., s. 5341; C. S., s. 7649.)

§ **147-30. To provide new seals when necessary.**—Whenever the great seal of the State shall be lost or so worn or defaced as to render it unfit for use, the Governor shall provide a new one and when such new one is provided the former one, if it can be found, shall be destroyed in the presence of the Governor. Whenever the seal of any department of the State shall be lost or so worn or defaced as to render it unfit for use, a new seal shall be provided by the head of the department and the former one, if it can be found, shall be destroyed in the presence of the head of the department. Whenever the seal of any court of record shall be lost or so worn or defaced as to render it unfit for use, the board of county commissioners of the county in which such court is situate shall provide a new one and the old one, if it can be found, shall be destroyed in the presence of the chairman of the board of county commissioners of such county. (1868-9, c. 270, s. 36; Code, s. 3331; Rev., s. 5342; C. S., s. 7650; 1943, c. 632.)

Editor's Note.—The 1943 amendment rewrote this section.

§ **147-31. Payment for seals.**—The Treasurer shall pay the expense of procuring all seals provided for in this chapter, upon the warrant of the Auditor. (1868-9, c. 270, s. 37; 1883, c. 71; Code, s. 3332; Rev., s. 5343; C. S., s. 7651.)

§ **147-32. Compensation for widows of Governors.**—All widows of Governors of the State of North Carolina, who shall make written request therefor to the Director of the Budget, shall be paid the sum of three thousand dollars ($3,000.00) per annum, in equal monthly installments, out of the State treasury upon warrants duly drawn thereon. Provided, that such compensation shall terminate upon the subsequent remarriage of such person. (1937, c. 416; 1947, c. 897, ss. 1, 2; 1955, c. 1314.)

Editor's Note.—The 1955 amendment rewrote this section as changed by the 1947 amendment.

§ **147-33. Compensation of Lieutenant Governor.**—As authorized by article III, section eleven, of the Constitution of North Carolina, the salary of the Lieutenant Governor is hereby fixed at two thousand and one hundred dollars ($2,100.00) per year, which amount shall be in addition to the compensation for the Lieutenant Governor as the presiding officer of the Senate, provided by article II, section twenty-eight, of the Constitution of North Carolina. Whenever the Lieutenant

Governor shall attend any meeting of State officials, or other meetings which by law he is required to attend, he shall be paid his necessary traveling expenses in going to and from such meetings. From and after the time that the Lieutenant Governor shall take the oath of office and begin serving the term for which he was elected in 1952, he shall be paid an annual expense allowance in the sum of three thousand dollars ($3,000.00). If there is no Lieutenant Governor, the salary and expense allowance provided herein shall be paid to the presiding officer of the Senate. (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050.)

Editor's Note.—The 1945 amendment rewrote this section.

The 1953 amendment added the last sentence.

The 1963 amendment substituted "three thousand dollars ($3,000.00)" for "one thousand dollars ($1,000.00)" at the end of the third sentence and added the present last sentence.

ARTICLE 3A.

Emergency War Powers of Governor.

§ 147-33.1. Short title.—This article may be cited as the "North Carolina Emergency War Powers Act." (1943, c. 706, s. 1; 1959, c. 337, s. 6.)

Editor's Note.—Session Laws 1945, c. 7, re-enacted the sections of this article. And Session Laws 1955, c. 125 extended the duration of the article to March 1, 1957.

Session Laws 1959, c. 337, s. 6, provides: "All the provisions of §§ 1 through 6, inclusive, of chapter 706 of the Session Laws of 1943, known and cited as the 'North Carolina Emergency War Powers Act', not inconsistent with this act, are hereby in all respects re-enacted." For other sections of the 1959 act, see §§ 166-1.1., 166-3, 166-4, 166-6, 166-8.

§ 147-33.2. Emergency war powers of the Governor.—Upon his own initiative, or on the request or recommendation of the President of the United States, the army, navy or any other branch of the armed forces of the United States, the federal Director of Civilian Defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the successful prosecution thereof, the Governor may, with the approval of the Council of State, at any time and from time to time during the existing state of war:

(1) Formulate and execute plans for:

a. The inventory, mobilization, conservation, distribution or use of food, fuel, clothing and other necessaries of life and health, and of land, labor, materials, industries, facilities and other resources of the State necessary or useful in the prosecution of the war;

b. Organization and co-ordination of civilian defense in the State in reasonable conformity with the program of civilian defense as promulgated from time to time by the Office of Civilian Defense of the federal government; and, further, to effectuate such plans for civilian defense in such manner as to promote and assure the security, protection and mobilization of the civilian population of the State for the duration of the war and in the interest of State and national defense.

(2) Order and carry out blackouts, radio silences, evacuations and all other precautionary measures against air raids or other forms of enemy action, and suppress or otherwise control any activity which may aid or assist the enemy.

(3) Mobilize, co-ordinate and direct the activities of the police, fire fighting, health, street and highway repair, public utility, medical and welfare forces and services of the State, of the political subdivisions of the State,

and of private agencies and corporations, and formulate and execute plans for the interchange and use of such forces and services for the mutual aid of the people of the State in cases of air raid, sabotage or other enemy action, fire, flood, famine, violence, riot, insurrection, or other catastrophe or emergency.

(4) Prohibit, restrict, or otherwise regulate and control the flow of vehicular and pedestrian traffic, and congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities.

(5) Accept, or authorize any officer or department of the State to accept, from the federal government or any federal agency or instrumentality, or from any other source, grants of funds and grants or loans of equipment, materials, supplies or other property for war or defense purposes, subject to the terms and conditions appertaining to such grants and loans.

(6) Authorize any department or agency of the State to lease or lend to the army, navy or any other branch of the armed forces of the United States, any real or personal property of the State upon such terms and conditions as he may impose, or, on behalf of the State, to make a contract directly therefor.

(7) Authorize the temporary transfer of personnel of the State for employment by the army, navy or any other branch of the armed forces of the United States and fix the terms and conditions of such transfers.

(8) At any time when the General Assembly is not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when he shall find and proclaim after such study, investigation or hearings as he may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:

a. The use of the roads, streets and highways of the State, with particular reference to speed limits, weights and sizes of motor vehicles, regulations of automobile lights and signals, transportation of munitions or explosives and parking or assembling of automobiles on highways or any other public place within the State; provided that any changes in the laws referred to in this subdivision shall be first approved by the State Highway Commission and the Commissioner of Motor Vehicles of the State;

b. Public health, in so far as suspension or modification of the laws in reference thereto may be stipulated by the United States Public Health Service or other authoritative agency of the United States government as being essential in the interest of national safety and in the successful prosecution of the war effort; provided that such suspension or modification of public health laws shall first be submitted to and approved by the State Board of Health;

c. Labor and industry; provided, however, that any suspension or modification of laws regulating labor and industry shall be only such as are certified by the Commissioner of Labor of the State as being necessary in the interest of national safety and in the furtherance of the war program; and provided further that any such changes as may result in an increase in the hours of employment over and above the limits of the existing statutory provisions shall carry provision for adequate additional com-

pensation; and provided, further, that no changes in such laws or regulations shall be made as affecting existing contracts between labor and management in this State except with the approval of the contracting parties;

d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State militia in addition to the existing units of the State guard; to provide transportation and facilities for mobilization and full utilization of the State guard, or other units of militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;

e. Manufacture, sale, transportation, possession and use of explosives or fireworks, or articles in simulation thereof, and the sale, use and handling of firearms;

(9) Co-operate with agencies established by or pursuant to the laws of the United States and the several states for civilian protection and the promotion of the war effort, and co-ordinate and direct the work of the offices and agencies of the State having duties and responsibilities directly connected with the war effort and the protection of the civilian population.

(10) Aid in the administration and enforcement in this State of any rationing, freezing, price-fixing or similar order or regulation duly promulgated by any federal officer or agency under or pursuant to the authority of any act of Congress or of any order or proclamation of the President of the United States, by making temporarily available personnel and facilities of the State to assist in the administration thereof and/or by adopting and promulgating in this State an order or regulation substantially embodying the provisions of such federal order or regulation, filing the same in the office of the Secretary of State, prescribing the penalties for the violation thereof, and specifying the State and local officers and agencies to be charged with the enforcement thereof.

(11) Formulate and execute plans and adopt rules for:

a. The organization, recruiting, training, maintenance and operation of aircraft warning services, observation and listening posts, information and control centers and such other services and facilities as may be necessary for the prompt and accurate reception and transmission of air-raid warnings and signals;

b. The organization, recruiting, training, equipment, identification, conduct, powers, duties, rights, privileges and immunities of air-raid wardens, auxiliary police, auxiliary firemen and of the members of all other auxiliary defense and civilian protection forces and agencies.

(12) Adopt, promulgate, publicize and enforce such orders, rules and regulations as may be necessary for the proper and effective exercise of the powers granted by this article, and amend or rescind the same.

(13) Hold and conduct hearings, administer oaths and take testimony, issue subpoenas to compel the attendance of witnesses and the production of relevant books, papers, records or documents, in connection with any investigation made by him under the authority of this article. (1943, c. 706, s. 2; 1959, c. 337, s. 6.)

Editor's Note.—By virtue of § 136-1.1, the words "State Highway Commission" have been substituted for "State Highway and Public Works Commission" in subdivision (8), paragraph a.

§ **147-33.3. Orders, rules and regulations.**—All orders, rules and regulations promulgated by the Governor pursuant to this article shall have the full force and effect of law from and after the date of the filing of a duly authenticated copy thereof in the office of the Secretary of State. All laws, ordinances, rules and regulations, in so far as they are inconsistent with the provisions of this article or of any rule, order or regulation made pursuant to this article, shall be suspended during the period of time and to the extent that such conflict exists. A violation of any such order, rule or regulation, unless otherwise provided therein, shall be deemed a misdemeanor and punishable as such. (1943, c. 706, s. 3; 1959, c. 337, s. 6.)

§ **147-33.4. Immunity.**—Neither the State nor any political subdivision thereof, nor the agents or representatives of the State or any political subdivision thereof, under any circumstances, nor any individual, firm, partnership, corporation or other entity, or any agent thereof, in good faith complying with or attempting to comply with any order, rule or regulation made pursuant to this article, shall be liable for the death of or any injury to persons or for any damage to property as the result of any air raid, invasion, act of sabotage, or other form of enemy action, or of any action taken under this article or such order, rule or regulation. This section shall not be construed to impair or affect the right of any person to receive any benefits or compensation to which he may otherwise be entitled under Workmen's Compensation Law, any pension law, or any other law, or any act of Congress, or any contract of insurance or indemnification. (1943, c. 706, s. 4; 1959, c. 337, s. 6.)

§ **147-33.5. Federal action controlling.**—All action taken under this article and all orders, rules and regulations made pursuant thereto in any field or with respect to any subject matter over which the army or navy or any other department or agency of the United States government has duly taken jurisdiction shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations and requests of such department or agency and shall be consistent therewith. Blackouts, radio silences and evacuations shall be carried out only in such areas, at such times, and for such periods as shall be designated by air-raid warnings or orders with respect thereto issued by the United States army, or its duly designated agency, and only under such conditions and in such manner as shall be consistent with such warning or order, and practice blackouts shall be held only when and as authorized by the United States army or its duly designated agency. (1943, c. 706, s. 5; 1959, c. 337, s. 6.)

§ **147-33.6. Construction of article.**—This article shall be construed liberally to effectuate its purposes. (1943, c. 706, s. 6; 1959, c. 337, s. 6.)

Article 4.

Secretary of State.

§ **147-34. Office and office hours.**—The Secretary of State shall attend at his office, in the city of Raleigh, between the hours of ten o'clock a. m. and three o'clock p. m., on every day of the year, Sundays and legal holidays excepted. (1868-9, c. 270, s. 44; 1870-1, c. 111; Code, s. 3339; Rev., s. 5344; C. S., s. 7652.)

§ **147-35. Salary of Secretary of State.**—The salary of the Secretary of State shall be eighteen thousand dollars ($18,000.00) a year, payable monthly. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1.)

Cross Reference.—As to bond of Secretary of State, see § 128-8.

Editor's Note.—The amendments increased the salary from time to time, the 1957 amendment raising it to $12,000.00 from the time the Secretary took the oath of office and began serving the term for which he was elected in 1956.

The 1963 amendment, effective July 1, 1963, increased the salary from $12,000.00 to $18,000.00.

§ 147-36. Duties of Secretary of State.—It is the duty of the Secretary of State:

(1) To attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two Houses, or either of them;

(2) To attend the Governor, whenever required by him, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes, the legislative journals and the reports of the Supreme Court;

(5) To distribute the acts of Congress received at his office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;

(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed; and

(13) To receive and keep all oaths of public officials required by law to be filed in his office, and as Secretary of State, he is fully empowered to administer official oaths to any public official of whom an oath is required. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C. S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543.)

Cross Reference.—As to issuing grants, see § 146-47.

Editor's Note.—The 1941 amendment struck out "and documents" formerly appearing after "journals" in subdivision (4). The 1943 amendments added subdivisions (7) to (13).

For act authorizing the Secretary of State to enroll in a book the Constitution of 1868 and amendments thereto, see Session Laws 1943, c. 107.

§ 147-37. Secretary of State; fees to be collected.—The Secretary of State shall collect the following fees, namely: Copying and certifying a will, grant or patent not exceeding two copy-sheets, fifty cents, and for every additional copy-sheet, ten cents; correcting an error not made by himself in a patent, fifty cents; copying and certifying a plot and survey, fifty cents for each warrant or for each six hundred and forty acres contained in the plot or survey, not to exceed five dollars for one copy; receiving surveyor's return, making out, recording and endorsing grants, sixty cents; each certificate, ten cents; filing and recording a copy of a judgment vacating a grant and all other services thereon, fifty cents; copying an entry from the journals of the Assembly, forty cents; copying and certifying the laws of other states, twenty cents for each copy-sheet; and in all cases not otherwise provided for, the Secretary of State shall receive for copies of records from his office, one dollar for the first three copy-sheets and ten cents a copy-sheet thereafter. (R. C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; Code, s. 3725; Rev., s. 2742; C. S., s. 3864.)

§ **147-38. Copy-sheet defined.**—A copy-sheet shall consist of one hundred words, and in reckoning the number of words in a copy-sheet, every date, or amount of money, expressed in figures, as "1885," "$250.90," shall be estimated and charged as one word. (R. C., c. 102, s. 42; 1868-9, c. 279, s. 556; Code, s. 3757; Rev., s. 2805; C. S., s. 3851.)

§ **147-39. Custodian of statutes, records, deeds, etc.**—The Secretary of State is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation. Every deed, conveyance, or other instrument whereby the State or any State agency or institution has acquired title to any real property and which is deposited with the Secretary of State shall be filed by him, and indexed according to the county or counties wherein the real property is situated and the name or names of the grantor or grantors and of the grantee; and the real property shall be briefly described in the index. (R. C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129; Code, s. 3337; Rev., s. 5347; C. S., s. 7656; 1957, c. 584, s. 5.)

Editor's Note.—The 1957 amendment added the second sentence. Section 9 of the amendatory act provides that "nothing in this act shall be construed as repealing in any manner G. S. 146-1."

§ **147-40. Compensation of indexer of laws.**—The assistant to the Secretary of State who indexes the laws and prepares the laws and captions for publication shall receive a compensation to be fixed by the Budget Bureau. (1903, c. 3; Rev., s. 2733; C. S., s. 3866; 1931, c. 277; 1933, c. 46.)

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

§ **147-41. To keep records of oyster grants.**—The Secretary of State shall keep books of records in which shall be recorded a full description of all grounds granted for oyster beds under the provisions of chapter 119 of the laws of 1887, and laws amendatory thereof, and shall keep a map or maps showing the position and limits of all public and private grounds. (1887, c. 119, s. 14; Rev., s. 2381; C. S., s. 7657.)

§ **147-42. Binding original statutes, resolutions, and documents.**—The original statutes and joint resolutions passed at each session of the General Assembly the Secretary of State shall immediately thereafter cause to be bound in volumes of convenient size. Each such volume shall be lettered on the back with its title and the date of its session. (1866-7, c. 71; 1868-9, c. 270, s. 46; Code, s. 3343; Rev., s. 5348; C. S., s. 7658.)

§ **147-43. Reports of State officers.**—The Secretary of State shall file and keep in his office one copy of each of the reports of State officers in the best binding in which any such report is issued, and the State Librarian shall likewise keep five similarly bound copies of each such report. (Rev., s. 5101; 1911, c. 211, s. 7; C. S., s. 7300.)

§ **147-43.1. Secretary of State to prepare index to acts and resolutions.**—The Secretary of State shall biennially, at the beginning of each regular session of the General Assembly, appoint an assistant, whose duties it shall be to prepare for publication the indexes to the acts and resolutions, both public and private, ratified by the General Assembly. All index references with respect to the Session Laws shall refer to the chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section

numbers and not to page numbers. (1903, c. 3; Rev., s. 4423; C. S., s. 6109; 1927, c. 217, s. 1; 1951, c. 3, s. 2.)

Editor's Note.—This section formerly appeared as § 120-23 and was transferred to its present position by Session Laws 1943, c. 543.

The 1951 amendment struck out "and side or marginal notes" formerly appearing after "indexes" in the first sentence, "it being the intent and purpose of this amendment to discontinue the requirement that marginal notes be prepared and included in the volumes of the Session Laws." The amendment also added the second sentence.

§ 147-43.2. Secretary of State to have laws printed.—The Secretary of State, immediately upon the termination of each session of the General Assembly, shall cause to be published in one volume all the laws and joint resolutions passed at such session, whether public, private, general or special within the meaning of the Constitution and without regard to classification, except that the laws and resolutions shall be kept separate and indexed separately; and the volume shall contain his certificate that it was printed under his direction from enrolled copies on file in his office. In the printing, he shall omit the certificate required to be endorsed upon the original bills and resolutions; but he shall insert immediately at the end of each law or resolution the word "ratified," adding the day, month and year. (1868-9, c. 270, s. 14; Code, s. 2869; Rev., s. 4425; C. S., s. 6111; 1943, c. 48, s. 1.)

Editor's Note.—The 1943 amendment rewrote the section. This section formerly appeared as § 120-24 and was transferred to its present position by Session Laws 1943, c. 543.

§ 147-43.3. Number to be printed.—There shall not be printed more than twenty-five hundred (2500) volumes of Session Laws, which are to be half-bound; six hundred (600) volumes of House Journals and six hundred (600) volumes of Senate Journals of each Session of the General Assembly. (1929, c. 85, s. 1; 1941, c. 379, s. 6; 1943, c. 48, s. 5; 1955, c. 978, s. 1.)

Editor's Note.—The 1941 amendment increased the authorized printing of the House and Senate Journals from five to six hundred volumes. The 1943 amendment substituted "Session" for "Public" preceding "Laws" and omitted a former provision relating to public-local and private laws.

The 1955 amendment reduced the number of volumes of Session Laws to be printed.

This section formerly appeared as § 120-25 and was transferred to its present position by Session Laws 1943, c. 543.

§ 147-44: Repealed by Session Laws 1943, c. 48, s. 2.

§ 147-45. Distribution of copies of Session Laws, and other State publications by Secretary of State.—The Secretary of State shall, at the State's expense, as soon as possible after publication, distribute such number of copies of the Session Laws, Senate and House Journals, and Supreme Court Reports to federal, State and local governmental officials, departments and agencies, and to educational institutions for instructional and exchange use, as is set out in the table below:

	Session Laws	House and Senate Journals	Supreme Court Reports
State Departments and Officials:			
Governor	3	1	1
Lieutenant Governor	1	1	1
Auditor	3	1	1
Treasurer	3	1	1
Secretary of State	3	1	1
Superintendent of Public Instruction	3	1	1
Attorney General	8	1	8
Commissioner of Agriculture	3	1	1

	Session Laws	House and Senate Journals	Supreme Court Reports
Commissioner of Labor	3	1	1
Commissioner of Insurance	3	1	1
State Board of Health	3	1	0
State Highway Commission	3	1	1
State Board of Charities and Public Welfare	3	1	0
Adjutant General	2	0	0
Commissioner of Banks	2	0	0
Commissioner of Revenue	5	0	1
Commissioner of Motor Vehicles	1	0	0
Utilities Commission	8	1	8
State School Commission	2	0	0
State Board of Elections	2	0	0
Local Government Commission	2	0	1
Budget Bureau	2	1	1
State Bureau of Investigation	1	0	1
Director of Probation	2	0	1
Commissioner of Paroles	2	0	1
Department of Conservation and Development	3	1	0
Veterans' Loan Commission	1	0	0
Industrial Commission	6	0	6
State Board of Alcoholic Beverage Control	2	0	0
Division of Purchase and Contract	2	0	0
Justices of the Supreme Court	1 each	1 each	1 each
Clerk of the Supreme Court	1	1	0
Judges of the Superior Court	1 each	0	1 each
Emergency Judges of the Superior Court	1 each	0	1 each
Special Judges of the Superior Court	1 each	0	1 each
Solicitors of the Superior Court	1	0	1
Employment Security Commission	1	1	1
State Employment Service	1	0	0
State Commission for the Blind	1	0	1
State Prison	1	0	0
Western North Carolina Sanatorium	1	0	0
Eastern North Carolina Sanatorium	1	0	0
State Department of Archives and History	1	0	0
State Library	22	22	2
Supreme Court Library		as many as requested	
Supreme Court Reporter	0	0	1
General Assembly Members and Officials:			
Representatives of General Assembly	1 each	1 each	0
State Senators	1 each	1 each	0
Principal Clerk—Senate	1	1	0
Reading Clerk—Senate	1	1	0
Sergeant-at-Arms—Senate	1	1	0
Principal Clerk—House	1	1	0
Reading Clerk—House	1	1	0

	Session Laws	House and Senate Journals	Supreme Court Reports
Sergeant-at-Arms—House	1	1	0
Enrolling Clerk	1	0	0
Engrossing Clerk—House	1	1	0
Indexer of the Laws	1	0	0
Schools and Hospitals:			
University of North Carolina at Chapel Hill	65	56	71
North Carolina State College of Agriculture and Engineering of the University of North Carolina	5	1	1
Woman's College of the University of North Carolina	3	1	1
Duke University	25	25	25
Davidson College	1	1	1
Wake Forest College	5	5	25
Lenior Rhyne College	1	1	1
Elon College	1	1	1
Guilford College	1	1	1
East Carolina Teachers College	1	1	1
Catawba College	0	0	1
North Carolina School for the Deaf	1	0	0
State Hospital at Raleigh	1	0	0
State Hospital at Morganton	1	0	0
State Hospital at Goldsboro	1	0	0
Caswell Training School	1	0	0
School for the Blind and Deaf	1	0	0
State Normal School at Fayetteville	1	0	1
North Carolina College for Negroes	5	5	5
Local Officials:			
Clerks of the Superior Courts	1 each	1 each	1 each
Registers of Deeds of the Counties	1 each	0	0
Federal, Out-of-State, and Foreign Officials and Agencies:			
Secretary to President	1	0	1
Secretary of State	1	1	1
Secretary of War	1	0	1
Secretary of Navy	1	0	1
Secretary of Agriculture	1	0	1
Attorney General	1	0	1
Postmaster General	1	0	1
Marshal of United States Supreme Court	1	0	1
Department of Justice	1	0	1
Bureau of Census	1	0	1
Treasury Department	1	0	1
Department of Internal Revenue	1	0	1
Department of Labor	1	1	1
Bureau of Public Roads	1	0	1
Department of Commerce	1	1	1
Department of Interior	1	0	1
Veterans' Administration	1	0	1
Securities and Exchange Commission	1	0	1

	Session Laws	House and Senate Journals	Supreme Court Reports
Social Security Board	1	0	1
Work Projects Administration	1	0	1
Farm Credit Administration	1	0	1
Library of Congress	8	2	5
Federal Judges resident in North Carolina	1 each	0	1 each
Federal District Attorneys resident in North Carolina	1 each	0	1 each
Clerks of Federal Court resident in North Carolina	1 each	0	1 each
Chief executives or designated libraries or governments or other states, territories and countries, including Canada, Canal Zone, Porto Rico, Alaska and Philippine Islands, provided such governments exchange publications with the Supreme Court Library	1 each	0	1 each

Upon his appointment or election each justice of the Supreme Court shall receive for his private use one complete and up-to-date set of the Reports of the Supreme Court. The copies of Reports furnished each justice as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of Reports.

One copy each of the Public Laws, the Public-Local Laws and the Supreme Court Reports shall be furnished the head of any department of State government created in the future.

Five complete sets of the Public Laws, the Public-Local and Private Laws, the Senate and House Journals and the Supreme Court Reports heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes.

The Governor may delete from the above list, in his discretion, any government official, department, agency or educational institution. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, cc. 1061, 1400; 1959, c. 215.)

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

Editor's Note.—The 1943 amendment substituted "Session Laws" for "Public Laws, Public-Local and Private Laws" in the introductory paragraph. It also substituted "Session Laws" for "Public Laws" in the table and struck out of the table the former column relating to public-local and private laws.

Various amendments have changed the number of copies to be sent to particular distributees.

The first 1955 amendment deleted the North Carolina Library Commission from the list of distributees. The second 1955 amendment added the last paragraph. And the third 1955 amendment deleted from the list the following: Sheriffs of the counties, registers of deeds of the counties, and chairmen of the boards of county commissioners.

The 1959 amendment added to the table of enumerated officials, etc.: "Registers of Deeds of the Counties."

In the above section, "Employment Security Commission" has been substituted for "Unemployment Compensation Commission" by virtue of § 96-1.1; "State Department of Archives and History" has been substituted for "North Carolina Historical Commission" by virtue of Session Laws 1943, c. 237; and "State Highway Commission" has been substituted for "State Highway and Public Works Commission" by virtue of § 136-1.1.

§ 147-46: Repealed by Session Laws 1955, c. 987.

§ 147-46.1. Publications furnished State departments, bureaus, institutions and agencies.—Upon request of any State department, bureau, institution or agency, and upon authorization by the Governor and Council of State, the Secretary of State shall supply to such department, bureau, institution or agency copies of any State publications then available to replace worn, damaged or lost copies and such additional sets or parts of sets as may be requested to meet the reasonable needs of such departments, bureaus, institutions or agencies, disclosed by the request.

This section shall not authorize the reprinting of any State publications which would not be ordered without reference to the provisions hereof. (1947, c. 639.)

§ 147-47: Repealed by Session Laws 1955, c. 748.

§ 147-48. Sale of Laws and Journals and Supreme Court Reports.—Such Laws and Journals as may be printed in excess of the number directed to be distributed, the Secretary of State may sell at such price as he deems reasonable, not exceeding ten per centum (10%) over the costs for half-bound copies of the Session Laws; and not exceeding ten per centum (10%) in advance of the costs for copies of the Journals.

The Secretary of State shall sell any and all of the Supreme Court Reports, both the current reports and the reprints, at such price as he deems reasonable, not less than one dollar and fifty cents per volume. The Secretary of State may allow to regular licensed booksellers in this State a discount on Laws, Journals and Supreme Court Reports not exceeding twelve and one-half per centum. All proceeds received from sales made pursuant to this section shall be paid into the State treasury. (1941, c. 379, s. 4; 1943, c. 48, s. 4; 1955, c. 978, s. 2.)

Editor's Note.—The 1943 amendment substituted "Session Laws" for "Public Laws" in the first paragraph. The 1955 amendment changed the sales price for the Session Laws.

§ 147-49. Disposition of damaged and unsaleable publications.—The Secretary of State is hereby authorized and empowered to dispose of such damaged and unsaleable North Carolina Supreme Court Reports, House and Senate Journals and Public Laws of various years at a price to be determined by the Secretary of State, the Supreme Court Reporter and the Marshal-Librarian of the Supreme Court. (1939, c. 345.)

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.—Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill ..... 25 copies;
Duke University ..... 25 copies;
Wake Forest College ..... 2 copies;
Davidson College ..... 2 copies;
North Carolina Supreme Court Library ..... 2 copies;
North Carolina College for Negroes ..... 5 copies;
Library of Congress ..... 2 copies;
State Library ..... 5 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes. (1941, c. 379, s. 5; 1955, c. 505, s. 7.)

Editor's Note.—The 1955 amendment added the reference to State Library.

§ 147-51. Clerks of superior courts to furnish inventory of Reports; lending prohibited.—On or before the first Monday in June of each and every year after March 9, 1927, the clerks of the superior courts of the State are required to furnish to the Secretary of State an inventory of the volumes of the Reports of the Supreme Court of North Carolina which they have on hand.

From and after March 9, 1927, the clerks of the superior courts of the State of North Carolina are held officially responsible for the volumes of the North Carolina Supreme Court Reports furnished and to be furnished them by the State.

The said clerks of the various courts shall not lend or permit to be taken from their custody the said Reports, nor shall any person with or without the permission of the said clerks take them from their possession. (1927, c. 259.)

§ 147-52. Reprints of Supreme Court Reports.—The Supreme Court is authorized to have such of the Reports of the Supreme Court of the State of North Carolina as are not on hand for sale, republished and numbered consecutively, retaining the present numbers and names of the Reporters and by means of star pages in the margin retaining the original numbering of the pages. The Supreme Court is authorized and directed to have such Reports reprinted without any alteration from the original edition thereof, except as may be directed by the Supreme Court. The contract for such reprinting and republishing shall be made by the Supreme Court in the manner prescribed in § 7-34. Such republication shall thus continue until the State shall have for sale all of such Reports; and hereafter when the editions of any number or volume of the Supreme Court Reports shall be exhausted, it shall be the duty of the Supreme Court to have the same reprinted under the provisions of this section and § 7-34. In reprinting the Reports that have already been annotated, the annotations and the additional indexes therein shall be retained and such Reports shall be further annotated so as to make the annotations in all reprints complete up to the date of the reprinting thereof. In reprinting Reports the Supreme Court is authorized to provide for, and to secure, such further annotations for Reports that have been heretofore annotated and for the annotating of the Reports that have not been heretofore annotated and the costs thereof as provided in the contract made by the Supreme Court with the annotator selected by it, shall be paid as a part of the cost of reprinting the said Reports. (Code, s. 3634; 1885, c. 309; 1889, c. 473, ss. 1-4, 6; Rev., s. 5361; 1907, c. 503; 1917, cc. 201, 292; C. S., s. 7671; 1923, c. 176; 1929, c. 39, s. 2.)

§ 147-53: Superseded by Session Laws 1943, c. 716.

Editor's Note.—The act superseding this section provided for the final disposition of surplus copies of the Consolidated Statutes.

§ 147-54. Payment of proceeds of sales to Treasurer.—The Secretary of State, as often as now provided by law, shall pay over to the Treasurer of the State the proceeds of any and all sales which may be made by him under authorization of § 147-53. (1933, c. 115, s. 2.)

Editor's Note.—As § 147-53 has been superseded, this section would seem to be obsolete.

§ 147-54.1. Division of Publications; duties.—The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the assistant to the Secretary of State. This Division shall collect, tabulate, annotate, and digest information for the use of members and committees of the General Assembly, and other officials of the State and of the various counties and cities, upon all questions of State, county, and municipal legislation; make references and analytical comparisons of legislation upon similar questions in other states and nations; and have at hand for the use of the members of the General Assembly the laws of other states and nations as

well as those of North Carolina, and such other books, papers, and articles as may throw light upon questions under consideration.

It shall also be the duty of the Division of Publications to classify and arrange by proper indexes, so as to make them accessible, all public bills relating to the aforesaid matters heretofore introduced in the General Assembly. Upon request by members of the General Assembly, the Division shall secure all available information on any particular subject.

The Division shall also perform all such other duties as may be assigned by the Secretary of State.

The several departments of the State government shall, upon request of the Division of Publications, supply said Division with such copies of their reports and other publications as may be necessary to effect exchanges with other states for their publications of a similar character for the use of the said Division. (1915, c. 202, ss. 1, 2; C. S., ss. 6147, 6148; 1939, c. 316.)

Editor's Note.—This section formerly appeared as § 143-167 and was transferred to its present number by Session Laws 1943, c. 543.

ARTICLE 5.

Auditor.

§ 147-55. Salary of Auditor.—The salary of the State Auditor shall be eighteen thousand dollars ($18,000.00) a year, payable monthly. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; c. 994, s. 2; 1911, c. 108, s. 1; c. 136, s. 1; 1913, c. 172; 1919, c. 149; c. 247, s. 7; C. S., s. 3867; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1.)

Editor's Note.—The amendments increased the salary from time to time, the 1963 amendment, effective July 1, 1963, increasing it from $12,000.00 to $18,000.00.

§ 147-56. Office and office hours.—The Auditor shall keep his office at the city of Raleigh, and shall attend thereat between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. (1868-9, c. 270, ss. 69, 70; Code, s. 3353; Rev., s. 5364; C. S., s. 7674.)

§ 147-57. Bond.—The State Auditor shall be placed under an official bond in a penal sum to be fixed by the Governor and Council of State at not less than fifty thousand ($50,000) dollars. Such official bond shall be corporate surety and furnished by a company admitted to do business in the State. The premiums will be paid by the State out of the appropriations to the State Auditor's Office. (1929, c. 337, s. 1.)

§ 147-58. Duties and authority of State Auditor.—The duties and authority of the State Auditor shall be as follows:

(1) The State Auditor shall except as provided in G. S. 143-25 be independent of any fiscal control exercised by the Director of the Budget or the Budget Bureau, and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the duties and responsibilities of his office.

(2) The State Auditor shall be responsible for conducting a thorough post audit of the receipts, expenditures and fiscal transactions of each and every State agency which in any manner handles State funds; "State agency" is hereby defined to mean any State department, institution, board, commission, commissioner, official or officer of the State.

(3) The Auditor shall be responsible for conducting a complete and detailed audit of the fiscal transactions of each and every State agency, except

his own office, at least once each year, such audit to cover the fiscal transactions entered into since the period covered by the previous annual audit of such State agency.

(4) The Auditor is authorized to conduct special audits, in addition to the annual audits, of the accounts of every State agency whenever in his discretion he determines that such is necessary.

(5) The Auditor is authorized to audit at such times as he deems necessary the records of all performances staged on State property under direction of any State agency or wherein any State agency shares in a percentage of gross admission receipts except athletic funds, and the accounts of any private or semi-private agency receiving State aid.

(6) The Auditor shall make special investigations upon written request from the Advisory Budget Commission, or upon written request from the Governor.

(7) Upon completion of each audit and investigation, the Auditor shall report his findings and recommendations to the Advisory Budget Commission, furnishing a copy of such report to the Governor, a copy to the head of the agency to which the report pertains, and copies to such other persons as he may deem advisable.

(8) If the Auditor shall at any time discover any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds, or if at any time it shall come to his knowledge that any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds is contemplated but not consummated, in either case, he shall forthwith report the facts to the Governor with a copy of such report to the Advisory Budget Commission.

(9) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions or recommendations he deems desirable concerning any aspect of such agency's activities and operations.

(10) In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

(11) The Auditor shall require, when deemed necessary, all persons who have received moneys or securities, or have had the disposition or management of any property of the State, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

(12) The Auditor shall require all persons who have received and moneys belonging to the State, and who have not accounted therefor, to settle their accounts; upon failure of any person to settle accounts, the Auditor is authorized and directed to call the matter to the attention of the Attorney General and furnish such information as he may direct.

(13) The Auditor shall transmit to the Advisory Budget Commission annually a complete statement of the funds of the State, of its revenues and of the public expenditures during the preceding fiscal year, as revealed by his audits and investigations as herein prescribed, with copies of such statements furnished to the Governor and to such other persons as may be deemed advisable.

(14) The Auditor shall examine as often as may be deemed necessary the accounts of the debits and credits in the bank book kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith

in writing to the Advisory Budget Commission, with copy of such report to the Governor.

(15) The Auditor may examine the accounts and records of any bank or trust company relating to transactions with the State Treasurer, or with any State department, institution, board, commission, officer, or other agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

(16) The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence, files, records, money, investments, and property of any State department, institution, board, commission, officer, or other agency as it relates to the handling of State funds. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request. Should any officer or employee fail to perform the requirements of this section, he shall be guilty of a misdemeanor. The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as it relates to transactions with any department, board, officer, commission, institution, or other agency of the State; provided that such examination shall be limited to those things which might relate to irregularities on the part of any State agency.

(17) The Auditor may, as often as he deems advisable, make a detailed examination of the bookkeeping and accounting systems in use in the various State agencies and make suggestions and recommendations to the agencies for improvements, with a copy of such recommendations transmitted to the Budget Bureau. Any State department, board, commission, institution or agency which plans to change its accounting system must first submit its plan to the Director of the Budget and obtain approval in accordance with provisions of G. S. 143-22; prior to approval of any change in accounting systems, the Director of the Budget shall submit the proposed changes to the Auditor and receive and consider the Auditor's advice and recommendations with respect to such changes.

(18) The Auditor, or his deputy, while conducting an examination authorized by these sections, shall have the power to administer oath to any person whose testimony may be required in any such examination, and to compel the appearance and attendance of such person for the purpose of such an examination. If any person shall willfully swear falsely in such an examination, he shall be guilty of perjury.

(19) The Auditor may appoint a deputy auditor to perform any duties pertaining to the office, and he may appoint a deputy auditor for any specific purpose; provided that any deputy so appointed shall not be authorized to transfer authority to any other person.

(20) The Auditor shall charge and collect from each of the following agencies the actual cost of audit of such agency: North Carolina Rural Rehabilitation Corporation, State Board of Barber Examiners, State Board of Certified Public Accountant Examiners, State Board of Cosmetic Art Examiners, State Board of Registration for Professional Engineers and Land Surveyors, North Carolina Board of Nurse Registration and Nursing Education, North Carolina Board of Opticians, North Carolina Milk Commission, the State Banking Commission, State Highway Commission, Law Enforcement Officers Benefit and Retirement Fund,

Board of Paroles, State Probation Commission, North Carolina Wildlife Resources Commission, Atlantic and North Carolina Railroad, Department of Motor Vehicles, Burial Association Commission, North Carolina Public Employees Social Security Agency, and any other agency which operates entirely within its own receipts from revenue derived from sources other than the general fund. Costs collected under this subsection shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such cost. Amounts collected under this subsection shall be deposited in the general fund as nontax revenue.

(21) Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of pre-audit of State agency expenditures, issuance of warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Budget Bureau. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Budget Bureau, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Budget Bureau. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Budget Bureau the unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Budget Bureau under the provisions of this section.

(22) Nothing under this article shall be construed to affect the right of the Director of the Budget to require information from State agencies under the provisions of article 1, chapter 143 of the General Statutes. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1; 1953, c. 61; 1955, c. 576; 1957, c. 390.)

Cross References.—As to being constitutional office, see Const., Art. III, §§ 1 and 13. As to mandamus by Governor to compel performance of certain duties, see note to § 147-12. As to provision that statutory reference to "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

Editor's Note.—The 1951 amendment rewrote this section. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

The 1955 amendment rewrote this section as changed by the 1953 amendment.

The 1957 amendment rewrote subdivision (20), and by virtue of § 136-1.1, "State Highway Commission" was substituted therein for "State Highway and Public Works Commission."

Mandamus to Compel Issuance of Warrant.—The duty of the Auditor under subdivision (14) is not a ministerial duty but is one involving judgment and discretion, and mandamus will not lie against him for refusal to issue a warrant for payment of a claim he does not approve. Burton v. Furnam, 115 N. C. 166, 20 S. E. 443 (1894).

Where a clerk of the General Assembly had received a warrant for the entire number of days to which he was entitled, at seven dollars per day, he had no right to a writ of mandamus against the Auditor of the State because he refused to give him a warrant for three dollars per day additional for the same number of days for which he had heretofore obtained a warrant. Boner v. Adams, 65 N. C. 639 (1871).

Report to the General Assembly.—The Auditor of the State is not a mere ministerial officer; when a claim is presented to him against the State, he is to decide whether there is a sufficient provision of law for its payment, and if in his opinion there is not sufficient provision of law, he must examine the claim and report the fact, with his opinion to the General Assembly. Boner v. Adams, 65 N. C. 639 (1871).

Cited in Bank v. Worth, 117 N. C. 146, 23 S. E. 160 (1895).

§ 147-59. Warrants to bear limitations; presented within sixty days.—All warrants drawn by the State Auditor or any State department, or agency, bureau, or commission on the Treasurer, shall bear, and there shall be printed upon the face thereof in plain type so as to be easily read, the following words, to-wit: "This warrant will not be paid if presented to the Treasurer after the expiration of sixty (60) days from the date hereof"; and the State Treasurer is hereby prohibited from paying any warrant drawn by the State Auditor, or any State department, or agency, bureau, or commission, unless the same shall be presented within sixty (60) days from the date of such warrant. (1925, c. 246, s. 1; 1945, c. 496, s. 1.)

Cross Reference.—As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.2, 147-58 (21).

Editor's Note.—Prior to the 1945 amendment this section applied only to warrants drawn by the State Auditor.

§ 147-60. Surrender of barred warrant; issue of new warrant.—Any person, firm or corporation holding a warrant drawn by the Auditor which cannot be paid because of the provisions of §§ 147-59 and 147-61 may present the same to the Auditor, and upon satisfactory proof that such person, firm or corporation is the owner thereof and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, may surrender said warrant to the Auditor and cancel the same, whereupon the Auditor is authorized and empowered to issue another warrant for like amount in lieu thereof; or in his discretion, he may validate the original warrant. (1925, c. 246, s. 2; 1945, c. 496, s. 2; 1951, c. 1010, s. 3.)

Cross Reference.—As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.2, 147-58 (21).

Editor's Note.—The 1951 amendment rewrote this section as changed by the 1951 amendment. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

§ 147-61. Warrants issued before March 10, 1925.—Every person, firm or corporation holding a warrant, drawn and issued by the State Auditor prior to March 10, 1925, shall present the same for payment on or before May 1, 1925. If such warrant is not presented to the State Treasurer for payment prior to May 1, 1925, the same shall not be paid, but the holder thereof shall be notified of the provisions of §§ 147-59, 147-60 and 147-61, and upon satisfactory proof that the holder thereof is the proper owner and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, the warrant may be surrendered to the Auditor and cancelled and the Auditor is authorized and empowered to issue another and new warrant for like amount in lieu thereof. (1925, c. 246, s. 3.)

Cross Reference.—As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.2, 147-58 (21).

§ 147-62. Assignments of claims against State.—All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to

assignments made in favor of hospitals, building and loan associations, and life insurance companies: Provided further, that employees of the State or of any of its institutions, departments, bureaus or commissions who are members of the State Employees Credit Union may in writing authorize any periodical payment or obligation to such Credit Union to be deducted from their salaries or wages as such employee, and such deductions shall be made and paid to said Credit Union as and when said salaries and wages are payable: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, motor vehicle inspectors of the Revenue Department, and State prison guards, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128.)

Editor's Note.—The first proviso was added by the 1935 amendment, the 1939 amendment added the second proviso, and the 1941 amendment added the last proviso.

For assignments in general, see 13 N. C. Law Rev. 113, 118.

§ 147-63. Warrants for money paid into treasury by mistake.—Whenever the Governor and Council of State are satisfied that moneys have been paid into the treasury through mistake, they may direct the Auditor to draw his warrant therefor on the Treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes nor to payments on bonds and mortgages. (1868-9, c. 270, s. 66; Code, s. 3351; Rev., s. 5366; C. S., s. 7676.)

Cross Reference.—As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.2, 147-58 (21).

§ 147-64. Warrants for surplus proceeds of sale of property mortgaged to State.—Whenever any real property mortgaged to the State, or bought in for the benefit of the State, of which a certificate shall have been given to a former purchaser, is sold by the Attorney General on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the State, with costs and expenses, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract. The Auditor shall not draw his warrant for such surplus money but upon satisfactory proof, by affidavit or otherwise, of the legal rights of such person. (1868-9, c. 270, s. 68; Code, s. 3352; Rev., s. 5368; C. S., s. 7678.)

Cross Reference.—As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.2, 147-58 (21).

ARTICLE 6.

Treasurer.

§ 147-65. Salary of State Treasurer.—The salary of the State Treasurer shall be eighteen thousand dollars ($18,000.00) a year, payable monthly. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1.)

Cross References.—As to bonds required of State Treasurer, see § 128-8. As to settlement of affairs of inoperative boards and agencies, see §§ 143-267 through 143-272.

Editor's Note.—The amendments increased the salary from time to time, the 1963 amendment, effective July 1, 1963, increasing it from $12,000.00 to $18,000.00.

Bond of Clerk Not Official Bond.—A bond by a clerk executed to the State Treasurer individually is not an official bond and does not extend beyond the term during which the clerk was appointed. Jackson v. Martin, 136 N. C. 196, 48 S. E. 672 (1904).

Same—Limitation.—An action against the sureties on the bond of a clerk for defalcations in the office of the State Treasurer is barred after three years. Jackson v. Martin, 136 N. C. 196, 48 S. E. 672 (1904).

§ 147-66. Office and office hours.—The Treasurer shall keep his office at the city of Raleigh, and shall attend there between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary. (1868-9, c. 270, ss. 80, 81; Code, s. 3362; Rev., s. 5369; C. S., s. 7679.)

§ 147-67. Bonds of Treasurer's clerks.—The clerks in the Treasurer's office shall enter into good and sufficient bonds, payable to the State of North Carolina, as provided in § 128-8. These several bonds shall be in addition and cumulative to the official bond of the State Treasurer, and shall not be construed to affect in any way the liability of the State Treasurer upon his official bond. (Rev., s. 289; 1919, c. 8; C. S., s. 7681; 1921, c. 175.)

§ 147-68. To receive and disburse moneys; to make reports.—(a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the Treasury of this State; and to pay all warrants legally drawn on the Treasurer by the State Disbursing Officer or the State Auditor or the State Treasurer in the lawful exercise of their duties and responsibilities.

(b) No moneys shall be paid out of the treasury except on warrant of the State Disbursing Officer or the State Auditor or the State Treasurer, and unless there is a legislative appropriation or authority to pay the same.

(c) It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

(d) The Treasurer shall report to the Governor and Advisory Budget Commission annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

(e) The State Treasurer shall except as provided in G. S. 143-25 be independent of any fiscal control exercised by the Director of the Budget or the Budget Bureau and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C. S., s. 7682; 1955, c. 577.)

Cross References.—As to funds of inoperative boards and agencies, see §§ 143-267 through 143-272. As to provision that statutory reference to "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

Editor's Note.—The 1955 amendment rewrote this section.

Duty to Pay Warrants.—As it is the duty of the State Treasurer to keep his accounts, showing the transactions of each fiscal year ending December 31st, he has no right to pay out money except upon proper warrants drawn upon the proper funds in the treasury. Arendell v. Worth, 125 N. C. 111, 34 S. E. 232 (1899).

The Treasurer is not required to pay any and every warrant which the Auditor may sign, but only those which are legally drawn, and the fact that the Auditor finds that a claim for which he issues a warrant on the Treasurer is authorized by law is not binding upon or a protection to the latter. Bank v. Worth, 117 N. C. 146, 23 S. E. 160 (1895).

Mandamus for Payment of Warrant.—The State Treasurer is not liable to a mandamus for refusing to pay a warrant improperly drawn, and he is entitled to a mandamus to enforce the drawing of proper warrants upon the proper funds before paying them, as they are his vouchers. Arendell v. Worth, 125 N. C. 111, 34 S. E. 232 (1899).

Same—When Fraud Is Alleged.—Where the State Treasurer denies the correctness of a claim audited by the State Auditor and alleges fraud in the creation of the indebtedness or that the services for which a warrant was issued were not rendered, mandamus will not lie to compel him to pay it, the question raised by such claim being for the legislature, and not the courts, to determine. Garner v. Worth, 122 N. C. 250, 29 S. E. 364 (1898).

Mandamus without Warrant.—Mandamus will not lie to compel the Treasurer to pay a claim where the Auditor has not issued a warrant therefor, as the Treasurer can only pay on such warrant. Burton v. Furnam, 115 N. C. 166, 20 S. E. 443 (1894).

Court Compelling Payment of Claim.—The courts cannot direct the State Treasurer to pay a claim against the State, how-

ever just and unquestioned, when there is no legislative appropriation to pay the same; and when there is such an appropriation the coercive power is applied not to compel the payment of the State liability but to compel a public servant to discharge his duty by obedience to a legislative enactment. Garner v. Worth, 122 N. C. 250, 29 S. E. 364 (1898).

Applied in Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

§ 147-69. Deposits of State funds in banks regulated.—Banks having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No bank shall make any charge for exchange or for the collection of any warrant drawn on the Treasurer or for the transmission of any funds which may come into the hands of the State Treasurer, or any other State department, agency, bureau or commission; provided, that banks organized under the laws of the State of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the Commissioner of Revenue the proceeds of collections of revenue, not over twenty cents (20¢) for each check in the amount of not over one thousand dollars ($1,000.00), and for each check for an amount in excess of one thousand dollars ($1,000.00), such banks may charge not over twenty cents (20¢) plus one-tenth of one per cent (1%) of the amount of such check in excess of one thousand dollars ($1,000.00). The Commissioner of Banks and the bank examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit.

The payment of interest on deposits of State money in any bank or banks shall be controlled by the Governor and Council of State, who shall have full power and authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon. The interest collected on the bank balances from time to time shall be paid to the State's general fund; but the Treasurer shall credit to the funds of the Agricultural Department all money which is received as interest on the funds of the Department, and he shall notify the Commissioner of Agriculture when such amounts are paid. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C. S., s. 7684; 1931, c. 127, s. 1, c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183.)

Editor's Note.—The 1933 amendment rewrote the first sentence of the second paragraph. The interest rate on State deposits which was temporarily fixed by the 1931 amendment at 2½% was by the 1933 amendment left to determination of the Governor and Council of State and a corresponding change was made in relation to deposit by the Commissioner of Banks of funds from the liquidation of banks. See 11 N. C. Law Rev. 202.

The 1945 amendment rewrote the fourth sentence of the first paragraph, and the 1949 amendment inserted the proviso thereto. For comment on the 1949 amendment, see 27 N. C. Law Rev. 425.

§ 147-69.1. Deposit or investment of surplus State funds; reports of State Treasurer.—It shall be the duty of the State Treasurer, with assistance of the Director of the Budget, on or before the tenth day of each calendar month, and upon request of the Governor or the Council of State, at any other time, to carefully analyze the amount of cash in the general fund of the State and in all special funds credited to any special purpose designated by the General Assembly or held to meet the budgets or appropriations for maintenance and permanent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the State, and to determine in his opinion when the cash in any such funds

is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the Governor and the Council of State. The Governor and the State Treasurer, acting jointly, with the approval of the Council of the State, are hereby authorized and empowered to deposit such excess funds at interest with any official depository of the State upon such terms as may be authorized by applicable laws of the United States and the State of North Carolina, or to invest such excess funds in bonds or certificates of indebtedness or treasury bills of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in certificates of deposit issued by banks or official depositories within the State of North Carolina yielding a return at rates not less than U. S. treasury notes and certificates of indebtedness of comparable maturities. Notwithstanding the above, if such rates on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturity are higher than the rates banks are permitted to pay by federal or State statutes or regulations and if in the judgment of the Governor and the Council of State it would benefit the economy of the State, such excess funds may be invested in certificates of deposit issued by those banks or official depositories within the State of North Carolina, whose ratio of total loans to total deposits is equal to or exceeds thirty-nine per cent (39%) on the date of application for new deposits or renewal of outstanding certificates of deposit, yielding a return at the maximum rate permitted by statutes or regulations: Provided further, however, that if the rates available on United States treasury bonds, notes, certificates of indebtedness or bills exceed the rates banks are permitted to pay by as much as one-half of one per cent (½ of 1%), the funds invested with banks on certificates of deposit shall be withdrawn and invested otherwise as provided by this section; provided further that any such bank shall, on its application for such funds certify that the sum applied for is needed to make loans to farmers or domestic industries and will not be invested by the applicant in U. S. treasury bonds, notes, certificates of indebtedness or bills. The said funds shall be so invested that in the judgment of the Governor and State Treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the State's general fund; provided, however, that on and after July 1, 1961, all interest accruing on the monthly balance of the highway fund of the State shall be paid to the State Highway Fund.

The State Treasurer shall include in his biennial reports to the General Assembly a full and complete statement of all funds invested by virtue of the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the General Assembly with reference thereto.

The State Treasurer shall also cause to be prepared a quarterly statement on or before the tenth day of each January, April, July and October in each year. This statement shall show the amount of cash on hand, the amount of money on deposit and the name of each depository, and all investments for which he is in any way responsible. This statement shall be delivered to the Governor as Director of the Budget, and a copy thereof shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2.)

Editor's Note.—The 1949 amendment rewrote this section.

The 1957 amendment inserted in the first paragraph the third sentence and provisos thereto.

The 1961 amendment, effective July 1961, added the proviso at the end of the first paragraph.

§ 147-70. To make short-term notes in emergencies.—Subject to the approval of the Governor and Council of State, the State Treasurer is authorized to make

short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the General Assembly. (1915, c. 168, s. 3; C. S., s. 7685.)

§ 147-71. May demand and sue for money and property of State.—The Treasurer is authorized to demand, sue for, collect and receive all money and property of the State not held by some person under authority of law. (1866, c. 46; Code, s. 3359; Rev., s. 5375; C. S., s. 7688.)

§ 147-72. Ex officio treasurer of State institutions; duties as such.—The Treasurer shall be ex officio the treasurer of the Department of Agriculture, of the North Carolina State College of Agriculture and Engineering, of the North Carolina School for the Deaf and Dumb at Morganton, of the North Carolina Institution for the Deaf and Dumb and the Blind at Raleigh, for the State hospitals (for the insane) at Raleigh, Morganton and Goldsboro and for the State's prison. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees or directors, with the approval of the Governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (1879, c. 240, s. 2; 1881, c. 128, c. 211, s. 9; 1883, c. 156, s. 12, c. 405; Code, ss. 2235, 2251, 3723; 1895, c. 434; 1899, c. 1, s. 11; Rev., s. 5376; 1919, c. 314, s. 6; C. S., s. 7689; 1947, c. 781.)

Editor's Note.—The 1947 amendment struck out "soldiers home" from the list of institutions in the first sentence.

§ 147-73. Office of treasurer of each State institution abolished.—The office of treasurer of each of the several State institutions of which the State Treasurer is ex officio treasurer is hereby abolished. (1929, c. 337, s. 3.)

§ 147-74. Office of State Treasurer declared office of deposit and disbursement.—The office of the State Treasurer is declared to be an office of deposit and disbursement and only such records and accounts as may be necessary to disclose the accountability of the State Treasurer shall be kept. The purpose of this section is to prevent duplication in account and record keeping and such accounts as may be necessary shall be prescribed by the Director of the Budget under the terms of the Executive Budget Act. (1929, c. 337, s. 2.)

§ 147-75. May authorize chief clerk to act for him; Treasurer liable.—The Treasurer may authorize his chief clerk to perform any duties pertaining to the office, except signing checks; but the Treasurer is responsible for the conduct of all his clerks. (1868-9, c. 270, s. 76; Code, s. 3358; Rev., s. 5377; C. S., s. 7690.)

§ 147-76. Liability for false entries in his books.—If the Treasurer of the State shall wittingly or falsely make, or cause to be made, any false entry or charge in any book by him as Treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the Governor, the General Assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with the Auditor, with intent, in any of said instances, to defraud the State or any person, such Treasurer shall be guilty of a misdemeanor,

and fined, at the discretion of the court, not exceeding three thousand dollars, and imprisoned not exceeding three years. (R. C., c. 34, s. 68; Code, s. 1119; Rev., s. 3606; C. S., s. 7691.)

§ 147-77. Daily deposit of funds to credit of Treasurer.—All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State or any agency, department, division or commission thereof, except officers and the clerk of the Supreme Court, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after thirty days' trial. (1925, c. 128, s. 1; 1945, c. 159.)

Editor's Note.—The 1945 amendment struck out "or other designated depository" formerly appearing after "trust company" near the middle of the section.

§ 147-78. Treasurer to select depositories; bond.—The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks or trust company as an official depository of the State, and the said Treasurer shall require of such depository a bond, or in lieu thereof collateral security for such deposit, consisting of such bonds as are approved for investment by the State sinking fund, as provided for in §§ 142-31 to 142-43, payable to the State of North Carolina, in a sufficient amount to protect the State on account of any deposit of State funds made therein. (1925, c. 128, s. 2.)

§ 147-79. Deposits of State funds in banks that have provided for safety of deposits without requiring depository bonds.—Where any bank or trust company, State or national, has come within the provisions of the national banking laws, providing guarantee or insurance or security, in full, for the deposits in such bank or trust company, and for payment thereof upon demand of the depositor, and when thereby such protection is afforded depositors of such bank or trust company, and where any such bank or trust company may be properly designated as a depository for the deposits of moneys of the State of North Carolina, or of any county, city, town, or other political subdivision of the State of North Carolina, it shall be permissible and lawful to deposit the moneys of the State, or of such county, city, town or other political subdivision therein, without requiring of the said bank or trust company to furnish any additional security for the protection of such deposits, or the payment thereof upon demand, as now required by law: Provided, however, that the Council of State shall have previously passed upon the character and extent of the guarantee afforded by the United States banking laws, and shall have approved the same as satisfactory: Provided further, that the approval of such bank or trust company as a depository for moneys of the State of North Carolina must be given by the Council of State, and approval by the Local Government Commission must be secured for such bank or trust company to act as a depository for any county, city, town, or other political subdivision of the State: Provided further, that any action in regard to these matters shall be discretionary with the Council of State as far as this section applies to them, and with the Local Government Commission as far as this section applies to it.

Where the deposits are guaranteed or insured only in part, the bank or trust company receiving such deposits shall be required to deposit bonds or security only to the extent of the unguaranteed portion of said deposits. (1933, c. 461, ss. 1, 1½.)

Editor's Note.—See 11 N. C. Law Rev. 201, for review of this section.

§ 147-80. Deposit in other banks unlawful; liability.—It shall be unlawful for any funds of the State to be deposited by any person, institution, or department

or agency in any place or bank or trust company, other than those so selected and designated as official depositories of the State of North Carolina by the State Treasurer, and any person so offending or aiding and abetting in such offense shall be guilty of a misdemeanor and punished by a fine or imprisonment, or both, in the discretion of the court, and any person so offending or aiding and abetting in such offense shall also immediately become civilly liable to the State of North Carolina in the amount of the money or funds unlawfully deposited, and, at the instance of the State Treasurer, or at the instance of the Governor, the Attorney General shall forthwith institute the civil action in the name of the State of North Carolina against such person or persons, either in the courts of Wake County, according to their respective jurisdiction, or in the county in which said unlawful deposit has been made, according to the selection made by the officer requesting the institution of such action, for the purpose of recovering the amount of the money so unlawfully deposited, with interest thereon at six per cent per annum, and for the cost of said action, and the court in which said action is tried may also tax, as a part of the cost in said action, to the use of the State of North Carolina, a sum sufficient to reimburse the State of North Carolina for all expense incidental to or connected with the preparation and prosecution of such action. (1925, c. 128, s. 3.)

§ **147-81. Number of depositories; contract.**—The State Treasurer is authorized and empowered to select as many depositories in one place and in the State as may appear to him to be necessary and convenient for the various officers, representatives and employees of the State, to comply with the purposes of §§ 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and may make such contracts with said depositories for the payment of interest on average daily or monthly balances as may appear advantageous to the State in the opinion of such Treasurer and the Governor. (1925, c. 128, s. 4.)

§ **147-82. Accounts of funds kept separate.**—In order to preserve and keep them separate, all funds that are now required by law to be kept separate or to be separately administered, both by State departments, institutions, commissions, and other agencies or divisions of the State which collect or receive funds belonging to the State, or funds handled or maintained as trust funds in any form by such department, division or institution shall be evidenced in daily reports by distribution sheets, which shall reflect and show an exact copy of the accounts, showing the distribution of said money kept by such collecting departments, institutions and agencies, and the same shall be entered in the records of the office of the State Treasurer, so as to keep and maintain in the office where the same is first collected or received the same account thereof, and of the distribution thereof, the same records and accounts as are kept in the office of the State Treasurer relating thereto. (1925, c. 128, s. 5.)

§ **147-83. Receipts from federal government and gifts not affected.**—Sections 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84 shall not be held or construed to affect or interfere with the receipts and disbursements of any funds received by any institution or department of this State from the federal government or any gift or donation to any institution or department of the State or commission or agency thereof when either in the act of Congress, relating to such funds received from the federal government, or in the instrument evidencing the said private donation or gift, a contrary disposition or handling is prescribed or required, and the said section shall not apply to any moneys paid to any department, institution or agency, or undertaking of the State of North Carolina, as a part of any legislative appropriation, or allotment from any contingent fund, as provided by law, after the same has been paid out of the State treasury. (1925, c. 128, s. 6.)

§ **147-84. Auditor to furnish forms; reports; refund of excess payments.**—The State Auditor, by and with the advice, consent and approval of the Governor, shall prescribe and furnish all forms necessary for full compliance with §§ 147-77,

147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and the cost of printing and furnishing the same shall be charged in the printing account of the several departments, institutions and agencies receiving and using such forms; and such daily reports shall be made by mail by those departments, institutions and collecting agencies and officers and employees who are not in the city of Raleigh, when required to make such daily deposits and reports; and, in addition to such daily reports, the Treasurer may require a report, as to the amount deposited, by wire, and all such departments, institutions, agencies, officers and employees, who are at or in the city of Raleigh, when required to make such deposits and reports, shall deliver the same, in person or by messenger, to the State Treasurer; whenever taxes of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State treasury in excess of the amount found to be legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate from the head of the department through which said tax was collected, or his successor in the performance of the functions of that department, and the Treasurer shall pay said warrant. (1925, c. 128, s. 7.)

§ **147-85. Fiscal year.**—The fiscal year of the State government shall annually close on the thirtieth day of June. The accounts of the Treasurer, the Auditor and the charitable and penal institutions of the State shall be annually closed on that date. (1868-9, c. 270, s. 77; 1883, c. 60; Code, s. 3360; 1885, c. 334; 1905, c. 430; Rev., s. 5378; C. S., 7692; 1921, c. 229; Ex. Sess. 1921, c. 7; 1925, c. 89, s. 21.)

Editor's Note.—Prior to the 1921 amendment the fiscal year closed on the thirtieth day of November. By the 1925 amendment a sentence providing for examination of the accounts of the Treasurer, Auditor and Insurance Commissioner by a commissioner appointed by the legislature, was deleted.

Applied, as fixing salary of sheriff, in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843 (1931).

§ **147-86. Additional clerical assistance authorized; compensation and duties.**—The State Treasurer, by and with the consent and advice of the Governor and Council of State, is authorized to employ an additional clerk in the Treasury Department, whose compensation and duties shall be fixed by the State Treasurer, by and with the consent and advice of the Governor and Council of State. The compensation of such additional clerk as may be employed pursuant to this section shall be paid as other officers and clerks are paid. (1923, c. 172; C. S., s. 7693(a).)

Article 7.

Commissioner of Revenue.

§ **147-87. Commissioner of Revenue; appointment; salary.**—A Commissioner of Revenue shall be appointed by the Governor on January 1, 1933, and quadrennially thereafter. The term of office of the Commissioner shall be four years and until his successor is appointed and qualified. His salary shall be fixed by the Governor, with the approval of the Advisory Budget Commission. (1921, c. 40, ss. 2, 6; 1929, c. 232.)

Cited in Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

§ **147-88. Duties as to revenue laws.**—In addition to the other duties of the Commissioner of Revenue, it shall be his duty to prepare for the legislative committees of the General Assembly such revision of the revenue laws of the State as he may find by experience and investigation expedient to recommend, so that the same may be introduced in the General Assembly and available in printed form for consideration of its members within the first ten days of the session. (1921, c. 40, s. 5.)

Article 8.

Solicitors.

§ **147-89. To prosecute cases removed to federal courts.**—It shall be the duty of the solicitors of this State, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts, to prosecute, or assist in the prosecution of, all criminal cases in said courts where the defendants are charged with violations of the laws of this State, and have moved their cases from the State to the federal courts under the provisions of the various acts of Congress on such subjects. (1874-5, c. 164, s. 1; Code, s. 1239; Rev., s. 5381; C. S., s. 7696.)

Chapter 148.

State Prison System.

Article 1.

Administration by Director of Prisons.

Article 2.

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ARTICLE 1.

Administration by Director of Prisons.

§ 148-1. Prison Department created; State Prison Commission; Director of Prisons.—(a) A State Prison Department is hereby created. All powers and duties respecting the control and management of the State prison system heretofore vested in and imposed upon the State Highway and Public Works Commission are hereby transferred to the State Prison Department. The governing authorities of the Department shall include a State Prison Commission and a Director of Prisons.

(b) The State Prison Commission shall consist of seven members appointed by the Governor, who shall designate one member to serve as chairman. Members of this Commission shall be deemed "commissioners for special purposes" within the meaning of the language of article 14, § 7, of the Constitution of this State. The Governor shall, on July 1, 1957, appoint four members to serve for four years and three members to serve for two years. Subsequent appointments to this Commission shall be made for a term of four years, except those made to fill out an unex-

pired term in case of the death, resignation, or removal of a member. The Governor may remove any member for cause. Prison commissioners shall each receive such per diem and necessary traveling expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions generally. Members who are salaried officials or employees of the State shall not receive any per diem but shall receive their regular salary without deduction for loss of time while engaged in their duties as members of this Commission. The Commission shall meet at least once in each ninety days, and may hold special meetings at any time and place within the State at the call of its chairman, to formulate general prison policies, to adopt prison rules and regulations, to approve budgetary proposals of the State Prison Department, and to advise with the Director of Prisons on matters pertaining to prison administration. The Commission shall keep minutes of all its meetings.

(c) The executive head of the State Prison Department shall be a Director of Prisons appointed by the State Prison Commission, subject to the approval of the Governor. A Director shall be appointed on July 1, 1957, or as soon thereafter as practicable, for a term expiring July 1, 1962. Subsequent appointments to this office shall be made for a term of four years, except those made to fill out an unexpired term in case of the death, resignation, or removal of a Director. The Director shall administer the affairs of the State Prison Department subject to the duly adopted policies and rules and regulations of the Commission. The Commission may remove the Director, with the consent and approval of the Governor, at any time after notice and hearing for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. The Director shall be responsible for the appointment, promotion, demotion, and discharge of other prison system personnel.

(d) The salary of the Director of Prisons shall be set by the Governor subject to the approval of the Advisory Budget Commission. The compensation and duties of other prison system personnel shall be determined by the Director of Prisons in conformity with the provisions of the Executive Budget Act and the State Personnel Act.

(e) Neither the Director of Prisons nor any other person employed in a supervisory capacity in the State prison system shall be permitted to use his position to influence elections or the political action of any person. (1901, c. 472, s. 3; Rev., s. 5388; C. S., s. 7703; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1955, c. 238, s. 1; 1957, c. 349, s. 1.)

Editor's Note.—Public Laws 1933, c. 172, created the State Highway and Public Works Commission, which formerly controlled and managed the State prison system as well as the State highway system.

The 1955 amendment rewrote this section so as to create the office of Director of Prisons and transfer to such Director the administrative and executive powers formerly vested in the State Highway and Public Works Commission.

The 1957 amendment rewrote subsections (a), (b) and (c), creating the State Prison Department and the State Prison Commission and relating to the Director of Prisons.

Suits against Prison Department.—The State Prison Department was created as the State's agency for the performance of an essential governmental function. A suit against the State Prison Department eo nomine is essentially a suit against the State. Hence, absent constitutional or legislative authority therefor, one cannot maintain such a suit. Pharr v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-2. Prison moneys and earnings.—(a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the State Prison Commission, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(b) All revenues from the sale of articles and commodities manufactured or produced by prison enterprises shall be deposited with the State Treasurer to be kept and maintained as a special revolving working-capital fund designated "Prison

Enterprises Fund." The Prison Enterprises Fund shall be used for capital and operating expenditures, including salaries and wages of supervisory personnel, necessary to develop and operate prison industrial and forestry enterprises to provide diversified employment for prisoners. When, in the opinion of the Governor, the Prison Enterprises Fund has reached a sum in excess of requirements for these purposes, the excess shall be used for other purposes within the State prison system or shall be transferred to the general fund as the Governor may direct. (1901, c. 472, s. 7; Rev., s. 5389; C. S., s. 7704; 1923, c. 156; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 2.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 148-3. Prison property.—(a) The State Prison Department shall, subject to the provisions of G. S. 143-341, have control and custody of all unexpended surplus highway funds previously allocated for prison purposes and all property of every kind and description now used by or considered a part of units of the State prison system, except vehicles used on a rental basis. The property coming within the provisions of this section shall be identified and agreed upon by the executive heads of the highway and prison systems, or by their duly authorized representatives. The Governor shall have final authority to decide whether or not particular property shall be transferred to the Prison Department in event the executive heads of the two systems are unable to agree.

(b) Property, both real and personal, deemed by the Prison Department to be necessary or convenient in the operation of the State prison system may, subject to the provisions of G. S. 143-341, be acquired by gift, devise, purchase, or lease. The Prison Department may, subject to the provisions of G. S. 143-341, dispose of any prison property, either real or personal, or any interest or estate therein. (1901, c. 472, ss. 2, 6; Rev., s. 5392; C. S., s. 7705; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1957, c. 349, s. 3.)

Editor's Note.—The 1943 amendment rewrote this section.

The 1957 amendment rewrote this section.

Operation of Prison on Particular Site Is Discretionary with Commission.—Whether the maintenance and operation of a prison on a particular site shall be conducted either as at present, or as enlarged by the construction of additional buildings and facilities, or as a "minimum security prison," is a matter for determination by the State Prison Commission in the exercise of its discretion, and the court has no power to substitute its discretion for that of the Commission; and, in the absence of fraud, manifest abuse of discretion or conduct in excess of lawful authority, the court has no power to intervene. Pharr v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

A prison is not a nuisance per se. Hence, the construction of a prison on a site selected by public officials pursuant to statutory authority will not be enjoined. Pharr v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-4. Control and custody of prisoners.—The Director of Prisons shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Prison Department, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Director of Prisons or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Director shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Em-

ployees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Director of Prisons for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109.)

Editor's Note.—The 1955 amendment rewrote this section, which formerly provided for management of convicts and prison property by the State Highway and Public Works Commission.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

The 1959 amendment added the last two sentences.

Stated in Pharr v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

Cited in State v. Davis, 253 N. C. 86, 116 S. E. (2d) 365 (1960).

§ 148-5. Director to manage prison property.—The Director of Prisons shall manage and have charge of all the property and effects of the State prison system, and conduct all its affairs subject to the provisions of this chapter and the rules and regulations legally adopted for the government thereof. (1933, c. 172, s. 4; 1955, c. 238, s. 3.)

Editor's Note.—The 1955 amendment rewrote this section, which formerly provided for control over prison property by the State Highway and Public Works Commission.

Cited in Pharr v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-6. Custody, employment and hiring out of convicts.—The State Prison Department shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The Department shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the Department: Provided, however, that no female convict shall be worked on public roads or streets in any manner. (1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; Rev., s. 5391; C. S., s. 7707; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.—By the 1925 amendment the provision for work on any property owned by the State replaced a provision for work on property owned by the State Prison. And a former provision restricting prisoners to be hired out to those not necessary to be detained in the prison near Raleigh was deleted by the amendment.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

Predicate of Section.—This section and §§ 148-26 and 148-33.1, as well as provisions with reference to paroles contained in article 4 of this chapter, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest employment and become law abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-7. Inspection of mines.—The State Prison Department is hereby authorized, in its discretion, to have monthly inspection made of all mines in North Carolina in which State convicts are or may be employed and to employ for this

purpose the services of an accredited mine inspector approved by the United States Bureau of Mines. (1929, c. 292, ss. 1, 2; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-8. Automobile license tags to be manufactured by Department.—The State Prison Department is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Prison Department for the State automobile license tag requirements from year to year.

The price to be paid to the State Prison Department for such tags shall be fixed and agreed upon by the Governor, the State Prison Department, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1941, c. 36; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-9. State Board of Public Welfare to supervise prison.—The State Board of Public Welfare shall exercise a supervision over the State prison as contemplated by the Constitution, under proper rules and regulations, to be prescribed by the Governor. (1925, c. 163; 1933, c. 172; 1957, c. 100, s. 1.)

Editor's Note.—The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 148-10. State Board of Health to supervise sanitary and health conditions of prisoners.—The State Board of Health shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Prison Department, and shall make periodic examinations of the same and report to the State Prison Department the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; C. S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; 1957, c. 349, s. 10.)

Editor's Note.—The 1943 amendment struck out the former last sentence which provided: "The Commission shall do such things as may be necessary to carry out the recommendations of the Board of Health."

The 1957 amendment substituted "State Prison Department" for "Division of Prisons" and for "State Highway and Public Works Commission."

ARTICLE 2.

Prison Regulations.

§ 148-11. Authority to make regulations.—The Director shall propose rules and regulations for the government of the State prison system, which shall become effective when approved by the State Prison Commission. The Director shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C. S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4.)

Editor's Note.—The 1955 amendment rewrote this section, which formerly authorized the adoption of regulations by the State Highway and Public Works Commission.

The 1957 amendment rewrote the first sentence.

This section is constitutional. State v. Revis, 193 N. C. 192, 136 S. E. 346, 50 A. L. R. 98 (1927); State v. Carpenter, 231

N. C. 229, 56 S. E. (2d) 713 (1949).

Immunity of Prison Official from Prosecution.—The fact that disciplinary punishment inflicted on a prisoner by a prison official was administered in accordance with the rules and regulations of the former State Highway and Public Works Commission did not render the prison official immune to prosecution for assault unless the particular regulation relied on was within the statutory authority of the Commission. State v. Carpenter, 231 N. C. 229, 56 S. E. (2d) 713 (1949).

§ 148-12. Classification of prisoners.—The rules and regulations for the government of the State prison system shall provide for initial classification and periodic reclassification of prisoners, and for classification and conduct records to be kept on all prisoners held in the system. Any prisoner confined in the State prison system while under a sentence to imprisonment imposed upon conviction of a felony shall be classified and treated as a convicted felon even if, before beginning service of the felony sentence, such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 5; 1959, c. 50.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1959 amendment added the second sentence.

§ 148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc.—The rules and regulations for the government of the State prison system may contain provisions relating to grades of prisoners, rewards and privileges applicable to the several classifications of prisoners as an inducement to good conduct, allowances of time for good behavior, the amount of cash, clothing, etc., to be awarded prisoners after their discharge or parole. (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409; 1955, c. 238, s. 6.)

Editor's Note.—The 1955 amendment rewrote this section.

Cited in In re Swink, 243 N. C. 86, 89 S. E. (2d) 792 (1955).

§§ 148-14 to 148-17: Repealed by Session Laws 1943, c. 409.

§ 148-18. Money and other allowances for prisoners discharged; certificates of competency.—All prisoners upon being discharged, except short-term prisoners convicted of misdemeanors, paroled or pardoned from prison, shall be given a small sum of money, transportation to the place in North Carolina designated in parole or discharge papers, and sufficient clothing for neat and comfortable appearance. If any prisoner demonstrated during his prison service that he is competent or proficient in any gainful trade, he shall also be given upon his discharge, parole, or pardon a certificate of competency in such trade signed by the proper prison authorities. (1935, c. 414, s. 19.)

§ 148-19. Prisoners examined for assignment to work.—Each prisoner committed to the charge of the State Prison Department shall be carefully examined by a competent physician in order to determine his physical and mental condition, and his assignment to labor and the work he is required to do shall be dependent upon the report of said physician as to his physical and mental capacity. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-20. Corporal punishment of prisoners prohibited.—It is unlawful for the Director of Prisons or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1.)

Cross Reference.—As to control of county convicts, see § 153-196.

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State

Highway and Public Works Commission."

The 1963 amendment rewrote this section, which formerly permitted whipping or flogging under certain circumstances.

Whipping formerly permitted.—For construction of section prior to 1963, before which whipping was permitted, see State v. Nipper, 166 N. C. 272, 81 S. E. 164 (1914); State v. Mincher, 172 N. C. 895, 90 S. E. 429 (1916); State v. Revis, 193 N. C. 192, 136 S. E. 346 (1927).

§ **148-21:** Repealed by Session Laws 1963, c. 1174, s. 5.

§ **148-22. Recreation and instruction of prisoners.**—The Director of Prisons shall arrange certain forms of recreation for the prisoners, and arrange so that the prisoners during their leisure hours between work and time to retire shall have an opportunity to take part in games, to attend lectures, and to take part in other forms of amusement that may be provided by the Director. The Director shall organize classes among the prisoners so that those who desire may receive instruction in various lines of educational pursuits. He shall utilize, where possible, the services of the prisoners who are sufficiently educated to act as instructors for such classes; such services, however, shall be voluntary on the part of the prisoner. This section shall apply to the State prison and to the State farms and State camps. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission" at the beginning of the first sentence and "Director" for "Commission" at the end of the first sentence. It also substituted "Director" for "Commission" at the beginning of the second sentence and "He" for "They" at the beginning of the third sentence.

§ **148-22.1. Educational facilities and programs for selected inmates.**—(a) The State Prison Department is authorized to take advantage of aid available from any source in establishing facilities and developing programs to provide inmates of the State prison system with such academic and vocational education as seems most likely to facilitate the rehabilitation of these inmates and their return to free society with attitudes, knowledge, and skills that will improve their prospects of becoming law-abiding and self-supporting citizens. The State Department of Public Instruction is authorized to cooperate with the State Prison Department in planning academic and vocational education of prison system inmates, but the State Department of Public Instruction is not authorized to expend any funds in this connection.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational education, the State Prison Department shall give priority to meeting the needs of inmates who are less than twenty-one years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a regular parole. These inmates shall be given appropriate tests to determine their educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them. (1959, c. 431.)

§ **148-23. Prison employees not to use intoxicants or profanity.**—No one addicted to the use of intoxicating liquors shall be employed as superintendent, warden, guard, or in any other position connected with the State Prison Department, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of intoxicating liquors, shall at once cease to be an employee of any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the State Prison Department who curses a prisoner under his charge shall at once cease to be an employee and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; C. S., s. 7733; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-24. Religious services; Sunday school.—The Director of Prisons shall make such arrangements as are necessary to hold religious services for the prisoners in the State prison and in the State farms and camps, on Sunday and at such other times as may be deemed wise. Attendance of the prisoners at such religious services shall be voluntary. The Director shall if possible secure the visits of some minister at the hospital to administer to the spiritual wants of the sick. In order to provide religious worship for the prisoners confined in the State prison, known as the Caledonia Farm, the Director shall employ a resident minister of the gospel and provide for his residence and support. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163, c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission" in the first sentence and "Director" for "Commission" in the third and fourth sentences.

§ 148-25. Director to investigate death of convicts.—The Director of Prisons, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Director may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C. S., s. 7746; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission" and "Director" for "Commission."

ARTICLE 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners.—(a) It is declared to be the public policy of this State to provide diversified employment for all able-bodied inmates of the State prison system in work for the public benefit that will reduce the cost of their keep while enabling them to acquire or retain skills and work habits needed to secure honest employment after their release.

(b) As many of the male prisoners available and fit for road work shall be employed in the maintenance and construction of the public roads of the State as can be used for this purpose. The number of prisoners to be kept available for work on the public roads and the amount to be paid for this labor supply shall be agreed upon by the governing authorities of the State's highway and prison systems for enough in advance of each budget to permit proper provisions to be made in the requests for appropriations submitted by each agency. The Governor shall decide these questions in event of disagreement between the two agencies.

(c) As many of the male prisoners available and fit for forestry work shall be employed in the development and improvement of State-owned forests as can be used for this purpose by the agencies controlling these forests.

(d) The remainder of the able-bodied inmates of the State prison system shall be employed so far as practicable in prison industries and agriculture, giving preference to the production of food supplies and other articles needed by State-supported institutions or activities.

(e) The State Prison Department may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Prison Department may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Director of the Department of Conservation and Development as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall

be fed, clothed, quartered, guarded, and otherwise cared for by the Prison Department. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5.)

Editor's Note.—For review of this section and those following, see 11 N. C. Law Rev. 252.

The 1957 amendment rewrote this section.

Predicate of Section.—See note with same catchline under § 148-6.

Applied in State v. Cooper, 238 N. C. 241, 77 S. E. (2d) 695 (1953).

§ 148-27. Women prisoners; limitations on labor of prisoners.—The State Prison Department may provide suitable quarters for women prisoners and arrange for work suitable to their capacity; and the several courts of the State may assign women convicted of offenses, whether felonies or misdemeanors, to these quarters. No woman prisoner shall be assigned to work under the supervision of the State Prison Department whose term of imprisonment is less than six months, or who is under sixteen years of age. (1931, c. 145, s. 32; 1933, c. 39, c. 172, s. 18; 1935, c. 257, s. 3; 1943, c. 409; 1953, c. 1230; 1957, c. 349, s. 10.)

Editor's Note.—The 1935 amendment rewrote this section.

The 1943 amendment transferred from the end of this section to the end of § 148-30 the following language: "No male person shall be so assigned whose term of imprisonment is less than thirty days." It also struck out the following proviso: "Provided, that in criminal actions in which a justice of the pease has final jurisdiction, no county shall be liable for or taxed with any costs."

The 1953 amendment, effective July 1, 1953, substituted "sixteen" for "eighteen" near the end of the second sentence.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

Quarters for Women Provided at Central Prison.—In sentencing a feme defendant convicted of a misdemeanor, the court may designate the place of imprisonment as the quarters provided by the State Highway and Public Works Commission (now State Prison Department) for women prisoners, and upon a finding that such quarters are maintained in the central prison at Raleigh, order defendant's imprisonment in such quarters at that place. State v. Cagle, 241 N. C. 134, 84 S. E. (2d) 649 (1954).

Cited in State v. Brown, 252 N. C. 366, 113 S. E. (2d) 584 (1960).

§ 148-28. Sentencing of prisoners to central prison.—The several judges of the superior courts of this State are hereby given express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offense or the character or condition of the defendant makes it advisable to do so, to sentence such person to the central prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the central prison. (1933, c. 172, s. 7.)

Only Felons Sentenced to Central Prison.—A defendant may be sentenced to the central prison only upon conviction of a felony. State v. Cagle, 241 N. C. 134, 84 S. E. (2d) 649 (1954).

Possession of non-taxpaid whiskey, possession of such whiskey for the purpose of sale, and the selling of such whiskey, are misdemeanors, and sentence of defendant, upon conviction, to be confined in the State's prison is not sanctioned by law, and the cause must be remanded for proper sentence. State v. Floyd, 246 N. C. 434, 98 S. E. (2d) 478 (1957).

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.—The sheriff having in charge any prisoner sentenced to the central prison at Raleigh shall send him to the central prison within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the Auditor as true copies of those on file in his office. The State is not liable for the expenses of maintaining convicts until they have been received by the State Prison Department authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception. (1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3;

1874-5, c. 107, s. 3; Code, ss. 3432, 3437, 3438; Rev., ss. 5398, 5399, 5400; C. S., ss. 7718, 7719, 7720; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

Expense of Conveying.—This section only applies to expense of maintenance and does not apply to expense of conveying convicts to the penitentiary. By the acts of 1869-70 it was especially provided that the expense of conveying should be paid by the State and this section did not repeal that act. Taylor v. Adams, 66 N. C. 338 (1872).

§ 148-30. Sentencing to public roads.—In all cases not provided for in §§ 148-28 and 148-32 the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the State Prison Department, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the Department as he may be advised by them is the proper person to receive such notice. Whereupon, the Department shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefore, and deliver them to such camp or station as the proper authorities of the Department shall designate: Provided, however, the Department shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. No male person shall be so assigned whose term of imprisonment is less than thirty days. (1933, c. 172, s. 8; 1943, c. 409; 1957, c. 349, s. 10.)

Cross Reference.—See note to § 14-335.

Editor's Note.—The 1943 amendment added the last sentence. The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-31. Maintenance of central prison; warden; powers and duties.—The central prison shall be maintained in such a manner as to conform to all the requirements of article 11 of the State Constitution, relating to a State's prison. A suitable person shall be appointed warden of the central prison, and he shall succeed to and be vested with all the rights, duties, and powers heretofore vested by law in the superintendent of the State's prison or the warden thereof with respect to capital punishment, or any matter of discipline of the inmates of the prison not otherwise provided for in this article. (1933, c. 172, s. 14.)

§ 148-32. Prisoners may be sentenced to work on city and county properties; Department may provide prisoners for county.—Any county, city or town that operates farms, parks, or other public grounds by convict labor may retain a sufficient number of prisoners for the operation of such properties, and the judges in the courts of such counties, cities, or towns, in lieu of sentencing prisoners to jail to be assigned to work under the State Prison Department, shall sentence a sufficient number to the county jail to be assigned to work on such county, city or town properties for the necessary operation thereof; and courts may also sentence prisoners to the county jail to be assigned to work at the county home or other county-supported institution.

The Department may in its discretion provide prison labor upon terms and conditions agreed upon from time to time for doing specific tasks of work for the several county homes, county farms, or other county owned properties, but prisoners assigned to such work shall be at all times under the control and custody of a duly authorized agent of the Department. (1931, c. 145, s. 30; 1933, c. 172, s. 31; 1939, c. 243; 1957, c. 349, s. 10.)

Cross Reference.—See note to § 14-335.

Editor's Note.—Prior to the 1957 amendment this section referred to the former State Highway and Public Works Commission and the former Division of Prisons.

§ 148-33. Prison labor furnished other State agencies.—The State Prison Department may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of § 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. Provided, further, that notwithstanding any provisions of law contained in this article or in this chapter, no male prisoner or group of male prisoners may be assigned to work in any building utilized by any State department, agency, or institution where women are housed or employed unless a duly designated custodial agent of the Director of Prisons is assigned to the building to maintain supervision and control of the prisoner or prisoners working there. (1933, c. 172, s. 30; 1957, c. 349, s. 10; 1961, c. 966.)

Editor's Note.—The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission." The 1961 amendment added the last proviso.

§ 148-33.1. Sentencing, quartering, and control of prisoners with work release privileges.—(a) Whenever a person is sentenced to imprisonment for a term not exceeding five years to be served in the State prison system, the presiding judge of the sentencing court may recommend to the State Prison Department that the prisoner be granted the option of serving the sentence under the work release plan as hereinafter authorized.

(b) The Board of Paroles of this State may authorize the State Prison Department to grant work release privileges to any inmate of the State prison system serving a term of imprisonment: Provided, in any case where the inmate being considered for work release privileges has not yet served a fourth of his sentence if determinate or a fourth of his minimum sentence if indeterminate, the Board of Paroles shall not authorize the Prison Department to grant him work release privileges without considering the recommendations of the presiding judge of the court which imposed the sentence.

(c) The State Prison Department shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for quartering prisoners with work release privileges. In areas where facilities suitable for this purpose are not available within the State prison system when needed, the State Prison Department may contract with the proper authorities of political subdivisions of this State for quartering in suitable local confinement facilities prisoners with work release privileges. No prisoner shall be granted work release privileges until suitable facilities for quartering him have been provided in the area where the prisoner has employment or the offer of employment.

(d) The State Prison Department is authorized and directed to establish a work release plan under which an eligible prisoner may be released from actual custody during the time necessary to proceed to the place of his employment, perform his work, and return to quarters designated by the prison authorities. No prisoner shall be granted work release privileges except upon recommendation of the presiding judge set forth in the judgment of imprisonment or written authorization of the Board of Paroles. If the prisoner shall violate any of the conditions prescribed by prison rules and regulations for the administration of the work release plan, then such prisoner may be withdrawn from work release privileges, and the prisoner may be transferred to the general prison population to serve out the remainder of his sentence. Rules and regulations for the administration of the work release plan shall be established in the same manner as other rules and regulations for the government of the State prison system.

(e) The State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Prison Department their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Prison Department shall

(1) Allow the prisoner to draw from the balance a sufficient sum to cover his incidental expenses,

(2) Retail to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him on his release from prison,

(3) Cause to be paid through the county department of public welfare such part of any additional balance as is needed for the support of the prisoner's dependents.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The State Board of Public Welfare is authorized to promulgate uniform rules and regulations governing the duties of county welfare departments under this section.

(g) No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system while working in the free community or going to or from such employment.

(h) Any prisoner employed under the provisions of this section shall not be entitled to any benefits under Chapter 96 of the General Statutes entitled "Employment Security" during the term of the sentence. (1957, c. 540; 1959, c. 126; 1961, c. 420; 1963, c. 469, ss. 1, 2.)

Editor's Note.—The 1959 amendment rewrote subsections (a) through (d).

The 1961 amendment deleted the words "apart from prisoners serving regular sentences" formerly appearing at the end of the first sentence of subsection (c). It also deleted the words "apart from other prisoners" formerly appearing after the words "him" in the third sentence of such subsection. The amendatory act provided that it was its purpose and intent "to allow the State Prison Department to determine the extent to which it is necessary and practicable to quarter prisoners with work release privileges apart from other prisoners."

The 1963 amendment deleted the words "not exceeding five years" formerly immediately following the word "imprisonment" in subsection (b). It also rewrote the second sentence of subsection (f).

Predicate of Section.—See same catchline under § 148-26.

§§ **148-34, 148-35:** Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-36. Director of Prisons to control prison camps.—All prison camps established or acquired by the State Prison Department shall be under the administrative control and direction of the Director of Prisons, and operated under rules and regulations adopted and approved as provided in G. S. 148-11. Subject to such rules and regulations, the Director shall establish grades for prisoners according to conduct, and so far as possible introduce the honor system, and may transfer honor prisoners to honor camps. Prisoners may be transferred from one district camp to another, and the Director of Prisons may where it is deemed practical to do so establish separate camps for white prisoners and colored prisoners. In each district camp, quarters shall be provided for the care and maintenance of such prisoners as may be sick or in need of special care. For each camp, a physician may be employed for such portion of his time as may be necessary, and prisoners may be used as attendants or nurses. Prisoners classified as having special qualifications to perform labor other than labor upon the public roads may be assigned to such special duties as the Director may determine. Personnel for such camps shall be employed by the Director of Prisons as provided in G. S. 148-1. (1931, c. 145, s. 28;

1931, c. 277, s. 8; 1933, c. 46, ss. 3, 4; 1933, c. 172, ss. 4, 17; 1943, c. 409; 1955, c. 238, s. 7; 1957, c. 349, s. 10.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-37. Additional prison camps authorized.—The State Prison Department may establish such additional camps as are necessary for use by the Department, such camps to be either of a permanent type of construction, or of temporary or movable type as the Department may find most advantageous to the particular needs, to the end that work to be done by the prisoners under its supervision may be so distributed throughout the State as to render their employment most economical and profitable, the Department to be the sole judges of the type and character of such buildings without the control of any other department. For this purpose, the Department may purchase or lease camp sites and suitable lands adjacent thereto and erect necessary buildings thereon, all within the limits of allotments as approved from time to time by the Budget Bureau for this purpose. (1933, c. 172, s. 19; 1957, c. 349, s. 10.)

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

Editor's Note.—Prior to the 1957 amendment this section referred to the former State Highway and Public Works Commission and the former Division of Prisons.

§§ **148-38, 148-39:** Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-40. Recapture of escaped prisoners.—The rules and regulations for the government of the State prison system may provide for the recapture of convicts that may escape, or any convicts that may have escaped from the State's prison or prison camps, or county road camps of this State, and the State Prison Department may pay to any person recapturing an escaped convict such reward or expense of recapture as the regulations may provide. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the State Prison Department. (1933, c. 172, s. 21; 1955, c. 238, s. 8; 1957, c. 349, s. 10.)

Editor's Note.—The 1955 amendment rewrote the first sentence.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission" in the first sentence and for "Division of Prisons" at the end of the section.

Applied in Davis v. North Carolina, 196 F. Supp. 488 (1961), cert. denied 365 U. S. 855, 81 S. Ct. 816, 5 L. Ed. (2d) 819 (1961).

Quoted in State v. Davis, 253 N. C. 86, 116 S. E. (2d) 365 (1960).

Cited in State v. Payne, 213 N. C. 719, 197 S. E. 573 (1938).

§ 148-41. Recapture of escaping prisoners; reward.—The Director of Prisons shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Director shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem advisable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Prison Department and accounted for as a part of the expense of maintaining the State's prisons. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407; 1917, c. 236; 1917, c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; 1955, c. 238, s. 9; c. 279, s. 3; 1957, c. 349, s. 10.)

Cross Reference.—See note to § 148-45.

Editor's Note.—The first 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Com-

mission" in the first sentence, and substituted "Director" for "Commission" in the second sentence. And the second 1955 amendment struck out the former second paragraph.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission" in the last sentence.

§ 148-42. Indeterminate sentences.—The several judges of the superior court are authorized in their discretion in sentencing prisoners for a term in excess of twelve months to provide for a minimum and maximum sentence, and the Director is authorized to consider at least once in every six (6) months the cases of such prisoners that have thus been committed with indeterminate sentences, and to take into consideration the prisoner's conduct, and to authorize his discharge at any time after the service of the minimum term subject to his earned allowance for good behavior which his conduct may justify. (1933, c. 172, s. 24; 1955, c. 238, s. 9.)

Editor's Note.—The 1955 amendment substituted "Director" for "Commission."

Commutation of Indeterminate Sentence.—Where judgment imposing prison sentence of not less than five nor more than seven years was commuted by Governor to a prison sentence of from two years, four months, thirteen days to four years, four months, and thirteen days, such sentence remained an indeterminate sentence, and whether prisoner was to be discharged at the conclusion of the minimum term or some time thereafter prior to the expiration of the maximum term was for determination of the State Highway and Public Works Commission (now Director of Prisons). In re Swink, 243 N. C. 86, 89 S. E. (2d) 792 (1955).

Applied in State v. Cooper, 238 N. C. 241, 77 S. E. (2d) 695 (1953); State v. Lee, 247 N. C. 230, 100 S. E. (2d) 372 (1957).

§ 148-43: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-44. Separation as to sex and age.—The Department shall provide quarters for female prisoners separate from those for male prisoners; and shall provide for separate facilities for youthful offenders as required by §§ 15-210 to 15-215. (1933, c. 172, s. 25; 1947, c. 262, s. 2; 1957, c. 349, s. 10; 1963, c. 1174, s. 2.)

Cross References.—As to segregation of youthful offenders generally, see §§ 15-210 through 15-216. As to prison camp for such offenders, see §§ 148-49.1 through 148-49.5.

Editor's Note.—The 1947 amendment rewrote the provision as to youthful offenders.

Prior to the 1957 amendment this section referred to the former State Highway and Public Works Commission.

Prior to the 1963 amendment this section required separate sleeping and eating places for the different races and sexes.

§ 148-45. Escaping or assisting escape from the State prison system; escape by conditionally and temporarily released prisoners.—(a) Any prisoner serving a sentence imposed upon conviction of a misdemeanor who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year. Any prisoner serving a sentence imposed upon conviction of a felony who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years. Any prisoner convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years. Any prisoner who connives at, aids or assists other prisoners to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned at the discretion of the court. Any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the prisoner is held at the time an offense defined by this statute is committed by such prisoner. Any prisoner convicted of an escape or attempt to escape classified as a felony by this statute shall be immediately classified and treated as a convicted felony even if such prisoner has time remaining to be served in the

State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(b) Any defendant convicted and in the custody of the North Carolina Prison Department and ordered or otherwise assigned to work under the work-release program, G. S. 148-33.1, or any convicted defendant in the custody of the North Carolina Prison Department and on a temporary parole by permission of the State Board of Paroles or other authority of law, who shall fail to return to the custody of the North Carolina Prison Department, shall be guilty of the crime of escape and subject to the provisions of subsection (a) of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, wilful failure to return to an appointed place and at an appointed time as ordered. (1933, c. 172, s. 26; 1955, c. 279, s. 2; 1963, c. 681.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1955 amendatory act, which became effective March 22, 1955, provided in section 4: "The provisions of this act shall be construed to be mandatory rather than directive; but this act does not apply to any offenses committed prior to the effective date thereof, and any such offense is punishable as provided by the statute in force at the time such offense was committed."

The 1963 amendment designated the former section as subsection (a) and added subsection (b).

The criminal offenses defined in this section may be committed only by a person in custody of the State prison system and serving a sentence imposed upon conviction of a criminal offense. State v. Jordan, 247 N. C. 253, 100 S. E. (2d) 497 (1957).

Sufficiency of Indictment.—It is necessary to allege that the escape or attempted escape occurred when defendant was serving a sentence imposed upon conviction of a misdemeanor or of a felony, irrespective of whether the presently alleged escape or attempted escape was alleged to be a first or a second offense. State v. Jordan, 247 N. C. 253, 100 S. E. (2d) 497 (1957).

Quoted in In re Swink, 243 N. C. 86, 89 S. E. (2d) 792 (1955).

§ 148-46. Degree of protection against violence allowed.—When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape. (1933, c. 172, s. 27.)

Editor's Note.—For note on use of deadly force in preventing escape of fleeing minor felon, see 34 N. C. Law Rev. 122.

§ 148-46.1. Inflicting or assisting in infliction of self-injury to prisoner resulting in incapacity to perform assigned duties.—Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, wilfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Prison Department, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the State's prison for a term not exceeding ten years in the discretion of the court. (1959, c. 1197.)

Cross Reference.—As to procedure for treatment of self-inflicted injuries upon prisoners where consent is refused, see § 130-191.1.

§ 148-47. Disposition of child born of female prisoner.—Any child born of a female prisoner while she is in custody shall as soon as practicable be surrendered to the director of public welfare of the county wherein the child was born upon a proper order of the domestic relations court or juvenile court of said county affecting the custody of said child. When it appears to be for the best interest of the child, the court may place custody beyond the geographical bounds of Wake County: Provided, however, that all subsequent proceedings and orders affecting custody of said child shall be within the jurisdiction of the proper court of the county where

the infant is residing at the time such proceeding is commenced or such order is sought: Provided, further, that nothing in this section shall affect the right of the mother to consent to the adoption of her child nor shall the right of the mother to place her child with the legal father or other suitable relative be affected by the provisions of this section. (1933, c. 172, s. 28; 1955, c. 1027; 1961, c. 186.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1961 amendment substituted "director" for "superintendent" near the beginning of the section.

§ 148-48. Parole powers of Board of Paroles unaffected.—Nothing in this chapter shall be construed to limit or restrict the power of the Board of Paroles to parole prisoners under such conditions as it may impose or prevent the reimprisonment of such prisoners upon violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29; 1955, c. 867, s. 8.)

Editor's Note.—The 1955 amendment substituted "Board of Paroles" for "Governor."

§ 148-49. Prison indebtedness not assumed by Commission.—The State Highway and Public Works Commission shall not assume or pay off any part of the deficit of the State prison existing on March 22, 1933. (1933, c. 172, s. 33.)

Cross Reference.—As to transfer to the State Prison Department of functions formerly vested in the State Highway and Public Works Commission, see § 148-1.

Article 3A.

Prison Camp for Youthful and First Term Offenders.

§ 148-49.1. Conversion of "Prisoners of War" Camp at Camp Butner into prison camp for youthful and first term offenders.—The State Department of Mental Health is authorized and empowered to convert the old "Prisoners of War" Camp located on its property at Camp Butner into a modern prison camp or guardhouse with a capacity of one hundred (100) for the purpose of receiving and detaining such youthful and first term prisoners as may be sent it by the Director of Prisons under such rules and regulations as may be jointly adopted by the Director of Prisons and the North Carolina State Department of Mental Health. Should the North Carolina State Department of Mental Health find it more practicable to establish the prison camp or guardhouse on some other property owned by the State at Butner, then, and in such event, such prison camp or guardhouse may be constructed at such other location on property owned by the State at Butner. (1949, c. 297, s. 1; 1951, c. 250; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Cross Reference.—As to segregation of youthful offenders generally, see §§ 15-210 through 15-216.

Editor's Note.—The 1951 amendment added the last sentence.

The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission."

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "State Hospitals Board of Control" and for "Hospitals Board of Control."

§ 148-49.2. "Youthful offender" and "first term offender" defined.—For the purposes of this article a "youthful offender" and a "first term offender" is a person

(1) Who, at the time of imposition of sentence, is less than 25 years of age, and

(2) Who has not previously served a term in any jail or prison. (1949, c. 297, s. 2.)

Judicial Notice.—The courts will take judicial notice of the fact that the "Umstead Youth Center" is a State penal institution authorized under and by virtue of chapter 297, Session Laws of 1949, and maintained for the purpose of receiving and detaining youthful and first term prisoners. Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

§ 148-49.3. Employment and supervision of prisoners.—Prisoners received at Camp Butner Prison shall be employed in work on the farm, workshops, the upkeep and maintenance of the property located at Camp Butner or in such other similar work as may be determined by the State Department of Mental Health and the Director of Prisons. The said prisoners to be under the general supervision of the agents and employees of the Director of Prisons or of such employees of the State Department of Mental Health as may be agreed upon by the two State agencies. (1949, c. 297, s. 3; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission."

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "State Hospitals Board of Control."

Meaning of "Employed."—The word "employed," in the sense it is used in this section, means to make use of the services of the "prisoners," and not in the sense of hiring them for wages. Alliance Co. v. State Hospital, 241 N. C. 329, 85 S. E. (2d) 386 (1955).

§ 148-49.4. Expenses incident to conversion of Camp and maintenance of prisoners.—All expenses incident to the conversion of the old "Prisoners of War" Camp shall be borne by the State Department of Mental Health and paid out of the proceeds from the sale of surplus property owned by said Department and located at Camp Butner. Said prison camp or guardhouse to fully meet the requirements of the Director of Prisons as to construction, plans and specifications. The cost of the maintenance of prisoners assigned to said prison shall be borne by the State Department of Mental Health. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission."

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "State Hospitals Board of Control" and "Department" has been substituted for "Board."

§ 148-49.5. Adoption of rules and regulations.—As soon as practicable the State Department of Mental Health and the Director of Prisons shall jointly adopt such rules and regulations as they may deem necessary to fully carry out the intents and purposes of this article. (1949, c. 297, s. 5; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Editor's Note.—The 1955 amendment substituted "Director of Prisons" for "State Highway and Public Works Commission."

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "State Hospitals Board of Control."

§ 148-49.6. Other prison camps for youthful and first term offenders.—The State Department of Mental Health is authorized to establish and construct modern prison camps or guardhouses on any other property of the State under its supervision and control where youthful and first term prisoners may be sent, supervised and employed as and in the manner provided in this article. (1953, c. 1249; 1963, c. 1166, s. 10.)

Editor's Note.—Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "State Hospitals Board of Control."

ARTICLE 4.

Paroles.

§§ 148-50, 148-51: Repealed by Session Laws 1955, c. 867, s. 13.

§ 148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes.—Whenever the words "Commissioner of Paroles" are used or appear in any statute of this State, the same shall be stricken out and the words "Board of Paroles" shall be inserted in lieu thereof. (1953, c. 17, s. 2.)

Predicate of Article.—Sections 148-6, 148-26 and 148-33.1, as well as provisions with reference to paroles contained in this article, are predicated upon the idea that the ability

as well as the disposition of released prisoners to engage in honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-52. Appointment of Board of Paroles; members; duties; quorum; salary.—(a) There is hereby created a Board of Paroles with authority to grant paroles (including both regular and temporary paroles), to persons held by virtue of any final order or judgment of any court of this State in any prison, jail, or other penal institution of this State or its political subdivisions. The Board shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before June 30, 1955) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency.

(b) The Board of Paroles shall consist of three members, all of whom shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Board. The Governor shall designate one of the persons so appointed to serve as chairman of the Board of Paroles. The three members of the first board shall be appointed for terms of office beginning July 1, 1955, as follows: One member to serve for two (2) years, one member to serve for three (3) years, and one member to serve for four (4) years. Any appointment to fill a vacancy shall be for the balance of the term only, but in the event that any member of the Board is temporarily incapable of performing his duties, the Governor may appoint some suitable person to act in his stead during the period of incapacity. At the end of the respective terms of office of the members of the first board, their successors shall be appointed for terms of four (4) years and until their successors are appointed and qualified. The Governor shall have power to remove any member of the Board only for total disability, inefficiency, neglect of duty or malfeasance in office.

(c) A majority of the Board shall constitute a quorum for the transaction of business.

(d) The salary of the members of the Board shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

(e) Nothing herein shall affect the power and authority of the State Board of Correction and Training to grant, revoke, or terminate paroles as now provided by law with regard to inmates of any training or correctional institution, school, or agency of a similar nature which is under the management and administrative control of said Board. (1935, c. 414, s. 2; 1939, c. 335; 1953, c. 17, s. 3; 1955, c. 867, s. 1.)

Editor's Note.—The 1953 amendment rewrote this section which formerly provided for a Commissioner of Paroles. The 1955 amendment again rewrote this section.

§ 148-52.1. Prohibited political activities of member or employee of Board of Paroles.—No member or employee of the Board of Paroles shall be permitted to use his position to influence elections or the political action of any person, serve as a member of the campaign committee of any political party, interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or be in any manner concerned in the demanding, soliciting or receiving of any assessments, subscriptions or contributions, whether volutary or involuntary, to any political party. Any Board member or employee of the Board who shall violate any of the provisions of this section shall be subject to dismissal from office or employment. (1953, c. 17, s. 4.)

§ 148-53. Investigators and investigations of cases of prisoners.—For the purpose of investigating the cases of prisoners serving both determinate and indeterminate sentences in the State prison, in prison camps, and on prison farms, the Board of Paroles is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable

clerical assistance as may be required, who shall, under the direction of the Board of Paroles, investigate all cases designated by it, and otherwise aid the Board in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair, and just consideration. (1935, c. 414, s. 3; 1955, c. 867, s. 2.)

Editor's Note.—The 1955 amendment substituted "Board of Paroles" for "Governor," and omitted the former provision as to investigating any prison, prison camp, etc., when warranted.

§ 148-54. Parole supervisors provided for; duties.—The Board of Paroles is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted to the work required of them, and who shall, under the direction of the Board of Paroles and under regulations prescribed by it exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law-abiding citizens. The supervisors shall also, under the direction of the Board of Paroles, maintain frequent contacts with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions of their paroles, and they shall perform such other duties in connection with paroled prisoners as the Board of Paroles may require. The number of supervisors may be increased by the Board of Paroles as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4; 1955, c. 867, s. 11.)

Editor's Note.—The 1955 amendment substituted "Board of Paroles" for "Governor."

§ 148-54.1: Repealed by Session Laws 1955, c. 867, s. 13.

§ 148-55. Administrative assistant; field supervisors; clerical and secretarial help, etc., for Board of Paroles.—(a) The Board of Paroles shall have authority to employ sufficient field supervisors, clerical and secretarial help and other necessary labor to conduct the affairs of the Board with economy and efficiency. It shall also have authority to discharge personnel, assign their duties and responsibilities, administer all fiscal affairs relating to the budget, expenditures, purchases, and equipment. All employees of the Board of Paroles shall be subject to the provisions of chapter 143, article 2 of the General Statutes.

(b) The chairman of the Board of Paroles shall exercise such administrative authority as the Board shall delegate to him. The Board of Paroles may designate its chief supervisor or one of its investigators to serve (in addition to his regular duties) as administrative assistant to the chairman. (1935, c. 414, s. 5; 1953, c. 17, s. 6; 1955, c. 867, s. 3; 1963, c. 1174, s. 3.)

Editor's Note.—The 1953 amendment rewrote this section.

The 1955 amendment added the provisions relating to field supervisors, chairman of Board of Paroles and administrative assistant.

The 1963 amendment deleted the former last sentence of subsection (a).

§ 148-56. Assistance in supervision of parolees and preparation of case histories.—Upon request by the Board of Paroles, the county directors of public welfare shall assist in the supervision of parolees and shall prepare and submit to the Board of Paroles case histories or other information in connection with any case under consideration for parole or some form of executive clemency. (1935, c. 414, s. 6; 1955, c. 867, s. 9; 1961, c. 186.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1961 amendment substituted "directors" for "superintendents."

§ 148-57. Rules and regulations for parole consideration.—The Board of Paroles is hereby authorized and empowered to set up and establish rules and regu-

lations in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. (1935, c. 414, s. 7; 1955, c. 867, s. 4.)

Editor's Note.—The 1955 amendment rewrote this section.

§ 148-58. Time of eligibility of prisoners to have cases considered.—All prisoners shall be eligible to have their cases considered for parole when they have served a fourth of their sentence, if their sentence is determinate, and a fourth of their minimum sentence, if their sentence is indeterminate; provided, that any prisoner serving sentence for life shall be eligible for such consideration when he has served ten years of his sentence. Nothing in this section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case upon its merits. (1935, c. 414, s. 8; 1955, c. 867, s. 5.)

Editor's Note.—The 1955 amendment rewrote this section.

Cited in State v. Conner, 241 N. C. 468, 85 S. E. (2d) 584 (1955).

§ 148-58.1. Limitations on discharge from parole; effect of discharge; relief from further reports; permission to leave State or county.—(a) No person released on parole (except temporary parole) shall be discharged from parole prior to the expiration of a period of one year. The official discharge by the Board of Paroles of a parolee shall have the effect of terminating the sentence or sentences under which the parolee was paroled.

(b) The Board of Paroles may relieve a person on parole from making reports and may permit such person to leave the State or county if fully satisfied that this is for the best interest of both the parolee and society. (1953, c. 17, s. 7; 1955, c. 867, s. 10.)

Editor's Note.—The 1955 amendment rewrote this section.

§ 148-59. Duties of clerks of all courts as to commitments; statements filed with Board of Paroles.—The several clerks of the superior courts and the clerks of all inferior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Board of Paroles shall by regulations prescribe, which information shall contain, among other things, the following:

(1) The court in which the prisoner was tried;
(2) The name of the prisoner and of all co-defendants;
(3) The date or term when the prisoner was tried;
(4) The offense with which the prisoner was charged and the offense for which convicted;
(5) The judgment of the court and the date of the beginning of the sentence;
(6) The name and address of the presiding judge;
(7) The name and address of the prosecuting solicitor;
(8) The name and address of private prosecuting attorney, if any;
(9) The name and address of the arresting officer; and
(10) All available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Board of Paroles, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Prison Department without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10.)

Editor's Note.—The 1953 amendment substituted "Board" for "Commissioner" near the beginning of the second paragraph. The 1955 amendment substituted "Board

of Paroles" for "Governor" in the first paragraph.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission" near the end of the section.

§ **148-60. Time for release of prisoners discretionary.**—The time of releasing each prisoner eligible for consideration for parole as provided for herein shall be discretionary, and due consideration shall be given to the reasonable probability that the prisoner will live and remain in liberty without violating the law; that the release of the prisoner is not incompatible with the welfare of society, and that the record of the prisoner during his confinement established that the prisoner is obedient to prison rules and regulations, and has shown the proper respect for prison officials, and due regard and consideration for his fellow prisoners; and that the prisoner harbors no resentment against society or the judge, prosecuting attorneys, or jury that convicted the prisoner. (1935, c. 414, s. 10.)

§ **148-60.1. Allowances for paroled prisoner.**—Upon the release of any prisoner upon parole, the superintendent or warden of the institution shall provide the prisoner with suitable clothing and, if needed, an amount of money sufficient to purchase transportation to the place within the State where the prisoner is to reside. The Board of Paroles may, in its discretion, provide that the prisoner shall upon his release on parole receive a sum of money not to exceed twenty-five dollars ($25.00). (1953, c. 17, s. 8.)

§ **148-61. Contents of release order.**—When a prisoner is released on parole, the parole instrument shall specify in writing the conditions of the parole, the place of residence of the parolee, within or without the State, the name and address of the party to whom the parolee is to report, and times and places when and where the said parolee shall report to the said party during the entire period of the parole. (1935, c. 414, s. 11.)

§ **148-61.1. Revocation of parole by Board; conditional or temporary revocation.**—(a) The Board of Paroles may at any time, in its discretion, revoke the order of parole of any parolee. The time a parolee is at liberty on regular parole shall not be counted as any portion of or part of the time served on his sentence, and if any parolee shall have his parole revoked, he shall thereafter be returned to the penal institution having custodial jurisdiction over him.

(b) The Board of Paroles may, in its discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without warrant by any peace officer or parole officer. After such conditional or temporary revocation of parole, the parolee shall be held for a reasonable length of time during which the Board of Paroles shall determine whether or not the conditions of said parole have been violated. If it is determined by the Board of Paroles that the conditions of said parole have been violated, the Board of Paroles may in its discretion revoke the order of parole. If it is determined by the Board of Paroles that there has been no violation of the conditions of said parole, then such parolee or paroled prisoner shall be reinstated upon his original parole. (1951, c. 947, s. 1; 1955, c. 867, s. 6.)

Editor's Note.—The 1955 amendment rewrote this section.

§ **148-62. Discretionary revocation of parole upon conviction of crime.**—If any parolee, while being at large upon parole, shall commit a new or fresh crime, and shall enter a plea of guilty or be convicted thereof in any court of record, then, in that event, his parole may be revoked according to the discretion of the Board of Paroles and at such time as the Board of Paroles may think proper. If such parolee, while being at large upon parole, shall commit a new or fresh crime and shall have his parole revoked, as provided above, he shall be subject, in the discretion of the Board of Paroles, to serve the remainder of the first or original sentence upon which his parole was granted, after the completion or termination of the sen-

tence for said new or fresh crime. Said remainder of the original sentence shall commence from the termination of his liability upon said sentence for said new or fresh crime. The Board of Paroles, however, may, in its discretion, direct that said remainder of the original sentence shall be served concurrently with said second sentence for said new or fresh crime. (1935, c. 414, s. 12; 1951, c. 947, s. 2; 1955, c. 867, s. 12.)

Editor's Note.—The 1951 amendment rewrote this section. Prior to the amendment the section provided for automatic revocation of parole upon conviction of crime. The 1955 amendment substituted "Board of Paroles" for "Governor."

§ 148-63. Arrest powers of police officers.—Any officer who is authorized to make arrests of fugitives from justice shall have full authority and power to arrest any parolee whose parole has been revoked. (1935, c. 414, s. 13.)

§ 148-64. Cooperation of prison and other officials; information to be furnished.—The Director of the Prisons, the warden of each prison and the superintendent of each camp and farm and all officers and employees thereof and all other public officials shall at all times cooperate with the Board of Paroles and shall furnish to it, or any member of its staff, all information that may be requested from time to time that will assist the Board in performing its functions, and all such wardens and other employees shall at all times give to the Board of Paroles and its staff free access to all prisoners. (1935, c. 414, s. 14; 1955, c. 867, s. 7.)

Editor's Note.—The 1955 amendment rewrote this section.

§ 148-65: Repealed by Session Laws 1955, c. 867, s. 13.

ARTICLE 4A.

Out-of-State Parolee Supervision.

§ 148-65.1. Governor to execute compact; form of compact.—The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act granting the consent of Congress to any two or more states to enter into agreements or compacts for co-operative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

a. Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

b. Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months im-

mediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other state party hereto. (1951, c. 1137, s. 1.)

§ 148-65.2. Title of article.—This article may be cited as the "Uniform Act for Out-of-State Parolee Supervision." (1951, c. 1137, s. 2.)

Article 5.

Farming Out Convicts.

§ 148-66. Cities and towns and Board of Agriculture may contract for prison labor.—The corporate authorities of any city or town may contract in writing with the State Prison Department for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Board of Agriculture of the State of North Carolina is hereby authorized and empowered to contract, in writing, with the State Prison Department for the employment and use of convicts under its supervision to be worked on the State

test farms and/or State experimental stations. (1881, c. 127, s. 1; Code, s. 3449; Rev., s. 5410; C. S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; 1957, c. 349, s. 10.)

Editor's Note.—The 1943 amendment added the second paragraph. For comment on the amendment, see 21 N. C. Law Rev. 333.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

Cited in Watson v. Durham, 207 N. C. 624, 178 S. E. 218 (1935).

§ 148-67. Hiring to cities and towns and State Board of Agriculture.—The State Prison Department shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in § 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Prison Department, in its discretion, to hire to the Board of Agriculture of the State of North Carolina for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Prison Department. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C. S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; 1957, c. 349, s. 10.)

Editor's Note.—The 1943 amendment added the second paragraph.

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 148-68. Payment of contract price; interest; enforcement of contracts.—The corporate authorities of any city or town so hiring convicts shall pay into the treasury of the State for the labor of any convict so hired such sum or sums of money at such time or times as may be agreed upon in the contract of hire; and if any such city or town fails to pay the State money due for such hiring, the same shall bear interest from the time it is due until paid at the rate of six per cent per annum; and an action to recover the same may be instituted by the Attorney General in the name of the State in the courts of Wake County. (1881, c. 127, s. 3; Code, s. 3451; Rev., s. 5412; C. S., s. 7760; 1925, c. 163; 1931, c. 145, s. 35.)

§ 148-69. Agents; levy of taxes; payment of costs and expenses.—The corporate authorities of any city or town so hiring convicts may appoint and remove at will all such necessary agents to superintend the construction or improvement of such highways and streets as they may deem proper, or to pay the costs and expenses incident to such hiring may levy taxes and raise money as in other respects. (1881, c. 127, s. 4; Code, s. 3452; Rev., s. 5413; C. S., s. 7761; 1925, c. 163; 1931, c. 145, s. 35.)

§ 148-70. Management and care of convicts; prison industries; disposition of products of convict labor.—The State Prison Department in all contracts for labor shall provide for feeding and clothing the convicts and shall maintain, control and guard the quarters in which the convicts live during the time of the contracts; and the Department shall provide for the guarding and working of such convicts under its sole supervision and control. The Department may make such contracts for the hire of the convicts confined in the State prison as may in its discretion be proper and will promote the purpose and duty to make the State prison as nearly self-supporting as is consistent with the purposes of its creation, as set forth in section eleven, article eleven of the Constitution. The Department may use the labor of convicts confined in the State prison in such work on farms, in manufacturing, either within or without the State prison, as the Department may

find proper and profitable to be carried on by the State prison; and the Department may dispose of the products of the labor of the convicts, either in farming or in manufacturing or in other industry at the State prison, to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State; and the Department may sell or dispose of the same elsewhere and in the open markets or otherwise, as in its discretion may seem profitable.

All departments, institutions and agencies of this State which are supported in whole or in part by the State shall give preference to Prison Department products in purchasing articles and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system and offered for sale to them by the Prison Department, and no article or commodity available from the Prison Department shall be purchased by any such State department, institution, or agency from any other source without permission of the board of award provided for in G. S. 143-52, unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the board of award, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of article 3 of chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Prison Department, but the Prison Department shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the board of award or with competitive bids which the board of award may in its discretion require, taking into consideration the best interest of the State as a whole. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C. S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2.)

Editor's Note—The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

The 1959 amendment added the second paragraph.

ARTICLE 5A.

Prison Labor for Farm Work.

§§ 148-70.1 to 148-70.7: Repealed by Session Laws 1957, c. 349, s. 11.

Editor's Note.—For comment on the repealed sections, see 21 N. C. Law Rev. 333.

ARTICLE 6.

Reformatory.

§§ 148-71 to 148-73: Repealed by Session Laws 1947, c. 262, s. 3.

ARTICLE 7.

Consolidated Records Section—Prison Department.

§ 148-74. Records Section established.—A State bureau to be entitled Consolidated Records Section—Prison Department is hereby established. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4.)

Cross Reference.—As to statute affecting this article, as previously written, see § 114-18.

Editor's Note.—The 1953 amendment changed the catchline of this section from "Bureau established" to "Records Section established," and substituted in the section "Consolidated Records Section—Prison Department" for "the Bureau of Identification." Section 1 of the amendatory act changed the article heading which formerly read "Bureau of Identification."

§ **148-75:** Repealed by Session Laws 1963, c. 1174, s. 5.

§ **148-76. Duty of Records Section.**—It shall be the duty of the said Consolidated Records Section—Prison Department to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or co-operative action on the part of the criminals, reporting such conditions, and to co-operate with all officials in detecting and preventing. (1925, c. 228, s. 3; 1953, c. 55, s. 4.)

Editor's Note.—The 1953 amendment inserted "Consolidated Records Section—Prison Department" in lieu of "Bureau of Identification" in this section, and substituted "Records Section" for "Bureau" in the catchline.

§ **148-77. Henry system maintained.**—The director is required to use and maintain the Henry system. (1925, c. 228, s. 4.)

§ **148-78. Annual report.**—The director of the Records Section is directed to submit in his annual report as a part of the report of the State prison, a full account of all funds received and expenses to the Governor, and an estimate of what is necessary to carry out the provisions of this article. (1925, c. 228, s. 5; 1953, c. 55, s. 4.)

Editor's Note.—The 1953 amendment substituted "Records Section" for "Bureau."

§ **148-79. Fingerprints taken; photographs.**—Every chief of police and sheriff in the State of North Carolina is hereby required to take or cause to be taken on forms furnished by this Records Section the fingerprints of every person convicted of a felony, and to forward the same immediately by mail to the said Consolidated Records Section—Prison Department. The said officers are hereby required to take the fingerprints of any other person when arrested for a crime when the same is deemed advisable by any chief of police or sheriff, and forward the same for record to the said Records Section. No officer, however, shall take the photograph of a person arrested and charged or convicted of a misdemeanor unless such person is a fugitive from justice, or unless such person is, at the time of arrest, in the possession of goods or property reasonably believed by such officer to have been stolen, or unless the officer has reasonable grounds to believe that such person is wanted by the Federal Bureau of Investigation, or the State Bureau of Investigation, or some other law enforcing officer or agency. (1925, c. 228, s. 6; 1945, c. 967; 1953, c. 55, s. 4.)

Local Modification.—City of Greensboro: 1959, c. 1137, s. 1.

Editor's Note.—The 1945 amendment added the last sentence.

The 1953 amendment inserted "Records Section" in lieu of "Bureau", and substituted "Consolidated Records Section—Prison Department" for "Bureau of Identification."

§ **148-80. Seal of Records Section; certification of records.**—The director shall provide a seal to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of said Consolidated Records Section—Prison Department and when so certified under seal such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7; 1953, c. 55, s. 4.)

Editor's Note.—The 1953 amendment inserted "Consolidated Records Section—Prison Department" in lieu of "Bureau of Identification" in this section, and substituted "Records Section" for "Bureau" in the catchline.

§ 148-81. Report of disposition of persons fingerprinted.—Every chief of police and sheriff shall advise said Records Section of final disposition of all persons fingerprinted. (1925, c. 228, s. 8; 1953, c. 55, s. 4.)

Editor's Note.—The 1953 amendment substituted "Records Section" for "Bureau."

Article 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ 148-82. Provision for compensation.—Any person who, having been convicted of felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be pardoned by the Governor upon the grounds that the crime with which he was charged either was not committed at all or was not committed by him, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by him through his erroneous conviction and imprisonment. (1947, c. 465, s. 1.)

Editor's Note.—For a brief comment on this article, see 25 N. C. Law Rev. 403.

§ 148-83. Form, requisites and contents of petition; nature of hearing.—Such petition shall be addressed to the Board of Paroles, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Board of Paroles shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least fifteen days before the time fixed therefor. (1947, c. 465, s. 2; 1963, c. 1174, s. 4.)

Editor's Note.—The 1963 amendment substituted "Records Section" for "Bureau."

§ 148-84. Evidence; action by Board of Paroles; payment and amount of compensation.—At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the Board of Paroles finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Board of Paroles shall report the facts, together with his conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the contingency and emergency fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars ($500.00) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of five thousand dollars ($5,000.00). (1947, c. 465, s. 3; 1963, c. 1174, s. 4.)

Editor's Note.—The 1963 amendment substituted "Board of Paroles" for "Commissioner of Pardons."

Article 9.

Prison Advisory Council.

§§ 148-85 to 148-88: Repealed by Session Laws 1957, c. 349, s. 11.

Chapter 149.

State Song and Toast.

Sec.
149-1. "The Old North State."
149-2. "A Toast" to North Carolina.

§ 149-1. **"The Old North State."**—The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her;
Though the scorner may sneer at and witlings defame her,
Our hearts swell with gladness whenever we name her.
Hurrah! Hurrah! The Old North State forever!
Hurrah! Hurrah! The good old North State!
Though she envies not others their merited glory,
Say, whose name stands the foremost in Liberty's story!
Though too true to herself e'er to crouch to oppression,
Who can yield to just rule more loyal submission?
Plain and artless her sons, but whose doors open faster
At the knock of a stranger, or the tale of disaster?
How like to the rudeness of their dear native mountains,
With rich ore in their bosoms and life in their fountains.
And her daughters, the Queen of the Forest resembling—
So graceful, so constant, yet to gentlest breath trembling;
And true lightwood at heart, let the match be applied them,
How they kindle and flame! Oh! none know but who've tried them.
Then let all who love us, love the land that we live in
(As happy a region on this side of Heaven),
Where Plenty and Freedom, Love and Peace smile before us,
Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1.)

§ 149-2. **"A Toast" to North Carolina.**—The song referred to as "A Toast" to North Carolina is hereby adopted and declared to be the official toast to the State of North Carolina, said toast being in words as follows:

"Here's to the land of the long leaf pine,
The summer land where the sun doth shine,
Where the weak grow strong and the strong grow great,
Here's to 'Down Home', the Old North State!

"Here's to the land of the cotton bloom white,
Where the scuppernong perfumes the breeze at night,
Where the soft southern moss and jessamine mate,
'Neath the murmuring pines of the Old North State!

"Here's to the land where the galax grows,
Where the rhododendron's rosette glows,
Where soars Mount Mitchell's summit great,
In the 'Land of the Sky', in the Old North State!

"Here's to the land where maidens are fair,
Where friends are true and cold hearts rare,
The near land, the dear land whatever fate,
The blest land, the best land, the Old North State!"

(1957, c. 777.)

Chapter 150.

Uniform Revocation of Licenses.

§§ 150-1 to 150-8: Repealed by Session Laws 1953, c. 1093.

Editor's Note.—The repealing act, effective July 1, 1953, substituted §§ 150-9 to 150-34 in lieu of the repealed sections.

For comment on former enactment, see 17 N. C. Law Rev. 331; 19 N. C. Law Rev. 438.

§ 150-9. Definitions.—As used in this chapter the term "board" shall mean the State Board of Certified Public Accountant Examiners, the State Board of Architectural Examination and Registration, the State Board of Barber Examiners, the State Board of Chiropody Examiners, the North Carolina State Board of Chiropractic Examiners, the North Carolina Licensing Board for Contractors, the North Carolina State Board of Cosmetic Art Examiners, the Board of Examiners of Electrical Contractors, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Engineers and Land Surveyors, the North Carolina Board of Nurse Examiners, and the North Carolina Board of Nurse Examiners Enlarged, the North Carolina Board of Opticians, the North Carolina State Board of Examiners in Optometry, the North Carolina State Board of Osteopathic Examination and Registration, the State Board of Examiners of Plumbing and Heating Contractors, the State Examining Committee of Physical Therapists, the Board of Examiners for Licensing Tile Contractors, the North Carolina Board of Veterinary Medical Examiners, and the State Board of Refrigeration Examiners. (1953, c. 1093; 1959, c. 1207.)

Editor's Note.—The 1959 amendment added at the end of the section the words "and the State Board of Refrigeration Examiners."

For note as to constitutionality of statutes licensing occupations, see 35 N. C. Law Rev. 473.

For comment on §§ 150-9 to 150-34, see 31 N. C. Law Rev. 378.

§ 150-10. Opportunity for licensee or applicant to have hearing.—Every licensee or applicant for a license, except applicants for license by comity and applicants for reinstatement after revocation, shall be afforded notice and an opportunity to be heard before the board shall have authority to take any action, the effect of which would be

(1) To deny permission to take an examination for licensing for which application has been duly made; or

(2) To deny a license after examination for any cause other than failure to pass an examination; or
(3) To withhold the renewal of a license for any cause other than failure to pay a statutory renewal fee; or
(4) To suspend a license; or
(5) To revoke a license. (1953, c. 1093.)

§ 150-11. Notice of contemplated board action; request for hearing; notice of hearing.—(a) When a board contemplates taking any action of a type specified in subdivisions (1) or (2) of § 150-10 it shall give to the applicant a written notice containing a statement:

(1) That the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;
(2) Indicating in what respects the applicant has so failed to satisfy the board; and
(3) That the applicant may secure a hearing before the board by depositing in the mail within twenty days after service of said notice, a registered letter addressed to the board and containing a request for a hearing.

In any board proceeding involving the denial of a duly made application to take an examination, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

(b) When a board contemplates taking any action of a type specified in subdivisions (3), (4) or (5) of § 150-10 it shall give to the licensee a written notice containing a statement:

(1) That the board has sufficient evidence which, if not rebutted or explained, will justify the board in taking the contemplated action;
(2) Indicating the general nature of the evidence, and
(3) That unless the licensee or applicant within twenty days after service of said notice deposits in the mail a registered letter addressed to the board and containing a request for a hearing, the board will take the contemplated action.

(c) If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of such request, notify the licensee or applicant of the time and place of hearing, which hearing shall be held not more than thirty nor less than ten days from the date of the service of such notice. (1953, c. 1093.)

Applied in In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 150-12. Method of serving notice of hearing.—Any notice required by § 150-11 may be served either personally by an officer authorized by law to serve process, or by registered mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the board. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed. Where notice is served by registered mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the addressee or refusal of the addressee to accept the notice. (1953, c. 1093.)

§ 150-13. Venue of hearing.—Board hearings held under the provisions of this chapter shall be conducted in the county in which the person whose license is involved maintains his residence, or at the election of the board, in any county in

which the act or acts complained of occurred; except that, in cases involving initial licensing, hearings shall be held in the county where the board maintains its office. In any case, however, the person whose license is involved and the board may agree that the hearing is to be held in some other county. (1953, c. 1093.)

§ **150-14. Hearings public; use of trial examiner or committee.**—All board hearings under this chapter shall be open to the public. At all such hearings at least a majority of the board members shall be present to hear and determine the matter; except that, in cases where the hearing is held in a county other than that in which the board maintains its office, the board may designate in writing one or more of its members to conduct the hearing as a trial examiner or trial committee, with the decision to be rendered in accordance with the provisions of § 150-20. (1953, c. 1093.)

§ **150-15. Rights of person entitled to hearing.**—A person entitled to be heard pursuant to this chapter shall have the right

(1) To be represented by counsel;
(2) To present all relevant evidence by means of witnesses and books, papers, and documents;
(3) To examine all opposing witnesses on any matter relevant to the issues; and
(4) To have subpoenas and subpoenas duces tecum issued to compel the attendance of witnesses and the production of relevant books, papers, and documents upon making written request therefor to the board. (1953, c. 1093.)

§ **150-16. Powers of board in connection with hearing.**—In connection with any hearing held pursuant to the provisions of this chapter the board or its trial examiner or committee shall have power

(1) To have counsel to develop the case;
(2) To subpoena witnesses and relevant books, papers, and documents;
(3) To administer oaths or affirmations to witnesses called to testify;
(4) To take testimony;
(5) To examine witnesses; and
(6) To direct a continuance of any case. (1953, c. 1093.)

§ **150-17. Contempt procedure.**—In proceedings before a board or its trial examiner or committee, if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of a board contained in its decision rendered after hearing, the secretary of the board may apply to the superior court of the county where the proceedings are being held for an order directing that person to take the requisite action. The court shall issue such order in its discretion. Should any person willfully fail to comply with an order so issued the court shall punish him as for contempt. (1953, c. 1093.)

§ **150-18. Rules of evidence.**—In proceedings held pursuant to this chapter, boards may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs. Boards may in their discretion exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. In proceedings involving the suspension, revocation, or the withholding of the renewal of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this State. (1953, c. 1093.)

§ **150-19. Transcript of the proceedings.**—In all hearings conducted pursuant to this chapter, a complete record shall be made of evidence received during the course of the hearing. (1953, c. 1093.)

§ 150-20. Manner and time of rendering decision.—After a hearing has been completed the members of the board who conducted the hearing shall proceed to consider the case and as soon as practicable shall render their decision. If the hearing was conducted by a trial examiner or trial committee, the decision shall be rendered by the board at a meeting where a majority of the members are present and participating in the decision, provided that all such members who were not present throughout the hearing must thoroughly familiarize themselves with the entire record including all evidence taken at the hearing before participating in the decision. In any case the decision must be rendered within ninety days after the hearing. (1953, c. 1093.)

§ 150-21. Service of written decision.—Within five days after the decision is rendered the board shall serve upon the person whose license is involved a written copy of the decision, either personally or by registered mail. If the decision is sent by registered mail it shall be deemed to have been served on the date borne on the return receipt. (1953, c. 1093.)

§ 150-22. Procedure where person fails to request or appear for hearing.—If a person who has requested a hearing does not appear, and no continuance has been granted the board or its trial examiner or committee may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by § 150-20.

Where because of accident, sickness, or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give such person notice thereof as required by §§ 150-11 and 150-12. At the time and place fixed a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing. (1953, c. 1093.)

§ 150-23. Contents of decision.—The decision of the board shall contain

(1) Findings of fact made by the board;
(2) Conclusions of law reached by the board;
(3) The order of the board based upon these findings of fact and conclusions of law; and
(4) A statement informing the person whose license is involved of his right to appeal to the courts and the time within which such appeal must be sought. (1953, c. 1093.)

Quoted in In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 150-24. Availability of judicial review; notice of appeal; waiver of right to appeal.—Any person entitled to a hearing pursuant to this chapter, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the Superior Court of Wake County, or in the superior court of the county in which the hearing was held, or, upon agreement of the parties to the appeal, in any other superior court of the State. In order to obtain such review such person must, within twenty days after the date of service of the decision as required by § 150-21, file with the board secretary a written notice of appeal, stating all exceptions taken to the decision and indicating the court in which the appeal is to be heard. Failure to file such notice of appeal in the manner and within the time stated shall operate as a waiver of the right to appeal and shall result in the decision of the board becoming final; except that for good cause shown, the judge of the superior court may issue an order permitting a review of the board decision notwithstanding such waiver. (1953, c. 1093.)

§ 150-25. Record filed by board with clerk of superior court; contents of record.—Within thirty days after receipt of the notice of appeal, the board

shall prepare, certify, and file with the clerk of the superior court in the proper county the record of the case, comprising

(1) A copy of the notice of hearing required under §§ 150-11 and 150-12;
(2) A complete transcript of the testimony taken at the hearing;
(3) Copies of all pertinent documents and other written evidence introduced at the hearing;
(4) A copy of the decision of the board containing the items specified in § 150-23; and
(5) A copy of the notice of appeal containing the exceptions filed to the decision.

With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable (1953, c. 1093.)

§ **150-26. Appeal bond; stay of board order.**—The person seeking the review shall file with the clerk of the reviewing court a copy of the notice of appeal and an appeal bond of $200 at the same time the notice of appeal is filed with the board as required by § 150-24. At any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The court may grant or deny the stay in its discretion. (1953, c. 1093.)

§ **150-27. Scope of review; power of court in disposing of the case.**—Upon the review of any board decision under this chapter, the judge shall sit without a jury, and may hear oral arguments and receive written briefs, but no evidence not offered at the hearing shall be taken, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because of the administrative findings, inferences, conclusions, or decisions are

(1) In violation of constitutional provisions; or
(2) In excess of the statutory authority or jurisdiction of the agency; or
(3) Made upon unlawful procedure; or
(4) Affected by other error of law; or
(5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
(6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1953, c. 1093.)

Findings of Fact Supported by Competent Evidence Are Conclusive.—The administrative findings of fact made by the State Board of Opticians, if supported by competent, material and substantial evidence in view of the entire record, are conclusive upon a reviewing court, and not within the scope of its reviewing powers. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

The court cannot substitute its judgment for that of the State Board of Opticians in making findings of fact. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ **150-28. Power of board to reopen the case.**—At any time after the hearing and prior to the service of the board's decision, the person affected may request the board to reopen the case to receive additional evidence or for other cause. The granting or refusing of such request shall be within the board's discretion. The board may reopen the case on its own motion at any time before notice of appeal is filed; thereafter, it may do so only with permission of the reviewing court. (1953, c. 1093.)

§ 150-29. Power of reviewing court to remand for hearing newly discovered evidence; procedure before the board.—At any time after the notice of appeal has been filed, the aggrieved person may apply to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the board, the court may remand the case to the board where additional evidence shall be heard. The board may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation of, or modifications in, its findings or decision. (1953, c. 1093.)

§ 150-30. Appeal to Supreme Court; appeal bond.—Any party to the review proceeding, including the board, may appeal to the Supreme Court from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the board. The appealing party may apply to the superior court for a stay of that court's decision or a stay of the board's decision, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court. (1953, c. 1093.)

§ 150-31. Power of board to sue; to seek court action in preventing violations.—Any board may appear in its own name in the courts of the State and may apply to courts having jurisdiction for injunctions to prevent violations of statutes administered by the board and of regulations issued pursuant to those statutes, and such courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. (1953, c. 1093.)

§ 150-32. Declaratory judgment on validity of rules.—The validity of any rule adopted by a board may be determined upon petition for a declaratory judgment thereon addressed to the Superior Court of Wake County when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The court shall declare the rule invalid if it finds that the rule violates or conflicts with constitutional or statutory provisions or exceeds the statutory authority of the board. (1953, c. 1093.)

§ 150-33. Judicial review procedure exclusive.—The provisions of this chapter providing a uniform method of judicial review of board actions of the kind specified in § 150-10 shall constitute an exclusive method of court review in such cases and shall be in lieu of any other review procedure available under statute or otherwise. Nothing herein, however, shall be construed to bar the use of any available remedies to test the legality of any type of board action not specified in § 150-10. (1953, c. 1093.)

§ 150-34. Amending and repealing.—The provisions of this article may be amended, repealed or superseded by another act of the legislature only by direct reference to the section or sections of this article being amended, repealed, or superseded. (1953, c. 1093.)

Division XVII. County and City Government.

Chapter 151.

Constables.

§ 151-1. Election and term.—In each township there shall be a constable elected by the voters thereof, who shall hold his office for two years. (Const., art. 4, s. 24; Rev., s. 933; C. S., s. 971.)

Local Modification.—Mecklenburg: 1963, c. 527.

Cross References.—See § 153-9, subdivisions (10)-(12). See also, Const., Art. IV, § 24.

Term of Office.—The provision of Art. IV, § 25 of the Constitution that officers shall hold office until their successors are qualified, does not embrace the office of constable. State v. McLure, 84 N. C. 1953 (1881).

Stated in Taylor v. Wake Forest, 228 N. C. 346, 45 S. E. (2d) 387 (1947).

§ 151-2. Oaths to be taken.—All constables, before they shall be qualified to act, shall take before the board of county commissioners the oaths prescribed for public officers, and also an oath of office. (R. C., c. 24, s. 8; Code, s. 642; Rev., s. 934; C. S., s. 972.)

Cross References.—As to form of oath, see § 11-11. As to oaths required of public officers, see §§ 11-6, 11-7; Const., Art. VI, § 7. As to penalty for failure to take oath, see § 128-5.

Stated in Taylor v. Wake Forest, 228 N. C. 346, 45 S. E. (2d) 387 (1947).

§ 151-3. Bond; where registered; how fees paid.—The board of commissioners of each county shall require of each constable, elected or appointed for a township, on entering upon the duties of his office, to give a bond with good surety, payable to the State of North Carolina, in a sum not exceeding one thousand dollars, conditioned as well for the faithful discharge of his duty as constable as for his diligently endeavoring to collect all claims put into his hands for collection, and faithfully paying over all sums thereon received, either with or without suit, unto the persons to whom the same may be due. Said bond shall be duly proved and registered and, after registration, filed in the office of the register of deeds; and certified copies of the same from the register's office shall be received and read in evidence in all actions and proceedings where the original might be. The fees for proving and registering the bond of constable shall be paid by the constable. (1818, c. 980, P. R.; 1820, c. 1045, s. 2, P. R.; 1833, c. 17; R. C., c. 24, s. 7; 1869-70, c. 185; Code, s. 647; 1891, c. 229; 1899, c. 54, s. 52; Rev., s. 302; C. S., s. 973.)

Local Modification.—Stanley: C. S. 973.

Cross References.—See §§ 109-3 through 109-15; 153-9, subdivisions (10)-(12). See also, § 128-8 et seq. and notes thereto.

Liability Where No Execution Issued.—The securities on a constable's bond are accountable for his default in paying the moneys collected, even though no execution was issued for the purpose of collecting the same. Holcomb v. Franklin, 11 N. C. 274 (1826).

Failure to Pay Over Money.—Where a claim against a nonresident of the State, but subject to a single justice's jurisdiction, was put into a constable's hands for collection, and he collected the money, it was held that a failure to pay over such money on demand was a breach of his official bond. Dunton v. Doxey, 52 N. C. 222 (1859), distinguishing Dade v. Morris, 7 N. C. 146 (1819).

Money in Excess of Amount of Execution.—Where a sale of property under execution is made by a sheriff or a constable, and the property brings more than the amount of execution, it is the duty of such sheriff or constable to see that the excess is paid to the owner of the property. If he fails to do so, he is liable on his official bond. State v. Reed, 27 N. C. 357 (1845).

Failure to Collect.—Where a person put into the constable's hands for collection a note, the amount of which exceeded the jurisdiction of a justice of the peace, and

the constable procured the maker to substitute for it two notes, each within the jurisdiction of a justice, and afterwards failed to collect the same when he might have done so, it was held that he was liable on his bond. State v. Stephens, 25 N. C. 92 (1842).

Failure to Return Uncollected Notes.—Where a constable received notes to collect, and for want of time did not collect them before his term of office expired, and afterwards refused to deliver them up, it was held that his sureties were liable therefor on his official bond. State v. Johnson, 29 N. C. 77 (1846).

Constable Becoming Surety.—If an insolvent constable become surety for stay of execution committed to him for collection, it is a breach of his bond. The law requires him to take responsible sureties. Governor v. Davidson, 14 N. C. 361 (1832). See also, Governor v. Coble, 13 N. C. 489 (1830).

Necessity of Demand.—In an action upon a constable's bond for failing to pay over money collected by him, it is necessary to prove a demand on him. White v. Miller, 20 N. C. 50 (1838).

Where negligence in failing to collect is the breach assigned in a suit on a constable's bond, no demand is necessary. Nixon v. Bagby, 52 N. C. 4 (1859).

Defense to Suit on Constable's Bond.—It is a sufficient defense to a suit on a constable's bond for failing to return a note given him for collection that the note had been sued and judgment obtained upon it. The note is thus sufficiently accounted for. Miller v. Pharr, 87 N. C. 396 (1882). See also, State v. Hooks, 33 N. C. 371 (1850).

Limitation of Action.—An action by warrant against a constable's sureties to recover moneys collected by a constable by virtue of his office, can only be barred by the same length of time that bars an action on the bond. Wilson v. Coffield, 27 N. C. 513 (1845).

Parties.—Where a debt is due to A., and he places it in the hands of a constable for collection, A. is the only person who can maintain, as relator, an action on the official bond of the constable for a breach of duty, nothwithstanding A. may have afterwards assigned his interest in the debt to another. Governor v. Deavor, 25 N. C. 56 (1842).

Nature of Damages.—In an action on the official bond of a constable for his failure to collect notes placed in his hands for collection, the plaintiff is entitled to recover only nominal damages, unless he shows some actual injury sustained. State v. Skinner, 25 N. C. 564 (1843).

§ 151-4. Fees of constables.—Constables shall be allowed the same fees as sheriffs. (1883, c. 108; Code, s. 3742; Rev., s. 2787; C. S., s. 3922.)

Local Modification.—Vance (Henderson Township): 1953, c. 368; 1961, c. 568.

§ 151-5. Special constables.—For the better executing of any precept or mandate in extraordinary cases, any justice of the peace may direct the same, in the absence of or for want of a constable, to any person not being a party, who shall be obliged to execute the same under like penalty that any constable would be liable to. (Code, s. 645; Rev., s. 935; C. S., s. 974.)

Decision of Justice Conclusive as to Extraordinary Case.—The decision of the justice of the peace is conclusive as to the existence of an "extraordinary case" for which he is, under this section, authorized to appoint anyone a special constable to execute his mandate. State v. Armistead, 106 N. C. 639, 10 S. E. 872 (1890); State v. Wynne, 118 N. C. 1206, 24 S. E. 216 (1896).

However, while what has been stated in the preceding paragraph is true, it is always well to state that the person specifically appointed is so appointed for the want of a regularly constituted officer; as the section does not contemplate the appointment of special constables except on "extraordinary cases." State v. Dula, 100 N. C. 423, 6 S. E. 89 (1888).

Deputation Should Be in Writing.—This section, by fair intendment, would seem to require that the deputation contemplated therein be in writing. State v. Johnson, 247 N. C. 240, 100 S. E. (2d) 494 (1957).

Defective Deputation of Special Officer.—Though the process be defective because it is not signed, or the deputation of the special officer is not in writing, as this section by fair intendment would seem to require, the defect may be waived by the defendant by his appearance before the court. In such a case, whatever may be the rights of the defendant making the arrest, the validity of the judgment is not thereby affected. State v. Cale, 150 N. C. 805, 63 S. E. 958 (1909).

Powers and Duties of Special Constables.—When a special constable is appointed under this section, in writing and without words restricting his authority, it confers upon him a general power to serve all processes and perform all the duties in regard to the particular case as those of a regular constable. State v. Armistead, 106 N. C. 639, 10 S. E. 872 (1890).

What Validity of Arrest Dependent upon.—The validity of the prisoner's arrest by the special constable depends upon the validity of the officer's deputation and not upon the sufficiency of the mittimus which

is to terminate his duties. State v. Armistead, 106 N. C. 639, 10 S. E. 872 (1890).

In Civil Actions.—A justice of the peace has no authority to depute a special officer to serve process in a civil action. McKee v. Angel, 90 N. C. 60 (1884).

§ 151-6. Vacancies in office.—Upon the death, failure to qualify or removal of any constable out of the township in which he was elected or appointed constable, or upon the failure of the voters of a township to elect a constable as required in § 151-1, the board of commissioners may appoint another person to fill the vacancy, who shall be qualified and act until the next election of constables. (R. C., c. 24, s. 6; Code, s. 646; Rev., s. 936; C. S., s. 975; 1925, c. 206.)

Local Modification.—Washington: 1925, c. 206, s. 2.

Cross Reference.—See Const., Art. IV, § 24.

Editor's Note.—The clause providing for appointment in case of failure to elect was inserted by the 1925 amendment.

County commissioners have the power to fill vacancies under the Constitution, Art. IV, § 24. State v. McLure, 84 N. C. 153 (1881).

§ 151-7. Powers and duties.—Constables are hereby invested with and may execute the same power and authority as they have been by law heretofore vested with, and have executed; and, in discharge of their duties, they shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county or upon any bay, river, or creek adjoining thereto; and the said precepts and processes shall be returned to the magistrate, or other proper authority. (R. C., c. 24, s. 9; Code, s. 643; Rev., s. 937; C. S., s. 976.)

Local Modification.—Henderson: 1941, c. 364; Onslow: 1957, c. 1213; Rutherford: 1941, c. 364; Scotland: 1951, c. 692.

Cross References.—See § 162-14. As to town constables, see § 160-17 et seq. As to contempt for certain omissions of duty, see § 5-8.

Powers and Duties Are Co-Extensive with Limits of County.—Constables have the same power and authority as they were invested with prior to our constitutional and statutory provisions, and their powers and duties are co-extensive with the limits of the county in which they are elected. Taylor v. Wake Forest, 228 N. C. 346, 45 S. E. (2d) 387 (1947).

Common-Law Rule Not Changed.—This section and § 162-14 do not change the common-law rule that an escaped convict may be rearrested in any county of the State, without new process, by the officer in charge of him. State v. Finch, 177 N. C. 599, 99 S. E. 409 (1919).

Effect of Constitutional Requirement.—Section 24, Article IV, of the Constitution of North Carolina, was not meant to restrict the powers and duties of the constables to the township in which they were elected, but to intersperse the constables throughout every part of the county. State v. Corpening, 207 N. C. 805, 178 S. E. 564 (1935).

Town Constable's Authority to Serve Papers Other than Process.—A town constable is given no authority to serve any papers for the superior court except process, and that only when expressly directed to him by the court. Forte v. Boone, 114 N. C. 177, 19 S. E. 632 (1894).

How Process Addressed to Officer.—To make a valid service of process from the superior courts by constables, the same should be specially addressed to such officer by his official title. Carson v. Woodrow, 160 N. C. 143, 75 S. E. 996 (1912).

§ 151-8. To execute notices within justice's jurisdiction.—Constables shall likewise execute, within the places aforesaid, all notices tendered to them which are required by law to be given for the commencement or in the prosecution of any cause before a justice of the peace; and the service thereof shall be made by delivering a copy to the person to be notified or by leaving a copy at his usual place of abode, if in the jurisdiction of the constable, which service, with the time thereof, he shall return on the notice, and such return shall be evidence of its service. On demand they shall deliver the notice to the party at whose instance it was issued. (R. C., c. 24, s. 10; Code, s. 644; Rev., s. 938; C. S., s. 977.)

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.—In each county a coroner shall be elected by the qualified voters thereof in the same manner and at the same time as the election of members of the General Assembly, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the county commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Const. art. 4, s. 24; 1903, c. 661; Rev., ss. 1047, 1049; C. S., ss. 1014, 1018; Ex. Sess. 1924, c. 65; 1935, c. 376.)

Local Modification.—Alamance: 1959, c. 1105, s. 1; Buncombe (assistant coroner): 1963, c. 358; Burke (assistant coroner): 1963, c. 952; Forsyth (assistant coroner): 1955, c. 95, s. 1; Orange (assistant coroner): 1953, c. 278; Pitt: 1963, c. 330; Surry (assistant coroner): 1953, c. 291; Union (assistant coroner): 1961, c. 305, s. 1; Wake: 1957, c. 638.

Cross References.—See § 153-9, subdivisions (10)-(12). See also Const., Art. IV, § 24.

Editor's Note.—For an article discussing the provisions of this chapter and suggesting the abolition of the coroner system, see 26 N. C. Law Rev. 96.

§ 152-2. Oaths to be taken.—Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office. (Code, s. 661; Rev., s. 1048; C. S., s. 1015; Ex. Sess. 1924, c. 65.)

Cross References.—As to form of oath, see § 11-11. As to oaths required of public officers, see §§ 11-6, 11-7; Const., Art. VI, § 7. As to penalty for failure to take oath, see § 128-5.

Editor's Note.—This section was reenacted without change by the 1924 amendment.

§ 152-3. Coroner's bond.—Every coroner shall execute an undertaking conditioned upon the faithful discharge of the duties of his office with good and sufficient surety in the penal sum of two thousand dollars ($2,000), payable to the State of North Carolina, and approved by the board of county commissioners. (1791, c. 342, ss. 1, 2, P. R.; 1820, c. 1047, ss. 1, 2, P. R.; R. C., c. 25, s. 2; Code, s. 661; 1899, c. 54, s. 52; Rev., s. 299; C. S., s. 1016; Ex. Sess. 1924, c. 65.)

Local Modification.—Yancey: 1945, c. 271.

Editor's Note.—The 1924 amendment inserted "and sufficient" and "penal sum."

Want of Official Bond.—Where one has been appointed coroner of a county, though it may appear he has not renewed his official bond, as required by law, yet his acts as a coroner de facto are valid, at least as regards third persons. Mabry v. Turrentine, 30 N. C. 201 (1847).

§ 152-4. Coroners' bonds registered; certified copies evidence.—All official bonds of coroners shall be duly approved, certified, registered, and filed as sheriffs' bonds are required to be; and certified copies of the same duly certified by the register of deeds, with official seal attached, shall be received and read in evidence in the like cases and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence. (1860-1, c. 18; Code, s. 662; Rev., s. 300; C. S., s. 1017; Ex. Sess. 1924, c. 65.)

Cross References.—See §§ 109-3 through 109-15, 153-9, subdivisions (10)-(12). See also, § 128-8 et seq. and notes thereto.

Editor's Note.—The 1924 amendment substituted in this section "certified by the register of deeds, with official seal attached" in lieu of "from the register's office."

§ 152-5. Fees of coroners.—Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars; if necessarily engaged more than one day, for each additional day, five dollars.

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county. It is the duty of every coroner, where he or any juryman deems it necessary to the better investigation of the cause or manner of death, to summon a physician or surgeon, who shall be paid for his attendance and services ten dollars, and such further sum as the commissioners of the county may deem reasonable. (Code, s. 3743; 1903, c. 781; Rev., s. 2775; C. S., s. 3905.)

Local Modification.—Alamance: 1959, c. 1105, s. 2; Buncombe: 1949, c. 910; Burke: 1963, c. 952; Cabarrus: 1947, c. 410; 1953, c. 567; Caldwell: Pub. Loc. 1939, c. 191; Camden: 1947, c. 200; Cleveland: Pub. Loc. 1921, c. 75; Columbus: 1959, c. 467, s. 3; Cumberland: 1941, c. 73; 1953, c. 90; Davidson: Pub. Loc. 1923, c. 402; Forsyth: 1955, c. 95, s. 2, amended by 1959, c. 942, s. 1; Graham: 1961, c. 572; Halifax: 1953, c. 362; Harnett: 1955, c. 752; 1959, c. 999; Johnston: Pub. Loc. 1927, c. 113; Pub Loc. 1933, c. 365; Lenoir: 1941, c. 84; McDowell: 1963, c. 1199; Mitchell: 1953, c. 416; New Hanover: 1955, c. 1110; 1959, c. 1049; Northampton: 1953, c. 420, s. 4; Onslow: 1951, c. 516; Orange: 1953, c. 281, s. 3; Pasquotank: Pub. Loc. 1939, c. 102; 1943, c. 630; Pender: 1947, c. 52; Polk: 1959, c. 982; Richmond: 1951, c. 267; 1959, c. 372; Rockingham: 1951, c. 430; Sampson: 1947, c. 747; Transylvania: 1957, c. 757; Union: Pub. Loc. 1921, c. 75; 1961, c. 305, s. 2; 1963, c. 440; Wake: Pub. Loc. 1923, c. 573; 1931, c. 137; Washington: 1963, c. 574; Watauga: 1959, c. 951.

§ 152-6. Powers, penalties, and liabilities of special coroner.—The special coroner appointed under the provisions of § 152-1 shall be invested with all the powers and duties conferred upon the several coroners in respect to holding inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners. (1903, c. 661, s. 2; Rev., s. 1050; C. S., s. 1019; Ex. Sess. 1924, c. 65.)

Editor's Note.—This section was reenacted without change by the 1924 amendment.

§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.—The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

(1) Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he shall go to the place where the body of such deceased person is and make a careful investigation and inquiry as to when and by what means such deceased person came to his death and the name of the deceased, if to be found out, together with all the material circumstances attending his death, and shall make a complete record of such personal investigation: Provided, however, that the coroner shall not proceed to summon a jury as is hereinafter provided if he shall be satisfied from his personal investigation that the death of the said deceased was from natural causes, or that no person

is blamable in any respect in connection with such death, and shall so find and make such finding in writing as a part of his report, giving the reason for such finding; unless an affidavit be filed with the coroner indicating blame in connection with the death of the deceased. A written report of said investigation shall be filed by the coroner with the clerk of the superior court who shall preserve the said report.

(2) To summon forthwith a jury of six good and lawful men, freeholders, who are otherwise qualified to act as jurors, who shall not be related to the deceased by blood or marriage, or to any person suspected of guilt in connection with such death, and the coroner, upon the oath of the jury at the said place, which oath may be taken by him or any other person authorized to administer oaths, shall make further inquiry as to when, how and by what means such deceased person came to his death, and shall cause to come before himself and the said jury all such persons as may be necessary in order to complete said inquiry.

(3) If it appears that the deceased was slain, or came to his death in such manner as to indicate any person or persons guilty of the crime in connection with the said death, then the said inquiry shall ascertain who was guilty, either as principal or accessory, or otherwise, if known; and the cause and manner of his death.

(4) Whenever in such investigations, whether preliminary or before his jury, it shall appear to the coroner or to the jury that any person or persons are culpable in the matter of such death, he shall forthwith issue his warrant for such persons and cause the same to be brought before him and the inquiry shall proceed as in the case of preliminary hearings before justices of the peace, and in case it appears to the said coroner and the jury that such persons are probably guilty of any crime in connection with the death of the deceased, then the said coroner shall commit such persons to jail, if it appears that such persons are probably guilty of a capital crime, and in case it appears that such persons are not probably guilty of a capital crime, but are probably guilty of a lesser crime, then such coroner is to have the power and authority to fix bail for such person or persons. All such persons as are found probably guilty in such hearing shall be delivered to the keeper of the common jail for such county by the sheriff or such other officer as may perform his duties at such hearings and committed to jail unless such persons have been allowed and given the bail fixed by such coroner.

(5) As many persons as are found to be material witnesses in the matters involved in such inquiry and hearings, and are not culpable themselves shall be bound in recognizance with sufficient surety to appear at the next superior court to give evidence, and such as may default in giving such recognizance may be by such coroner committed to jail as is provided for State witnesses in other cases.

(6) Immediately upon information of the death of a person within his county under such circumstances as, in his opinion, call for investigation, the coroner shall notify the solicitor of the superior court and the county medical examiner, who in turn shall notify the chairman of the committee, and thereafter, the coroner shall make such additional investigation as the solicitor may direct.

(7) If an inquest or preliminary hearing be ordered, to arrange for the examination thereat of any and all witnesses including those who may be offered by the chairman of the committee on post-mortem medicolegal examinations or the county medical examiner.

(8) To permit counsel for the family of the deceased, the solicitor of his district, or anyone designated by him, and counsel for any accused person to be present and participate in such hearing and examine and cross-

examine witnesses and, whenever a warrant shall have been issued for any accused person, such accused person shall be entitled to counsel and to a full and complete hearing.

(9) To begin his inquiry with his jury where the body of the deceased shall be, but said hearing may be adjourned to other times and places, and the body of the deceased need not be present at such further hearing.

(10) To reduce to writing all of the testimony of all witnesses, and to have each witness to sign his testimony in the presence of the coroner, who shall attest the same, and, upon direction of the solicitor of the district, all of the testimony heard by the coroner and his jury shall be taken stenographically, and expense of such taking, when approved by the coroner and the solicitor of the district, shall be paid by the county. When the testimony is taken by a stenographer, the witness shall be caused to sign the same after it has been written out, and the coroner shall attest such signature. The attestation of all the signatures of witnesses who shall testify before the coroner shall include attaching his seal, and such statements, when so signed and attested, shall be received as competent evidence in all courts either for the purpose of contradiction or corroboration of witnesses who make the same, under the same rules as other evidence to contradict or corroborate may be now admitted. The coroner shall file a copy of all testimony given at the said hearing and required by the foregoing portion of this subdivision to be in writing with the clerk of the superior court who shall preserve it. (Code, s. 657; 1899, c. 478; 1905, c. 628; Rev., s. 1051; 1909, c. 707, s. 1; C. S., s. 1020; Ex. Sess. 1924, c. 65; 1955, c. 972, s. 2; 1957, c. 503, ss. 1, 2.)

Local Modification.—Nash: 1951, c. 502.

Cross References.—As to contempt for certain omissions of duty, see § 5-8. As to limitation on right to perform autopsy, see § 90-217. As to duty to report death involving motor vehicle, see § 20-166.1.

Editor's Note.—No radical changes were made by the 1924 amendment. The same procedural steps were retained. Subdivisions (7), (8), (9), and the portions of (10) referring to stenographic reports were added.

The 1955 amendment, effective Jan. 1, 1956, rewrote subdivisions (6) and (7). The 1957 amendment added the last sentence of subdivisions (1) and (10).

Section States Historical Function of Coroner.—This section is simply a statement of the historical function of a coroner. He is by this section commanded to make an investigation whenever it appears deceased probably came to his death by criminal act. He is not required to summon a jury unless satisfied from his personal investigation that death was the result of criminal conduct. Gillikin v. United States Fidelity & Guaranty Co., 254 N. C. 247, 118 S. E. (2d) 606 (1961).

The Inquest a Judicial Proceeding.—The inquest is the coroner's court and it is an indispensable requisite that the jury which is summoned be sworn and charged by the coroner in the presence of the body of the deceased. Though the coroner is judge of the court and the power and authority to administer oaths to the witnesses rests in him, the administration of oaths is a ministerial act and may be performed by anyone by the direction and in the presence of the court. State v. Knight, 84 N. C. 790 (1881).

Autopsy.—A coroner has no authority to perform an autopsy in cases where there is no suspicion of foul play. Gurganious v. Simpson, 213 N. C. 613, 197 S. E. 163 (1938).

§ 152-8. Acts as sheriff in certain cases; special coroner.—If at any time there is no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff in said county; and he shall be under the same rules and regulations, and subject to the same forfeitures, fines, and penalties as sheriffs are by law for neglect or disobedience of the same duties. If at any time the sheriff of any county is interested in or a party to any proceeding in any court, and there is no coroner in such county, or if the coroner is interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations, and penalties

as hereinabove provided for. (Code, s. 658; 1891, c. 173; Rev., s. 1052; C. S., s. 1021; Ex. Sess. 1924, c. 65.)

Editor's Note.—This section was re-enacted without change by the 1924 amendment.

Service of Summons by Coroner When Sheriff Is Party.—In an action to which the sheriff is a party it is proper that the summons be addressed to and served by the coroner, State v. Baird, 118 N. C. 854, 24 S. E. 668 (1896), or by his deputy since the service of a summons is the discharge of a purely ministerial duty. Yeargin v. Siler, 83 N. C. 348 (1880).

The words "any proceedings in any court" contained in the provision for deputizing special officers where the sheriff and coroner are interested, have been given a literal interpretation and the provision is held applicable to courts of justices of the peace as well as to the higher courts. Baker v. Brem, 127 N. C. 322, 37 S. E. 454 (1900).

§ 152-9. Compensation of jurors at inquest.—All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, appear and act as such jurors, shall be entitled to the same compensation in per diem and mileage as is allowed by law to jurors acting in the superior courts. The coroners of the respective counties are authorized and empowered to take proof of the number of days of service of each juror so acting, and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the superior courts. (Code, ss. 659, 660; Rev., s. 1053; C. S., s. 1022; Ex. Sess. 1924, c. 65.)

Cross Reference.—As to fees of jurors in superior court, see § 9-5.

Editor's Note.—This section was re-enacted without change by the 1924 amendment.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus.—All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing before a justice of the peace or a recorder, and such cases shall be immediately sent to the clerk of the superior court of such county and docketed by him in the same manner as warrants from justices of the peace. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the superior court review the action of the coroner in fixing bail or declining the same. (Ex. Sess. 1924, c. 65.)

§ 152-11. Service of process issued by coroner.—All process, both subpoenas and warrants for the arrest of any person or persons, and orders for the summoning of a jury, in case it may appear necessary for such coroner to issue such order, shall be served by the sheriff or other lawful officer of the county in which such dead body is found, and in case it is necessary to subpoena witnesses or to arrest persons in a county other than such county in which the body of the deceased is found, then such coroner may issue his process to any other county in the State, with his official seal attached, and such process shall be served by the sheriff or other lawful officer of the county to which it is directed, but such process shall not be served outside of the county in which such dead body is found unless attested by the official seal of such coroner. (Ex. Sess. 1924, c. 65.)

Chapter 153.

Counties and County Commissioners.

Article 1.

Corporate Existence and Powers of Counties.

Article 2.

County Commissioners.

Article 2A.

Photographic Reproduction of Records.

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Article 4.

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ARTICLE 1.

Corporate Existence and Powers of Counties.

§ 153-1. County as corporation; acts through commissioners.—Every county is a body politic and corporate, and has the powers prescribed by statute, and those necessarily implied by law, and no others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them. (1868, c. 20, ss. 1, 2; 1876-7, c. 141, s. 1; Code, ss. 702, 703; Rev., s. 1309; C. S., s. 1290.)

Counties Are Bodies Politic and Corporate to Exercise Powers Granted.—Counties are bodies politic and corporate to exercise as agents for the State only such powers as are prescribed by statute and those which are necessarily implied therefrom by law, essential to the exercise of the powers specifically conferred. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928). See Board v. Hanchett Bond Co., 194 N. C. 137, 138 S. E. 614 (1927).

They Are Governmental Agencies.—The Constitution recognizes the existence of counties as governmental agencies. White v. Com'rs, 90 N. C. 437 (1884); Woodall v. Western Wake Highway Comm., 176 N. C. 377, 97 S. E. 226 (1918).

And Part of the State Government.—Counties are of, and constitute a part of, the State government. Their chief purpose is to establish its political organization, and effectuate the local civil administration of its powers and authority. They are in their general nature governmental—mere instrumentalities of government—and possess corporate powers adapted to its purposes. It is not their purpose to create civil liability on their part, and become answerable to individuals civilly or otherwise. Manuel v. Board, 98 N. C. 9, 31 S. E. 829 (1887), citing White v. Commissioners, 90 N. C. 437 (1884); McCormack v. Commissioners, 90 N. C. 441 (1884).

Counties are a branch of the State government. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900).

Power of Legislature to Create.—Under our Constitution, the legislature is given power to create special public quasi corporations for governmental purposes in certain designed portions of the State's territory subject to like control, and in the exercise of such power county lines may be disregarded. Board v. Webb, 155 N. C. 379, 71 S. E. 520 (1911).

It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with the corporate functions, more or less extensive and varied in their character, for the purpose of government. The legislature alone can create counties, directly or indirectly, and invest them, and agencies in them, with powers, corporate or otherwise

in their nature, to effectuate the purposes of the government, whether these be local or general, or both. Such organizations are intended to be instrumentalities and agencies employed to aid in the administration of the government, and are always under the control of the power that created them unless the same shall be restricted by some constitutional limitations. McCormack v. Commissioners, 90 N. C. 441 (1884); Board v. Webb, 155 N. C. 379, 71 S. E. 520 (1911); Commissioners v. Commissioners, 157 N. C. 514, 73 S. E. 195 (1911); Woodall v. Western Wake Highway Commission, 176 N. C. 377, 97 S. E. 226 (1918).

The powers of the legislature over counties is very broad and far-reaching, giving to it practically full control of them. Jones v. Madison County Com'rs, 137 N. C. 579, 50 S. E. 291 (1905); Woodall v. Western Wake Highway Comm., 176 N. C. 377, 97 S. E. 226 (1918).

It May Confer Corporate Powers and Impose Liability.—The legislature, subject to constitutional limitations, may confer upon counties such corporate powers to make contracts, create civil liabilities, and serve such business purposes, as it may deem expedient and wise and make them answerable in damages for the negligence of their officers and agents in failing to properly exercise the powers with which they are charged, or for exercising them improperly, to the injury of individuals. But such corporate authority and liability must be especially created by and appear from statutory provision, expressed in terms or necessarily implied. Manuel v. Board, 98 N. C. 9, 3 S. E. 829 (1887).

May Direct Performance of Duties.—The legislature may direct counties to perform as duties all things which it can empower them to do. State v. Board, 122 N. C. 812, 30 S. E. 352 (1898).

May Change Functions.—The functions of counties are not always the same, and they may be enlarged, abridged or modified at the will of the legislature. White v. Commissioners, 90 N. C. 437 (1884).

And May Alter or Abolish Counties.—Counties are legislative creations and subject to be changed, even abolished, or divided and subdivided at the will of the General Assembly. Jones v. Board of Com'rs, 143 N. C. 59, 55 S. E. 427 (1906); Board of Trustees v. Webb, 155 N. C. 379, 71 S. E. 520 (1911); Woodall v. Western Wake Highway Comm., 176 N. C. 377, 97 S. E. 226 (1918).

Powers of Counties Are Strictly Construed.—Corporations which exercise delegated governmental authority, such as counties, must be confined to a strict construction of the statutes granting their powers. There is nothing in the nature of their duties to give rise to the implication that the State intends to clothe them with any other power than that expressly conferred, and the further right to do what is necessary to the complete exercise of the express powers. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

Counties as Municipal Corporations.—By the Constitution, art. VII, counties are regarded as municipal corporations. Winslow v. Commissioners, 64 N. C. 218 (1870).

A county is a municipal corporation created by law for public and political purposes, and constitutes a part of the government of the State. Its powers are expressly defined by law, and, where they are not fixed by the Constitution, they may be enlarged or modified at any time by the legislature. Gooch v. Gregory, 65 N. C. 142 (1906).

Same—Differ from Cities and Towns.—Counties are not, in a strictly legal sense, municipal corporations, like cities and towns. Their purposes are more general and partake more largely of the purposes and powers of government proper. Manuel v. Board, 98 N. C. 9, 31 S. E. 829 (1887); Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900); Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

Property and Revenue Not Subject to Execution.—A county can only acquire and hold property for necessary public purposes and for the benefit of all its citizens, and the principles of public policy prevent such property from being sold under execution to satisfy the debt of an individual. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890). See Gooch v. Gregory, 65 N. C. 142 (1871).

The county revenue is safe from seizure by creditors, or even for taxes due the federal government, because, to admit the right to appropriate such revenue in satisfaction of a claim would be to concede the power to destroy the State government by depriving its agencies of the means of performing their proper functions. Subject to the restrictions contained in the federal Constitution, the State is a sovereignty, and it is essential to its preservation to give to all property held for it by such agencies as counties, the same protection as is given to that held in its own name. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890); Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

County Must Act through Commissioners in Legal Session.—For a county to exercise its power to contract, it is essential that it act through its county commissioners as a body convened in legal session, regular, adjourned or special, and, as a rule, authorized meetings are prerequisite to corporate action, which should be based upon deliberate conference and intelligent discussion of proposed measures. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928); Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 17 S. E. (2d) 1 (1941); Jefferson Standard Life Ins. Co. v. Guilford County, 225 N. C. 293, 34 S. E. (2d) 430 (1945).

And Not in Joint Meeting with Other Governmental Agencies.—The commissioners of a county are without authority, con-

stitutional or statutory, to enter into a joint meeting with other State governmental agencies functioning as entirely separate departments respectively of the county and the State, and therein make a binding corporate contract by the adoption of a joint verbal agreement to pledge the faith and credit of the county for its part in the payment for the employment of a person to render service in the capacity of a detective to determine and procure evidence against those who have committed a criminal offense. O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

May Issue Bonds to Make Repairs to Buildings.—This section when construed with § 153-77 gives the county statutory power to issue bonds to repair and make additions to the county jail or public schools, the greater power to "erect" necessarily including the lesser power to "repair." Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934).

Cited in State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

§ 153-2. Corporate powers of counties.—A county is authorized:

(1) To sue and be sued in the name of the county.

(2) To purchase and hold lands within its limits and for the use of its inhabitants, subject to the supervision of the General Assembly.

(3) To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its powers.

(4) To make such orders for the disposition or use of its property as the interests of its inhabitants require. (1868, c. 20, s. 3; Code, s. 704; Rev., s. 1310; C. S., s. 1291.)

Cross References.—As to corporate powers of a municipal corporation, see § 160-2. As to authority to lease, convey or acquire property for use as armory, see § 143-235. As to appropriations for benefit of military units, see § 143-236.

Suit in Name of County.—Where a county is the real party in interest, it must sue and be sued in its own name. Lenoir County v. Crabtree, 158 N. C. 357, 74 S. E. 105 (1912); Fountain v. Pitt County, 171 N. C. 113, 87 S. E. 990 (1916); Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

A county is not required in an action for mandatory injunction to bring the suit in the name of the county commissioners, but it should be brought in the name of the county. Lenoir County v. Crabtree, 158 N. C. 357, 74 S. E. 105 (1912).

In the absence of a refusal of the board of commissioners of a county to institute an action in its behalf, the action must be instituted in the name of the county or on relation of the county. Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

Same—Formerly in Name of County Commissioners.—Under the former statute all actions and proceedings by or against a county in its corporate capacity were required to be in the name of the board of commissioners. Pegram v. Commissioners, 65 N. C. 114 (1871); Askew v. Pollock, 66 N C. 49 (1872); Fountain v. Pitt, 171 N. C. 113, 87 S. E. 990 (1916).

And under such statute an action upon a county treasurer's bond to recover an amount alleged to be due the county was required to be brought on the relation of the commissioners, and not by the successor treasurer. State v. Thees, 89 N. C. 55 (1883).

When an order to show cause, which is in the nature of an alternative writ of mandamus, could be brought against the board of commissioners, it was not to be directed to the individuals composing the board. It was only in case of disobedience that they could be proceeded against individually. Askew v. Pollock, 66 N. C. 49 (1872).

Suits against Board of Financial Control.—For the purpose of liquidating securities held by the county of Buncombe, the board of financial control for the county is nothing more nor less than a liquidating agent designated by law for that purpose and is sued as provided by this section. Bourne v. Board of Financial Control, 207 N. C. 170, 176 S. E. 306 (1934).

Liability of Counties.—Counties may be sued only in such cases and for such causes as may be allowed by statute. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900).

Counties are not ordinarily liable to be sued civilly for the manner in which they exercise, or fail to exercise, their corporate powers. White v. Commissioners, 90 N. C. 437 (1884).

A county was held not liable in damages for an injury occasioned by a defective bridge forming a part of the highway. Moffitt v. Asheville, 103 N. C. 237, 9 S. E. 695 (1889).

Same—Torts of Officers or Agents.—Counties are not liable in damages for the torts of their officials, in the absence of statutory provisions giving a right of action. Keenan v. Commissioners, 167 N. C. 356, 83 S. E. 556 (1914).

Generally a county is not liable for damages sustained by individuals by reason of the neglect of its officers or agents. Manuel v. Board, 98 N. C. 9, 3 S. E. 829 (1887).

Form of Action.—Where a good cause of action exists, a county may be sued in any form appropriate to the cause of action, and its liability does not differ as respects the form of the action from that of a private corporation or of an individual. Winslow v. Commissioners, 64 N. C. 218 (1870).

Venue of Action.—Under the former statute which provided that a county should "sue and be sued in the name of the board of commissioners," actions against a board of county commissioners were required to be brought in the county of such commissioners. Jones v. Commissioners, 69 N. C. 412 (1873); Steele v. Commissioners, 70 N. C. 137 (1874).

Commissioners' Supervisory Control.—Under the Constitution and public laws of North Carolina the boards of county commissioners are generally given supervision and control of governmental matters in the several counties. Bunch v. Commissioners, 159 N. C. 335, 74 S. E. 1048 (1912). As to powers of commissioners generally, see § 153-9 and notes thereto.

Power to Compromise.—The power to sue and to defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits. Board v. Tollman, 145 F. 753 (1906).

Power to Enter Consent Judgment.—Under this section the county commissioners have the authority to assent to the entry of a consent judgment in an action pending against the county, when such judgment is entered in good faith, and is free from fraud, etc., a consent judgment being a contract of the parties spread upon the records with the approval and sanction of a court of competent jurisdiction. Weaver v. Hampton, 204 N. C. 42, 167 S. E. 484 (1933).

Contract Relating to Care of the Poor.—Under the statute imposing the general duty on county commissioners to provide for the poor, in order to make a binding pecuniary obligation on the county, there must be a contract to that effect, express in its terms, or the service must be done at the express request of an officer or agent charged with the duty and having the power to make contracts concerning it. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

When Commissioners May Not Sell Property.—County commissioners have no power to sell property held for corporate purposes, where its alienation would tend to embarrass or prevent the performance of its duties to the public. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

§ 153-2.1. Continuing contracts.—A county is authorized to enter into continuing contracts, some portion of which or all of which may be performed in an ensuing fiscal year, but no such contract shall be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The board of county commissioners shall, in the budget resolution of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G. S. 153-130 to be printed, written, or typewritten on all contracts, agreements, or requisitions requiring the payment of money shall be placed on a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made. (1959, c. 250.)

§ 153-3. Reconveyance of property donated to county, etc., for specific purpose.—Any county, city or town to which any real property has been conveyed, without consideration, to be used for a specific purpose set out in the deed, shall have authority to reconvey the same without consideration to the grantor, his heirs, assigns or nominees whenever the governing body of such municipality shall officially determine that the said property will not be used for the purpose for which it was given: Provided, that due notice of such proposed conveyance shall be given by advertisement for two successive weeks in some newspaper of general circulation in the county. (1937, c. 441.)

Cross Reference.—As to abandonment of property dedicated to public use, see § 136-96.

Article 2.

County Commissioners.

§ 153-4. Election and number of commissioners.—There shall be elected in each county of the State, at the general election to be held in the year one thousand eight hundred and ninety-six, and every two years thereafter, by the duly qualified

voters thereof, three persons to be chosen from the body of the county, who shall be styled "the board of commissioners for the county of ....." and shall hold their office for two years from date of their qualification and until their successors are elected and qualified. (Rev., s. 1311; C. S., s. 1292.)

Local Modification.—Bertie: 1951, c. 1106, s. 1; Columbus: 1953, c. 68; Cumberland: 1943, c. 44; Forsyth: 1949, c. 851; 1963, c. 802; Nash: 1951, c. 1106, s. 1; Orange: 1953, c. 439; Person: 1961, c. 188, repealing 1955, c. 16.

Session Laws 1957, c. 1303, to become effective when approved by the voters, repeals 1953 Session Laws, c. 617, relating to Lee County.

Cross References.—As to acting as commissioner before qualifying as such, see § 14-229. As to time of election of county commissioners, see § 163-4. As to provision that county commissioner cannot practice law, see § 84-2.

Remedies to Try Title to Office.—As to remedies to try title to the office of county commissioner, see Lyon v. Board, 120 N. C. 237, 26 S. E. 929 (1897); State v. Taylor, 122 N. C. 141, 29 S. E. 101 (1898). See also, §§ 1-511, 1-515, and notes.

§ 153-5. Local modifications as to term and number.—The number of commissioners shall be five instead of three in the counties of Alamance, Beaufort, Bertie, Buncombe, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Durham, Edgecombe, Franklin, Gates, Granville, Greene Guilford, Halifax, Harnett, Hertford, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenberg, Nash, New Hanover, Perquimans, Pitt, Richmond, Rockingham, Rowan, Sampson, Tyrrell, Vance, Warren, Wayne and Wilson.

Only one member of the board of commissioners of Brunswick County shall be from any one township of said county.

In Gaston County six persons shall be elected, one of whom must be a resident of Gastonia township, one a resident of River Bend township, one a resident of South Point township, one a resident of Crowders Mountain township, one a resident of Cherryville township, and one a resident of Dallas township. If at any time the board of commissioners of Gaston County are equally divided upon any question pending before them and there is a tie vote, then the clerk of said board is authorized and empowered to cast the deciding vote and to determine such question.

At the election for county officers to be held in Greene County in 1964, there shall be elected five county commissioners. The two candidates receiving the highest number of votes shall serve for a term of four (4) years each. The three candidates receiving the next highest number of votes shall serve for a term of two (2) years each.

At the election for county officers to be held in Greene County in 1966, and quadrennially thereafter, there shall be elected three county commissioners who shall serve for terms of four (4) years each and until their successors are elected and qualified. At the election to be held in Greene County in 1968, and quadrennially thereafter, there shall be elected two county commissioners who shall serve for terms of four (4) years each and until their successors are elected and qualified.

In the primary and general elections in 1964, and biennially thereafter, there shall be nominated and elected five (5) members to the board of county commissioners of Person County. The voters as a whole shall nominate and elect the above board members.

Commencing with the election in 1960 and every four years thereafter, the county commissioners of Sampson County shall be elected for terms of four years each.

In Wake County five persons shall be elected, three of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and ten, and two of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and twelve.

There shall be elected in Wilkes County at the general election to be held in 1964 five (5) members of the board of county commissioners. The two (2) candidates receiving highest votes in the 1964 election shall be elected for a term of four (4) years, and the three (3) receiving next highest vote shall be elected for two (2)

years. In the 1966 election and each two (2) years thereafter, there shall be elected three (3) commissioners, the two (2) candidates receiving the highest vote to be for a term of four (4) years and the one (1) receiving the next highest vote for a term of two (2) years, and each two (2) years thereafter, there shall be elected three (3) commissioners, the two (2) receiving highest vote for a term of four (4) years and the one (1) receiving the lowest vote for a term of two (2) years. (1876-7, c. 141, s. 5; Code, s. 716; 1887, c. 307; 1895, c. 135; 1899, cc. 103, 147, 153, 187, 297, 301, 346, 450, 467, 488, 609; 1901, cc. 14, 60, 328, 330, 581; 1903, cc. 4, 7, 14, 36, 46, 59, 137, 191, 203, 206, 207, 228, 265, 446, 515, 790; 1905, cc. 37, 44, 58, 73, 148, 338, 340, 346, 397, 422, 553; Rev., ss. 1311, 1312; 1907, cc. 2, 16, 55, 61, 125, 178, 291, 350; 1909, cc. 12, 53, 213, 302, 625, 729; 1917, cc. 32, 175, 381; C. S., s. 1293; 1931, c. 68; 1941, c. 34; 1943, cc. 18, 43, 103, 109, 217, 345; c. 368, s. 2; 1953, c. 310; 1955, c. 16; 1959, c. 695; 1961, c. 101; 1963, cc. 215, 217, 351.)

Editor's Note.—The 1941 amendment, which added a paragraph relating to Person County, was repealed by Session Laws 1943, c. 109. Session Laws 1943, c. 103, added "Lee" to the list of counties in the first paragraph. "Gates" and "Caswell" were impliedly inserted in the list by Session Laws 1943, cc. 18 and 43. Robeson County was impliedly stricken from the list by Session Laws 1943, c. 217, providing for the formation of a sixth commissioner's district in such county. Brunswick County was stricken from the list by Session Laws 1943, c. 368, s. 2.

Session Laws 1943, c. 345, which impliedly struck "Pasquotank" from the list of counties in the first paragraph, provided that in primaries thereafter held preceding the general election in the county, there shall be nominated by each of the political parties participating therein one candidate from each of the five rural townships and two from Elizabeth City Township for the office of county commissioner, to be voted on by the qualified voters of the entire county.

The 1953 amendment inserted "Sampson" in the first paragraph. The 1955 amendment added the former paragraph relating to Person County. The 1959 amendment added the last paragraph.

The 1961 amendment added the paragraph relating to Wilkes County.

Session Laws 1961, c. 188, repealing Session Laws 1955, c. 16, relating to Person County was itself repealed by Session Laws 1963, c. 215, codified as the fourth paragraph of this section.

The first 1963 amendment impliedly inserted the paragraph relating to Person County.

The second 1963 amendment rewrote the paragraph relating to Wilkes County.

The third 1963 amendment inserted the two paragraphs relating to Greene County.

Cited in Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

§ 153-6. Vacancies in board; how filled.—In case of a vacancy occurring in the board of commissioners of a county, the clerk of the superior court for the county shall appoint to said office some person for the unexpired term: Provided that in the following counties, the board of county commissioners shall appoint to said office some person for the unexpired term: Alexander, Anson, Avery, Brunswick, Burke, Camden, Caswell, Chatham, Chowan, Columbus, Duplin, Durham, Forsyth, Gaston, Gates, Graham, Greene, Haywood, Hertford, Johnston, Lenoir, Lincoln, McDowell, Montgomery, Nash, New Hanover, Northampton, Orange, Pasquotank, Pitt, Rockingham, Rowan, Stanly, Swain, Transylvania and Yadkin. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C. S., s. 1294; 1959, c. 1325.)

Local Modification.—Davidson: 1955, c. 402; Iredell: 1955, c. 244; Wayne: 1959, c. 1180.

Editor's Note.—The 1959 amendment added the proviso.

Authority of Clerk to Accept Resignation.—A tender of resignation by a county commissioner to the clerk of the superior court is a tender to the proper authority. While the mere filing of the resignation does not vacate the office, its acceptance by the clerk is final, and after its acceptance the commissioner has no power to withdraw it. Rockingham County v. Luten Bridge Co., 35 F. (2d) 301 (1929).

§ 153-7. When to qualify; oath to be filed.—The board of commissioners shall qualify and enter upon the duties of their office on the first Monday of December next succeeding their election, and they may take the oaths of office before the clerk of the superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths. The oaths of office severally taken and sub-

scribed by them shall be deposited with the clerk of the superior court. (Code, s. 708; 1895, c. 135, s. 4; Rev., s. 1316; C. S., s. 1295.)

Cross References.—As to oaths required, see §§ 11-6, 11-7, and 11-11. As to penalty for failure to take oath, see § 128-5.

§ 153-8. Meetings of the board of commissioners.—The board of commissioners of each county shall hold a regular meeting at the courthouse on the first Monday in each month unless the said first Monday falls on a legal holiday, in which event the meeting shall be held on the following Tuesday of the month. The board may adjourn its regular meetings from day to day until the business before it is disposed of. Special meetings may be held by call of the chairman of the board upon two days' written notice being given to each of the board members and posting such notice on the courthouse bulletin board. A majority of the board shall constitute a quorum. At each regular December meeting the board shall choose one of its members as chairman for the ensuing year, and the board may choose a vice-chairman to act in the event of the disability or absence of the chairman; in the absence of the chairman and vice-chairman at any regular, adjourned, or special meeting, the members present shall choose a temporary chairman. (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154.)

Local Modification.—Guilford, Harnett, Moore, Nash, Orange, Person: 1955, c. 677; Randolph: 1939, c. 172; Richmond: 1939, c. 88; 1963, c. 863.

Editor's Note.—The 1951 amendment rewrote this section. Section 2 of the amendatory act repealed all laws, except public-local and private laws, in conflict with its provisions.

The 1961 amendment provided for choosing a vice-chairman.

Construed as Directory.—The section is directory and is intended to forbid the commissioners from receiving compensation for attendance on other days than regular meetings. It does not, however, disable the commissioners from acting at other times on due notice to all concerned. People v. Green, 75 N. C. 329 (1876).

Hence, commissioners elected by the county commissioners at an adjourned meeting subject to the call of the chairman are at least de facto officers whose title cannot be collaterally attacked. Tripp v. Commissioners, 158 N. C. 180, 73 S. E. 896 (1912).

Cited in Rockingham County v. Luten Bridge Co., 35 F. (2d) 301 (1929).

§ 153-9. Powers of board.—The boards of commissioners of the several counties have power:

Cross References.—As to power of the county commissioners to establish courts inferior to the superior court, see §§ 7-265, 7-266, 7-308, 7-332, 7-351, 7-385 and 7-405; to establish a domestic relations court, see § 7-101; to reduce salaries of officers and employees of the county, see § 160-28; to administer oaths, see § 11-9; to increase pensions of Confederate veterans by levying a special tax therefor, see § 112-30; to elect to have county employees participate in retirement system, see § 128-33; to take depositions, see § 8-76; to protect public monuments, see § 100-9; to come under State Volunteer Fire Department, see § 69-21; to co-operate in forest fire protection, see § 113-59; to co-operate in establishment of employment bureau, see § 96-26; to provide farmers with erosion equipment, see § 106-521; to appoint electrical inspectors, see § 160-122. As to duty of county commissioners to prepare jury list, see § 9-1; to appoint county superintendent of public welfare, see § 108-13; to authorize state flag to be displayed at county courthouse, see § 144-4.

Board Has Perpetual Existence.—The board of commissioners of a county has a perpetual existence, continued by members who succeed each other, and the body remains the same, notwithstanding a change in the individuals who compose it. Pegram v. Commissioners, 65 N. C. 114 (1871).

Has Only Such Powers as Statute Prescribes.—The board of commissioners in a county possesses only those powers which have been prescribed by statute and those necessarily implied by law, and no others. This is the general rule. It has also been expressly declared by statute to be the rule which ascertains the true scope and limit of the board's power and authority. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 43 S. E. 899 (1903).

Exercise of Powers by Board Is Exercise by County.—The board's exercise of statutory powers is, in contemplation of law, the exercise of such powers by the county. Board v. Hanchett Bond Co., 194 N. C. 137, 138 S. E. 614 (1927).

Powers of De Facto Board.—An old board of commissioners, holding over, as de facto officers, have the right and the duty of performing, to the fullest extent, all the

appropriate functions of office. State v. Jones, 80 N. C. 127 (1879).

Powers Exercised by Majority.—A majority of the commissioners constitute the legal body, and generally a majority of the members of the legally organized body can exercise the powers delegated to the county. Cleveland Cotton Mills v. Commissioners, 108 N. C. 678, 13 S. E. 271 (1891).

All Duties and Powers Equally Important.—There is no grade among the duties and powers of county commissioners, and no preference is given to one over another. Long v. Commissioners, 76 N. C. 273 (1877).

Power to Protect Bridges.—The county commissioners, under the general powers granted by this section may bring an action for an injunction to restrain the use of a non-floatable stream for floatage of logs, causing damage to a county bridge over such stream. Commissioners v. Lumber Co., 115 N. C. 590, 20 S. E. 707 (1894).

The board of commissioners has the power and duty of auditing and passing upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. If after a hearing they refuse to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Reed v. Farmer, 211 N. C. 249, 189 S. E. 882 (1937), citing Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Board May Correct Clerical Error in Record.—Where the record of the board of county commissioners, through a clerical error, states that a tax levy for general county purposes is 20 cents on the $100 valuation of property, this error may subsequently be corrected by the board, at its own instance, to correctly show that in fact the levy was actually made for 15 cents for general county purposes, 5 cents thereof being for the improvement of the courthouse and county home, and thus within the constitutional requirement. Norfolk Southern R. Co. v. Forbes, 188 N. C. 151, 124 S. E. 132 (1924).

Personal Liability.—Where the legislature has created certain duties to be performed by the county commissioners, and has expressly imposed a personal liability upon their failure to perform some of them but not as to others, such liability only attaches where it is expressly so declared. Fore v. Feimster, 171 N. C. 551, 88 S. E. 977 (1916).

Same—Ministerial Duties.—County commissioners are held to an individual liability in the negligent performance of, or negligent omission to perform, a purely ministerial duty, to a person specially injured thereby, when the means to do so are available and when it does not involve the exercise of a discretionary or judicial power conferred upon them by statute. Hipp v. Farrell, 169 N. C. 551, 86 S. E. 570 (1915).

Same—Judicial and Discretionary Acts.—Public officers are not personally liable to persons specially injured by their acts done in the exercise of judicial or discretionary powers conferred on them by statute, unless it is alleged and shown that in doing the acts complained of they did so corruptly and with malice. Hipp v. Ferrell, 169 N. C. 551, 86 S. E. 570 (1915).

When Commissioners Act Intra Vires.—A court has no power to interfere with the domestic administration of affairs of a county, so long as the board of commissioners acts intra vires. Long v. Commissioners, 76 N. C. 273 (1877).

Retaining the consideration of an ultra vires contract can impose no contractual liability upon a municipal corporation of this character. Berlin Iron Bridge Co. v. Board, 111 N. C. 317, 16 S. E. 314 (1892), citing Weir v. Page, 109 N. C. 220, 13 S. E. 773 (1891).

Mandamus to Compel Bond Issue.—Mandamus will lie against county commissioners who refuse to issue bonds, as required by an act of the legislature. Jones v. Commissioners, 137 N. C. 579, 50 S. E. 291 (1905).

When Membership of Board Changes between Order and Service of Mandamus.—When a writ of mandamus is obtained against a board of commissioners, and there is a change in the individual members between the time when the writ is ordered and when it is served, those who compose the board at the time of service must obey it. Pegram v. Commissioners, 65 N. C. 114 (1894).

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

Taxation and Finance

(1) To Exempt from Capitation Tax.—To exempt from capitation tax in special cases, on account of poverty and infirmity. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—For constitutional provision, see N. C. Constitution, art V, § 1.

(2) To Levy County Taxes.—To levy, in like manner with the State taxes, the necessary taxes for county purposes within the limits prescribed in the Constitution. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross References.—As to constitutional limitation on county tax levies, see N. C. Constitution, art. V, § 6. As to the time for adoption of appropriation resolution and

levy of taxes, see §§ 153-120, 153-124 and 105-339. As to duty to reduce ad valorem taxes, see § 153-55.

County Authority to Levy Taxes Subject to Limitations.—While the General Assembly may regulate the amount and methods for raising county revenues, the present system of county government contemplates that the function shall be performed by the county authorities, subject to the limitations prescribed by the Constitution. Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889).

When Commissioners May Levy.—In Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898), the authorities are reviewed and their holdings summed up as follows:

(1) For necessary expenses, the county commissioners may levy up to the constitutional limitation without a vote of the people or legislative permission.

(2) For necessary expenses, the county commissioners may exceed the constitutional limitation by special legislative authority without a vote of the people. Constitution, article V, § 6.

(3) For other purposes than necessary expenses a tax cannot be levied either within or in excess of the constitutional limitation except by a vote of the people under special legislative authority. Constitution, article VII, § 7. State v. Board, 122 N. C. 812, 30 S. E. 352 (1898).

A special tax to pay indebtedness of the county incurred for its necessary expenses may be levied by the county commissioners, without special legislation, so long as such tax together with the regular taxes, does not exceed the constitutional limit; it being only in the latter case that art. 5, § 6, of the Constitution requires special authority. Smathers v. Commissioners, 125 N. C. 480, 34 S. E. 554 (1899).

Levy of Necessary Taxes within Discretion of Commissioners.—Where it was alleged that a board of commissioners had not levied a sufficient tax to defray the ordinary expenses of the county, on account of the levy of a tax to pay for repairing the courthouse, it was held to be no ground for interference by the courts. Long v. Commissioners, 76 N. C. 273 (1877).

Former Equation and Limitation Provision.—The equation and limitation of taxation established by art. V, § 1 of the Constitution as it read prior to the 1920 amendment applied only to taxes levied for ordinary purposes of the State and counties. Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890); Wagstaff v. Central Highway Commission, 177 N. C. 354, 99 S. E. 1 (1919).

Such former provision had no application to a special act of the legislature submitting the question of bonds and taxation to the qualified voters of the county for the special purpose of constructing and maintaining its public roads. Wagstaff v. Central Highway Comm., 177 N. C. 354, 99 S. E. 1 (1919).

Nor did such provision apply to debts made previous to the adoption of the Constitution. Uzzle v. Commissioners, 70 N. C. 564 (1874); Street v. Board, 70 N. C. 644 (1874); Mauney v. Board, 71 N. C. 486 (1874); Trull v. Board, 72 N. C. 388 (1875); Clifton v. Wynne, 80 N. C. 146 (1879).

The requirement that every act levying taxes shall state the objects to which they shall be appropriated (Const., art. V, § 7) has no application to taxes levied by the county authorities for county purposes. Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889).

When Tax Intra Vires and When Ultra Vires.—Where a statute authorizing the levy of a tax beyond the constitutional limit for a special purpose is intra vires, the taxes collected beyond the requirements of the special purpose may be turned into the general fund and used for general purposes, but where the act authorizes the levy partly for a "special purpose" and partly for general purposes it is ultra vires and no part of the levy can be collected. Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150 (1896).

When Commissioners May Not Exceed Restriction.—When bonds are issued by a county, by popular vote, under legislative authority, which does not further provide for a levy to exceed the constitutional limitation for the principal, interest or for a sinking fund, the commissioners are without authority to levy a tax to exceed the restriction. Commissioner v. McDonald, etc., Co., 148 N. C. 125, 61 S. E. 643 (1908).

In Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150 (1896) approved in Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898), it was held that a statute authorizing a special county tax for the purpose of maintaining public ferries, building roads, and meeting other current expenses was not for a "special purpose," and that a tax levied thereunder in excess of the constitutional limitation was void. Southern R. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Required School Term and the Constitutional Limitation.—When it becomes necessary the county commissioners are required to levy a tax sufficient to maintain the county schools for the required term each year, and the constitutional limitation does not apply to defeat such a levy. Collie v. Commissioners, 145 N. C. 170, 59 S. E. 44 (1907), expressly overruling Barksdale v. Commissioners, 93 N. C. 472 (1885), and Board v. Board, 111 N. C. 578, 16 S. E. 621 (1892); Southern R. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Tax Rate Variable.—There is no constitutional requirement that the tax rate for county purposes shall be the same everywhere. It varies in the different counties, and may vary in different townships, parts of townships, districts, towns, and cities in the same county. Jones v. Commissioners, 143 N. C. 60, 55 S. E. 427 (1906).

Property Subject to Taxation.—All of the property, including solvent credits, in the State, shall be assessed and taxed at its

value in money. Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 59 S. E. 653 (1907).

Same—Back Tax.—In Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 59 S. E. 653 (1907), the court said: "We have no doubt of the power of the legislature to provide for the listing, assessment, and taxing of personal property omitted to be listed by the owner as the law requires. Nor do we perceive any reason why it may not be taxed for five or more preceding years if it has escaped taxation so long. These questions have been settled by several decisions of this court. Kyle v. Mayor, 75 N. C. 445 (1876); North Carolina R. Co. v. Commissioners, 82 N. C. 260 (1880); Wilmington v. Cronly, 122 N. C. 388, 30 S. E. 9 (1898)."

Same—When Realty of Schools and Railroads Exempt from Special Tax.—Where the act provided for the construction of a fence to inclose the whole of several districts and that the commissioners should levy a special tax on all the real estate in said district, which was taxable by the State and county, it was held, not to embrace the real estate of schools and railroads, which was not taxable for general purposes. Bradshaw v. Board, 92 N. C. 278 (1885).

Taxes Leviable Yearly.—General taxes for county purposes are leviable but once in the year. Bradshaw v. Board, 92 N. C. 278 (1885).

Tax Raised for One Purpose and Applied to Another.—In Long v. Commissioners, 76 N. C. 273 (1877), the court said: "We know of no statute nor any rule of law or of public policy which prevents county commissioners from applying a tax raised professedly for one purpose to any other legitimate purpose. There may, perhaps, be an exception where a tax is levied by a special authority from the legislature, or upon the vote of the people, which would not otherwise be lawful."

Tax Lists in Hands of Sheriff.—In Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 59 S. E. 653 (1907), it was said: "While no express power is conferred upon the commissioners after making the assessment to place the list so made in the hands of the sheriff, we think that by a fair construction, in the light of the power conferred in other portions of the statute respecting the regular tax list, such power is given."

The tax list is a judgment against every person for the amount of the tax, and the copy delivered to the sheriff is an execution. Higgins v. Hinson, 61 N. C. 126 (1867), cited and approved in Gore v. Mastin, 66 N. C. 371 (1872); Commissioners v. Piercy, 72 N. C. 181 (1875); London v. Wilmington, 78 N. C. 109 (1878); Raleigh, etc., R. Co. v. Lewis, 99 N. C. 62, 5 S. E. 82 (1888); State v. Georgia Co., 112 N. C. 34, 17 S. E. 10 (1893).

Act Held Not to Be "Special."—In Bennett v. Board, 173 N. C. 625, 92 S. E. 603 (1917), it is held that a statute conferring on county commissioners the power to borrow money for the necessary expenses of the county and provide for its payment neither is, nor does it purport to be, a special act and for a purpose within the meaning of the constitutional provision. Southern R. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Assessment for Stock Fence.—An assessment for the building of a stock law fence is not a tax which requires a referendum vote by the people. Tripp v. Commissioners, 158 N. C. 180, 73 S. E. 896 (1912).

(2½) Expenditures of County Funds Directed by Commissioners.—The board of commissioners is invested with full power to direct the application of all moneys arising by virtue of this chapter for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county, in a manner not inconsistent with the provisions of the County Fiscal Control Act. (1777, c. 129, s. 4, P. R.; R. C., c. 28, s. 16; Code, s. 753; Rev., s. 1379; C. S., s. 1325; 1953, c. 973, s. 2.)

Editor's Note.—The 1953 amendment, effective July 1, 1953, renumbered G. S. 153-59 as subdivision (2½) of this section and added at the end of the subdivision "in a manner not inconsistent with the provisions of the County Fiscal Control Act."

Necessary Expenses Determined by Commissioners.—What is "necessary expense" for a county is to be determined by the sound judgment and discretion of its board of commissioners. Broadnax v. Groom, 64 N. C. 244 (1870); Comrs. v. Comrs., 165 N. C. 632, 81 S. E. 1001 (1914); Hargrave v. Comrs., 168 N. C. 626, 84 S. E. 1044 (1915); Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043 (1915).

As to province of the courts and the legislature, see Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909), citing Cromartie v. Commissioners, 87 N. C. 134 (1882); Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279 (1909).

Power to Create Necessary Debts.—The legislature may confer upon a county the power to create debts for necessary expenses, without the approval of "a majority of the qualified voters" in the county. Evans v. Commissioners, 89 N. C. 154 (1883).

When Commissioners' Actions Not Subject to Review.—The commissioners' exercise of their discretion will not be reviewed except when mala fides is shown. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Support of Convicts.—The support of the

county convicts must be paid out of the general county fund. Chambers v. Walker, 120 N. C. 401, 27 S. E. 77 (1897).

Legislature to Determine Care of Indigent.—It is the exclusive right of the legislature to determine how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

County May Hire Auditors.—The commissioners of a county have the right to contract with skilled expert accountants for auditing of the books and accounts of the various departments of the county at a price agreed upon, and empowers them to order that the same be paid by the county treasurer out of the county funds. Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043 (1915).

(3) To Provide for Payment of Existing Debts by Taxation or Otherwise.—To provide by taxation or otherwise for the prompt and regular payment, with interest, of any existing debt owing by the county. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Mandamus Lies to Compel Levy of Tax.—A plaintiff, upon a proper prayer for judgment, may have a mandamus to compel the board of commissioners to levy a tax and pay the debt of a county. Winslow v. Commissioners, 64 N. C. 218 (1870).

Ordinarily, the only remedy of a judgment creditor of a county is a writ of mandamus to compel its commissioners to levy a tax to pay the debt. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890), citing Pegram v. Commissioners, 64 N. C. 557 (1870); Lutterloh v. Board, 65 N. C. 403 (1871); Rogers v. Jenkins, 98 N. C. 129, 3 S. E. 821 (1887).

Same—Satisfaction of Judgment.—A plaintiff who has obtained a judgment against a county is not entitled to an execution against it. His remedy is by writ of mandamus against the board of commissioners of the county to compel them to levy a tax for the satisfaction of the judgment. Gooch v. Gregory, 65 N. C. 142 (1871).

Same—When Granted.—The writ of mandamus will be granted only where one demanding it shows that he has a specific legal right and has no other specific remedy adequate to enforce it. State v. Justices, 24 N. C. 430 (1842); Ex parte Biggs, 64 N. C. 202 (1870); Winslow v. Commissioners, 64 N. C. 218 (1870); Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890).

When Mandamus Unnecessary.—An action may be maintained against the county commissioners establishing a debt against the county without asking for a writ of mandamus, where it appears that the county has property subject to trusts, or such as can be reached only by proceedings supplemental to execution. Hughes v. Commissioners, 107 N. C. 598, 12 S. E. 465 (1890).

When Public and Private Interests Conflict.—Upon the principle that where public interests conflict with private interests, if the entire fund which can be raised by taxation is required to meet the necessary expenses of an economical administration of the county government, and none can be diverted to pay its indebtedness without serious detriment to the public, none ought to be thus appropriated. Cromartie v. Commissioners, 85 N. C. 211 (1881).

Bonds Issued under Unconstitutional Act.—A taxpayer may enjoin county commissioners from making a tax levy to pay interest on railroad bonds issued under an unconstitutional statute, without restoring to the bona fide holders of the bonds the consideration paid therefor. Graves v. Board, 135 N. C. 49, 47 S. E. 134 (1904).

Notice to Holder.—A county bond stating on its face the act under which it is issued is notice to the holder, and estops him from controverting the statement. Commissioners v. Call, 123 N. C. 308, 31 S. E. 481 (1898).

(4) To Purchase County Indebtedness.—To purchase if they desire, at any price, not exceeding their par value and accumulated interest, any of the outstanding bonds or other indebtedness of the county. (1868-9, c. 269, s. 2; Code, s. 718; Rev., s. 1320; C. S., s. 1297.)

(5) To Levy Taxes for Interest and Sinking Funds for Outstanding Bonds Not Provided for.—

a. To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of bonds issued and sold for the purpose of meeting necessary expenses of the county, where no other provision for such levy has been specially provided for. Such levy shall not exceed any constitutional limitation.

b. To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of township road improvement bonds, issued either by vote of the

people or by act of the General Assembly, where the amount of levy provided by the act under which the vote is held or tax levied is inadequate to pay the interest on bonds heretofore issued or authorized by acts now in force, but the levy shall not exceed any constitutional limitation. (1917, c. 121, ss. 1, 2; C. S., s. 1297.)

Funds Impressed with a Trust.—Where taxes are levied and collected to pay coupons on bonds issued by a county, the funds so collected are impressed with a trust for the benefit of the owners of the coupons. Board v. Tollman, 145 F. 753 (1906).

(6) Special Tax Authorized for Certain Purposes; Limit of Rate.—The boards of commissioners of the various counties in the State, for the purpose of the upkeep of county buildings, county homes for the aged and infirm and other similar institutions, and to supplement the general county fund, are hereby authorized to levy annually a tax upon all taxable property not to exceed five cents on the one hundred dollars of valuation, in addition to any tax allowed by any special statute for the above enumerated purposes and in addition to the rate allowed by the Constitution. (C. S., s. 1297; 1923, c. 7.)

Local Modification.—Gaston: 1945, c. 207; Madison: 1931, c. 436; 1957, c. 557.

In General.—This section authorizes the boards of commissioners of the various counties to levy a tax for the purpose of maintaining county homes for the aged and infirm. This is a special purpose within the contemplation of the constitutional provision, and the words "county aid and poor relief" should be construed to be within the scope of the special purpose which is indicated in the statute. Atlantic Coast Line R. Co. v. Lenoir County, 200 N. C. 494, 157 S. E. 610 (1931).

Tax within the Limitation of Const., Art. V, § 6.—Where a county levies a tax within the limitation of const., art. V, § 6, its levy for poor relief is limited to a tax rate of five cents under the provisions of this section. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

Resolution Correcting Record as to Purpose of Levy.—Where tax records of county disclose a fifteen-cent levy for general purposes and a seven-cent levy for county poor, two cents of the seven-cent levy is patently excessive and no part thereof can be justified for items of general expense, but where, in action by taxpayer to recover the amount paid under protest under the two-cent levy, defendant county introduces resolutions of the board correcting records to show that two cents was for administration of old age assistance and aid to dependent children, and for salaries of the county accounting and farm agent, nonsuit is proper, since levy is then for special purposes with special approval of the legislature under § 108-17, et seq. and § 108-44, et seq., and since, in the absence of evidence to the contrary the resolution, correcting the records will be presumed bona fide. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

Levy for Public Welfare in Beaufort.—The board of county commissioners of Beaufort County having levied in the year 1942 a tax rate of fifteen cents on the one hundred dollars property valuation for general purposes, the limit fixed by article V, § 6, of the Constitution, the levy for public welfare or poor relief was limited to a rate of five cents on the one hundred dollars property valuation under provisions of this section. Atlantic Coast Line R. Co. v. Beaufort County, 224 N. C. 115, 29 S. E. (2d) 201 (1944).

Conflict with Other Laws.—Cumberland County is authorized by this section to levy annually five cents only on the one hundred dollar valuation, for maintaining county homes for the aged and infirm and for similar purposes. Conceding that §§ 153-9, subdivision (23), and 153-152 constitute special approval of the General Assembly for unlimited levy for a special purpose, they are general acts and conflict with the provisions of this subdivision. Atlantic Coast Line R. Co. v. Cumberland County, 223 N. C. 750, 28 S. E. (2d) 238 (1943).

(7) Same—In Certain Counties.—Subject to the approval of the Director of Local Government, the boards of county commissioners of Alamance, Alleghany, Anson, Avery, Buncombe, Burke, Cherokee, Clay, Cleveland, Dare, Duplin, Durham, Edgecombe, Graham, Granville, Halifax, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Mitchell, Montgomery, Orange, Pender, Perquimans, Person, Polk, Randolph, Rutherford, Sampson, Scotland, Stokes, Swain, Tyrrell, Watauga and Wilson counties are hereby authorized to levy such special property

taxes as may be necessary not to exceed five cents on the one hundred dollars valuation for the following special purposes respectively, in addition to any tax now allowed by law for such purposes and in addition to the rate allowed by the Constitution:

a. For the expense of the quadrennial valuation or assessment of taxable property,

b. For the expense of holding courts in the county levying the tax and the expense of maintenance of jails and jail prisoners. (1931, c. 441; 1933, c. 54; 1935, c. 330; 1937, c. 41; 1939, cc. 190, 336; 1943, c. 646; 1951, c. 753; 1955, c. 932.)

Editor's Note.—The 1935 amendment added Henderson to the list of counties set out in this subdivision; the 1937 amendment added Buncombe and Randolph; the 1939 amendments added Orange and Anson; the 1943 amendment added Sampson; the 1951 amendment added Cleveland; and the 1955 amendment added "Lincoln."

Levies Held Unconstitutional.—Ordinarily, the purposes named in this subdivision are general rather than special, and a levy of taxes under this subdivision is invalid under art. V, § 6 of the Constitution in the absence of circumstances rendering the purpose special rather than general. Natahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938); Southern R. Co. v. Cherokee County, 218 N. C. 169, 10 S. E. (2d) 607 (1940).

(7a) Special Tax to Defray Expenses of Mapping Lands and Discovering Unlisted Land.—The board of county commissioners of any county is hereby authorized to levy annually on all taxable property within the county a special tax, and the General Assembly hereby gives special approval for the levy of such special tax, which tax shall not exceed five cents (5¢) on the one hundred dollar ($100.00) valuation, for the special purpose of defraying the expenses incurred in the mapping of the lands of the county and the discovery of lands therein not listed for taxes, including the county's share of the expenses incurred pursuant to any agreement entered into between county and the State of North Carolina providing for the mapping of the lands of the county and the discovery of lands therein not listed for taxes. (1959, c. 712.)

Editor's Note.—The 1959 amendment added this subdivision.

County Buildings

(8) To Erect and Repair County Buildings.—To erect and repair the necessary county buildings, and to raise, by taxation, the moneys therefor. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross References.—As to procedure for letting of public contracts, see §§ 143-129 through 143-135. As to duty to require contractor to execute bond, see § 44-14.

Erection and Maintenance of Courthouse.—It is the duty of the county commissioners to provide a sufficient courthouse and keep it in repair. They are cognate duties, and failure as to them is "neglect of duty." State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Same—Mandamus Does Not Lie to Provide.—A mandamus will not lie against county commissioners to compel them to provide a sufficient courthouse. State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Same—Remedy by Indictment.—For such neglect of duty the remedy is by indictment. And the indictment need not allege corrupt intent. State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Discretion of Commissioners.—The board of commissioners has the discretionary power to issue and sell or discount the notes of the county to provide the means to pay for a courthouse, and such discretion will not be interfered with by the courts. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354 (1895).

Cannot Mortgage Courthouse Site.—The county commissioners have no authority to convey the land on which they propose to erect the courthouse by a mortgage deed to secure the bonds issued to build it, and thereby render the site and buildings liable to sale for the satisfaction of the debt. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

Duties Inherent to Office of County Commissioner.—County commissioners, in approving the design, the method of construction, the site for a public building, and the amount to be paid for the site, are performing duties inherent to their offices,

expressly conferred by the legislature. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

Commissioners Not Individually Liable for Failure to Take Contractor's Bond.—The county commissioners are not individually liable for the failure of their ministerial duty to take the bond required from a contractor for the erection of a county home, such not having been expressly declared; and the remedy is by indictment. Fore v. Feimster, 171 N. C. 551, 88 S. E. 977 (1916).

Prior Special Act Does Not Bar Action Hereunder.—The fact that a special act authorizing the county commissioners of Forsyth County to issue bonds for a new courthouse, required the assent of a majority of the qualified voters to such issue, is no bar to the power of the commissioners conferred by a later act to erect necessary public buildings and to raise by taxation the money therefor. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354 (1895).

Necessary Expenses.—The cost of the erection of a courthouse is a necessary expense of a county, and the exercise of the discretionary power of the board of commissioners in providing to meet it is not reviewable by the courts. Vaughn v. Board, 117 N. C. 432, 23 S. E. 354 (1895).

Repairing a courthouse is also a necessary county expense. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909).

A jail is a necessary county expense, and, in the absence of statutory restrictions, the county commissioners may pledge the credit of the county in order to obtain one. Haskett v. Tyrrell County, 152 N. C. 714, 68 S. E. 202 (1910).

Special Tax to Pay Interest, etc.—While the county commissioners are clothed with the necessary power to erect and repair county buildings, they have no power to levy a special tax out of which to pay the interest and create a sinking fund, unless they have the special authority of the General Assembly, but construing this section with §§ 153-1 and 153-77, it would seem such authority is implied. Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934).

Courts cannot substitute their judgment for that of the county officials honestly and fairly exercised. For a court to enjoin a proposed expenditure, there must be allegation and proof that the county officials acted in wanton disregard of public good. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

(9) To Designate Site for County Buildings.—To remove or designate a new site for any county building; but the site of any county building already located shall not be changed, unless by a unanimous vote of all the members of the board at any regular monthly meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published in a newspaper printed in the county, if there is one, once in each of three calendar months, and posted in one or more public places in every township in the county for three months, next immediately preceding the monthly meeting at which the final vote on the proposed change is to be taken. Provided that where the notice is published in a newspaper printed in the county it shall not be necessary to post the notices in the townships. Such new site for the county courthouse shall not be more than one mile distant from the old, except upon the special approval of the General Assembly. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1925, c. 229; 1957, c. 909, s. 1; 1961, c. 811.)

Local Modification.—Caldwell: 1959, c. 26; Yadkin: 1953, c. 384.

Editor's Note.—The 1925 amendment struck out "the regular December meeting" in the first sentence and substituted "any regular monthly meeting." In the second sentence "monthly meeting" was substituted for "annual meeting."

The 1957 amendment inserted the words "once in each of three calendar months" in the second sentence. Section 2 of the amendatory act provides that all actions heretofore taken by the board of commissioners of any county which complies with the requirements of this subdivision as amended hereby is hereby ratified, approved and confirmed and declared to be in compliance with such requirements.

The 1961 amendment inserted the provision as to when not necessary to post notices in townships. It also inserted near the beginning of the last sentence the words "for the county courthouse."

Duties Inherent to Office of County Commissioner.—See same catchline under § 153-9 (8).

Courts cannot substitute their judgment for that of the county officials.—See same catchline under § 153-9 (8).

The site of a county building embraces only the space occupied by the building and such adjacent land as is reasonably required for the convenient use of the building. Brown v. Candler, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

When Partial Payments May be Recovered.—Where the county commissioners and the owner of lands have agreed for the

purchase of a new site for its courthouse, conditioned upon the future compliance with the statute relating thereto, which had failed of compliance, and the county had made certain payments upon the purchase price, the county may recover the partial payments it had so made, with the legal interest thereon, subject to deductions as against the interest for its reasonable rental value, while in possession and control of the county authorities. Hearne v. Stanly County, 188 N. C. 45, 123 S. E. 641 (1924).

Attempt to Validate Former Action.—Pending the continuance of an injunction against the county commissioners purchasing a new site for the county courthouse, the action of the commissioners in attempting to validate their former action is unlawful, and can have no effect; nor can proceedings under a later statute to submit the question of the change to the voters have a different effect, when this proposition has been rejected by them. Hearne v. Stanly County, 188 N. C. 45, 123 S. E. 641 (1924).

Selecting Part of Grounds of County Home as Site of High School.—Even though a county home be construed a county building within the purview of this subdivision, the statute refers to a change in the location of a county building, which embraces the space occupied by the building and such adjacent land as is reasonably required for its convenient use, and not to changes in the use of a part of the site of a county building, and therefore the statute does not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school when its use would not interfere with the use of the remainder of the site for a county home. Brown v. Candler, 236 N. C. 576, 73 S. E. (2d) 550 (1952).

County Officers

(10) To Require Officers to Report.—To require from any county officer, or other person employed and paid by the county, a report under oath at any time on any matters connected with his duties. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cited in Roberts v. McDevitt, 231 N. C. 458, 57 S. E. (2d) 655 (1950).

(11) To Approve Bonds of County Officers and Induct into Office.—To qualify and induct into office at the meeting of the board, on the first Monday in the month next succeeding their election or appointment, the following named county officers, to-wit: clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor, and constable; and to take and approve the official bonds of such officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds, for safekeeping.

If the board declares the official bonds of any of said county officers to be insufficient, or declines to receive the same, the officer may appeal to the superior court judge riding the district in which the county is, or to the resident judge of said district, as he may elect, who shall hear said appeal in chambers, at any place in said district he designates, within ten days after notice by him of the same, and if, upon the hearing of the appeal, the judge is of the opinion that the bond is sufficient, he shall issue an order to the board of commissioners to induct the officer into office, or that he shall be retained in office, as the case may be. If, upon the hearing of the appeal, the judge is of the opinion that the bond is insufficient, he shall give the appellant ten days in which to file before him an additional bond, and if the appellant within the ten days files before the judge a good and sufficient bond, in the opinion of the judge, he shall so declare and issue his order to said board directing and requiring them to induct the appellant into office, or retain him, as the case may be. If, in the opinion of the judge, both the original and the additional bonds are insufficient, he shall declare the said office vacant and notify the commissioners, who shall appoint to fill the vacancy and notify the clerk of the superior court. In case of a vacancy in the office of the clerk of the superior court said vacancy shall be filled by the resi-

dent judge. The judgment of the superior court judge shall be final. The appeal and the finding and judgment of the superior court judge shall be recorded on the minutes of the board of commissioners. (1868, c. 20, s. 8; 1874-5, c. 237, s. 3; Code, s. 707; 1895, c. 135, s. 3; Rev., s. 1318; C. S., s. 1297.)

Cross References.—As to commissioners' duty as to sheriff's bond, see §§ 162-9 through 162-11. As to approval, acknowledgment and custody of bonds, and commissioners' liability, see § 109-11 et seq. As to duty of commissioners when officer fails to renew bond, see § 109-6. As to criminal liability for approving insufficient bond, see § 153-14. As to suit on official bond when officer fails to account to treasurer, see § 155-18.

This section is mandatory on the county commissioners. Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

But there is no penalty or crime prescribed by this section, for failure of county commissioners to perform the ministerial duty therein imposed upon them of qualifying and inducting into office certain county officers and approving the bonds of such officers, but § 109-13 makes them liable as sureties on bonds which they approve with knowledge, actual or implied, that they are insufficient in penal sum or security. Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

Liable to All Injured Persons.—Public officials entrusted in so important a matter as this mandatory statute, are held individually liable to anyone injured by their willful failure or neglect of duty. To hold otherwise would put a premium on inefficiency and neglect. Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

Commissioners to Induct into Office and Take Bonds.—The commissioners are authorized and required to qualify and induct into office the several officers of the county, and to take and approve their official bonds, which they shall cause to be registered. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 43 S. E. 899 (1903).

It is the duty of the county commissioners to qualify and induct into office those whose election the county canvassers have ascertained and announced. Swain v. McRea, 80 N. C. 111 (1879).

De Facto Board May Act.—If from any cause the newly elected commissioners of a county fail to qualify at the time prescribed by law, the old board, as de facto officers, have the power to perform the functions prescribed by this section. Buckman v. Commissioners, 80 N. C. 121 (1879); State v. Jones, 80 N. C. 127 (1879).

Right to Examine Officers-Elect.—When a person presents himself before a board of commissioners, with a certificate of election, and asks to be inducted into office, the said commissioners have a right to inquire into his constitutional capacity to exercise the functions of the office to which he may have been chosen. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

The general jurisdiction to admit to county offices those who may have been chosen upon the electoral vote as counted and ascertained by the board of county canvassers is given to the board of county commissioners, and this is exercised in an examination into the regularity of the returns of the result of the election, (which, when regular, are conclusive of the election,) the sufficiency of the official bond tendered, and the administration of the required oath. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

In the case of a sheriff who has previously held office the board must go further, and see that he is not delinquent in the payment of the taxes of a previous term. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

And Exclude Unfit.—If the commissioners refuse to induct one who is plainly ineligible, the courts will not compel them to do so, and thus put one into an office which he cannot constitutionally hold. State v. Somers, 96 N. C. 467, 2 S. E. 161 (1887).

An elected person not competent to hold office under the Constitution has no right to be admitted to office, nor cause of action for being excluded. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

Commissioners Not Liable for Error of Judgment.—If, in the exercise of their functions, the commissioners commit an error of judgment in refusing to induct an elected candidate into office they are not responsible, their functions being quasi judicial. Hannon v. Grizzard, 99 N. C. 161, 6 S. E. 93 (1888).

Sheriff's Bonds.—To entitle a sheriff to be inducted into office, it is essential that the required bonds be executed by him and approved by the county commissioners according to the requirements of the statute. Dixon v. Commissioners, 80 N. C. 118 (1879). See §§ 162-8, 162-9, and notes.

While it is irregular to induct a sheriff into office without his giving the required bonds, yet the defect is cured when they are subsequently tendered and accepted. Worley v. Smith, 81 N. C. 304 (1879).

Cannot Release Surety.—A board of county commissioners cannot release a surety from an official bond. Fidelity, etc., Co. v. Fleming, 132 N. C. 332, 43 S. E. 899 (1903). See also, Dockery v. French, 69 N. C. 308 (1873); State v. Clarke, 73 N. C. 255 (1875).

May Declare Office Vacant and Fill It.—The board has the power—all the business before them being disposed of—to adjourn, and, if any officer shall fail to perfect his bond according to law before such adjournment, to declare such office vacant, and to fill it, when the power to fill such vacancy

is vested by law in the board. Kilburn v. Latham, 81 N. C. 312 (1879); State v. Patterson, 97 N. C. 360, 2 S. E. 262 (1887).

Term of office of sheriff begins on the first Monday in December after the election. Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894 (1940).

(12) To Fill Vacancies.—To fill by appointment a vacancy in the offices of sheriff, constable, coroner, register of deeds, county treasurer, or county surveyor. (1868, c. 4; Code, s. 720; Rev., s. 1321; C. S., s. 1297.)

Cross References.—See also, as to sheriff, § 162-5; as to constable, § 151-6; as to coroner and power of clerk of court to appoint, see § 152-1; as to register of deeds, see § 161-5; as to treasurer, see § 155-2. As to power of commissioners of certain counties to abolish office of treasurer and appoint banks, see § 155-3.

Commissioners Vote and Elect Hereunder.—The commissioners of a county board vote and elect when they exercise the power to fill a vacant office. State v. Bullock, 80 N. C. 132 (1879).

Application of Section.—Upon the failure of public officers, when the statutes so require, to renew annually their official bonds, and of sheriffs to, in addition, produce receipts for the public moneys collected by them, it shall be the duty of the board of county commissioners to declare the office vacant. Bray v. Barnard, 109 N. C. 44, 13 S. E. 729 (1891).

Sheriff's Office.—It is the right and the duty of the commissioners to declare the office of sheriff vacant, and appoint some one for the unexpired term, whenever the incumbent thereof is found to be, on a re-election, in arrears in his settlement of the public taxes; or when he takes no notice whatever of a summons by the commissioners to appear before them on a day certain and justify or renew his official bond. People v. Green, 75 N. C. 329 (1876).

A vacancy in the office of sheriff cannot be declared until the alleged delinquent shall have had due notice and a day in court, if within reach of its process. State v. Pipkin, 77 N. C. 408 (1877).

Office of Treasurer.—When a vacancy exists in the office of treasurer, it can only be filled by the county commissioners. State v. Hampton, 101 N. C. 629, 8 S. E. 219 (1888).

Office of Tax Manager.—Where there is a vacancy in the office of tax manager for a county, the board of county commissioners has the power by analogy to §§ 153-9 (12) and 153-9 (10) to appoint some qualified person to perform the duties of the office for the remainder of the term. Roberts v. McDevitt, 231 N. C. 458, 57 S. E. (2d) 655 (1950).

Penalty for Failure to Perform Duty.—Only one penalty is given against each commissioner composing the board, if he fails to perform his duty under this section. Bray v. Bernard, 109 N. C. 44, 13 S. E. 729 (1891).

(12a) To Fix Fees Charged by County Officers.—To fix, in their discretion, all fees and commissions which may be charged by registers of deeds, clerks of superior court, clerks of county domestic relations courts, clerks of general county courts, sheriffs, jailers, and coroners for the performance of any service or duty permitted or required by law. Such fees and commissions may be fixed from time to time, and once fixed may be changed at any time. Action to fix such fees and commissions shall be taken by resolution of the board of county commissioners. Such fees and commissions may be increased or decreased not exceeding twenty per cent (20%) during any one fiscal year of the county. Until the board of county commissioners takes such action to fix any fee or commission, such fee or commission shall continue to be charged as is now provided by law.

The provisions of this subdivision shall apply to the following counties: Alamance, Bertie, Bladen, Buncombe, Caldwell, Camden, Carteret, Chatham, Cherokee, Columbus, Forsyth, Halifax, Hertford, Hoke, Jackson, Johnston, Lee, Lenoir, Lincoln, Martin, Montgomery, Moore, Nash, Onslow, Orange, Pamlico, Perquimans, Person, Pitt, Richmond, Rutherford, Sampson, Stanly, Surry, Swain, Union and Wayne. (1953, c. 1303; 1955, c. 768; 1957, c. 38, s. 1; cc. 247, 352, 570, 635, 774, 1306; 1959, c. 206, s. 1; cc. 664, 700; c. 1267, s. 1; 1961, c. 350, s. 1; c. 492, s. 2; cc. 691, 777, 816; c. 948, s. 1; 1963, cc. 181, 562; c. 569, s. 1; cc. 794, 833, 873.)

Editor's Note.—The 1955 amendment inserted "Caldwell" in the list of counties in this subdivision.

The 1957 amendments inserted "Hertford," "Columbus," "Bertie," "Camden," "Bladen," "Nash," and "Onslow," respec-

tively, in the list of counties in this subdivision.

The 1959 amendments added Carteret, Chatham, Lee and Wayne to the list of counties.

Session Laws 1959, c. 376, s. 1, provides that the next to the last sentence of the first paragraph of this subdivision shall not apply to Montgomery County.

The first 1961 amendment inserted "Perquimans" in the list of counties. The second 1961 amendment, effective July 1, 1961, inserted "Pitt" therein. The third and fourth 1961 amendments inserted "Cherokee" and "Martin" in the list, and the fifth and sixth 1961 amendments inserted "Moore" and "Richmond."

Session Laws 1961, c. 948, s. 2 provides that the next to the last sentence of the first paragraph of this subdivision shall not apply to Richmond County.

The first 1963 amendment inserted "Swain" in the list of counties. The second 1963 amendment inserted "Sampson." The third 1963 amendment inserted "Jackson." The fourth 1963 amendment inserted "Person." The fifth 1963 amendment inserted "Forsyth." And the sixth 1963 amendment inserted "Halifax."

County Property

(13) To Make Orders Respecting County Property.—To make such orders respecting the corporate property of the county as may be deemed expedient. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Extent of Commissioner's Duty Hereunder.—This section imposes upon the commissioners the duty of employing such agents, and raising and appropriating such moneys, as may be sufficient to keep the public buildings in repair, and maintain them in such a condition as to prevent any noxious and offensive exhalations to proceed from any of them put to the private use of the people. Threadgill v. Commissioners, 99 N. C. 352, 6 S. E. 189 (1888), stating the measure and extent of official responsibility for a privy.

(14) To Sell or Lease Real Property.—To sell or lease any real property of the county and to make deeds or leases for the same to any purchaser or lessee. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—As to execution of warranty deeds and relief from personal liability thereon, see § 160-61.1.

Commissioners Do Not Have Power to Mortgage.—Power to sell is not a power to mortgage, and hence express authority conferred upon county commissioners, to sell real estate of the county, at a fair price, does not imply power to incumber the same by a mortgage. Threadgill v. Commissioners, 99 N. C. 352, 6 S. E. 189 (1888).

Right of Taxpayer to Bring Action to Restrain.—Though a proposed mortgage of county land by the county commissioners to secure bonds issued to build a courthouse would be void, and equity would enjoin foreclosure thereunder, a taxpayer may bring an action to restrain the execution of the mortgage without waiting until foreclosure is threatened. Vaughn v. Commissioners, 118 N. C. 636, 24 S. E. 425 (1896).

County Purchases

(15) To Purchase for Public Buildings, and at Execution Sale.—To purchase real property necessary for any public county building, and for the support of the poor, and to determine the site thereof, where it has not already been located; and to purchase land at any execution sale, when it is deemed expedient to do so, to secure a debt due the county. The deed shall be made to the county, and the board may, in its discretion, sell any lands so purchased. (1868, c. 20, s. 8; 1879, c. 144, s. 1; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

County Bound by Conditions Subsequent.—Where a county, owning a site upon which to build its courthouse, is authorized by statute to buy, sell, and exchange real estate surrounding it upon such terms and conditions as it may deem just and proper, and for the best interest of the county, and in pursuance of this authority, has acquired a conveyance of lands from adjoining owners upon condition that they shall be used as a public square and kept open for that purpose, etc., it is held, that whether the conditions be called conditions subsequent or otherwise, they were within the purview of the authority conferred upon the county; and, coming within the intent of the parties as expressed in the conveyance, and forming a material part of the consideration for the lands, they are valid and binding upon the county. Guilford County v. Porter, 167 N. C. 366, 83 S. E. 564 (1914).

(16) To Purchase or Lease a County Farm, and Work Convicts Thereon.—To lease or purchase a county farm, and where proper provisions are made for securing and caring for convicts, such of them as are subject to road duty may be worked on said farm, and, in the discretion of the board, such farms may be made experimental farms. The court, in its discretion, may sentence convicted prisoners either to said farm or to the roads. Where a farm is purchased or leased in those counties having a road system, the board may work the convicts on such farms. (1915, c. 140; C. S., s. 1297.)

Highways and Bridges

(17) Roads and Bridges.—To supervise the maintenance of neighborhood public roads or roads not under the supervision and control of the State Highway Commission and bridges thereon: Provided, however, county funds may not be expended for such maintenance except to the extent such expenditures are otherwise authorized by law; to exercise such authority with regard to ferries and toll bridges on public roads not under the supervision of the State Highway Commission as is granted in § 136-88 of the chapter on Roads and Highways or by other statutes; to provide draws on all bridges not on roads under supervision of the State Highway Commission where the same may be necessary for the convenient passage of vessels; to allow and contract for the building of toll bridges on all roads not under the supervision of the State Highway Commission and to take bond from the builders thereof. It is the intent of this subdivision that the powers and authorities herein granted shall be exercised in accordance with the provisions of the chapter on Roads and Highways.

The boards of commissioners of the several counties likewise have power to close any street or road or portion thereof (except those lying within the limits of municipalities) that is now or may hereafter be opened or dedicated, either by recording of a subdivision plat or otherwise. Any individuals owning property adjoining said street or road who do not join in the request for the closing of said street or road shall be notified by registered letter of the time and place of the meeting of the commissioners at which the closing of said street or road is to be acted upon. Notice of said meeting shall likewise be published once a week for four weeks in some newspaper published in the county, or if no newspaper is so published, by posting a notice for thirty days at the courthouse door and three other public places in the county. No further notice shall be necessary: Provided, that if the street or road has previously been accepted by the State Highway Commission for maintenance, the State Highway Commission shall be likewise notified of said meeting by registered letter. If it appears to the satisfaction of the commissioners that the closing of said road is not contrary to the public interest and that no individual owning property in the vicinity of said street or road or in the subdivision in which is located said street or road will thereby be deprived of reasonable means of ingress and egress to his property, the board of commissioners may order the closing of said street or road; provided, that any person aggrieved may appeal within thirty days from the order of the commissioners to the superior court of the county, where the same shall be heard de novo. Upon such an appeal, the superior court shall have full jurisdiction to try said matter upon the issues arising and to order said street or road closed upon proper findings of fact by the jury. A certified copy of said order of the commissioners (or of the judgment of the superior court in the event of an appeal) shall be filed in the office of the register of deeds of said

county. Upon the closing of a street or road in accordance with the provisions hereof, all right, title and interest in such portion of such street or road shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to such portion of such street or road, and the title of each of such persons, firms or corporations shall, for the width of the abutting land owned by such persons, firms or corporations, extend to the center of such street or road.

The board of aldermen or other governing body of any municipality shall have the same power and authority with respect to roads, streets or other public ways which are inside the corporate limits of such municipality as given to the county commissioners by the second paragraph of this subdivision with respect to roads, streets or public ways outside the corporate limits of a municipality.

Copies of the registered letters giving the notice required by the second paragraph of this subdivision, and the return receipts or other good and sufficient evidence of giving the required notice, shall be recorded in the register of deeds office, together with the resolution of such county or municipal governing body (or with the judgment of the superior court, in cases where an appeal was taken). (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11.)

Editor's Note.—The 1949 amendment added the last three paragraphs of this subdivision.

Most of the cases treated here were decided under former statutes which authorized counties to lay out, repair, etc., public roads, bridges and ferries and should be considered in that light.

Roads Are a Necessary Expense.—The well ordering and maintenance of the public roads of a county are "necessary expenses" within the meaning of our Constitution and statutes. Bunch v. Commissioners, 159 N. C. 335, 74 S. E. 1048 (1912).

A county is authorized to contract an indebtedness for the maintenance of its public roads, and such indebtedness being for a necessity, under art. VII, § 7, of our Constitution, it is not required that a special act be passed authorizing it under the provisions of our Constitution, art. II, § 14. Pritchard v. Commissioners, 159 N. C. 636, 75 S. E. 849 (1912).

Board of Commissioners May Be Deprived of Power over Roads.—The powers given to county commissioners over public highways, Const., art. VII, § 2, may be taken away from them and conferred by statute upon other political agencies of the State, and such agencies may be deprived of the discretionary powers conferred by this section. Day v. Commissioners, 191 N. C. 780, 133 S. E. 164 (1926).

When Superior Court Not to Grant Injunction.—It is not competent for a superior court to grant an injunction against an order by the county commissioners within the sphere of their general duties, laying out a public road. McArthur v. McEachin, 64 N. C. 454 (1870).

Discretionary Powers of Board over Roads.—The laying out and maintenance of the public roads or highways of a county are matters left largely within the discretion of the county commissioners, and, in the absence of express legislation to the contrary, they are not to be controlled by a vote of the localities affected, either informal or otherwise; and where it is shown that they have officially dealt with a question largely submitted to their judgment, their action may not be controlled or interfered with by the courts, unless it is established that there has been a gross or manifest abuse of their discretion, or it is made clearly to appear that they have not acted for the public interest, but in promotion of personal or private ends. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346 (1915).

The order in which work upon the public highways is to be performed is within the sound discretion of the county commissioners, and a finding by the court that they have exercised this discretion honestly and in a manner which they conceived to be for the best interests of the people of the county, excludes any interference by the courts. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58 (1905).

Where the county commissioners have acted within the powers conferred on them by ch. 122, Public Laws of 1913, establishing a scheme for the laying out, establishing and maintenance, etc., of roads for the different townships therein, and have accordingly issued bonds and expended most of the money on the township roads, they may not be enjoined at the suit of the taxpayer from laying out and constructing an additional road, with the use of the money remaining on hand from the sale of the bonds, upon allegation, as to this particular road, that it was not for the public convenience, or that the majority of the voters were not in favor of it. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346 (1915).

Failure to Give Notice of Proposed Route to Landowners.—The county commissioners will not be enjoined from building a public road in a township of a county from the proceeds of the sale of bonds, at the suit of taxpayers, because notice had not been given to landowners along the route proposed. Edwards v. Commissioners, 170 N. C. 448, 87 S. E. 346 (1915).

Cannot Bind County by Contract to Perpetually Maintain Road.—A board of commissioners has no power to enter into a contract with a citizen to perpetually maintain and keep in repair a public road or bridge giving to such citizens a cause of action against the county whenever, in the exercise of its discretion in the interest of the public, the same or another board shall deem it proper to discontinue such road or bridge. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58 (1905).

Control of Bridges and Ferries.—While county commissioners control public bridges and ferries, it is by virtue of their duties, imposed by law, in regard to public roads. Greenleaf v. Board, 123 N. C. 30, 31 S. E. 264 (1898).

Public bridges and ferries are incidental to public roads and are not to be established or assumed, or maintained, as county charges, unless as parts thereof, in actual existence or in contemplation. Greenleaf v. Board, 123 N. C. 30, 31 S. E. 264 (1898).

Same—Rests Solely with Commissioners.—The county commissioners alone have the power to determine upon the necessity for the construction or repair of bridges and to contract for the same, and such power can not be delegated. McPhail v. Board, 119 N. C. 330, 25 S. E. 958 (1896).

When Injunction Will Be Refused.—A citizen is not entitled to an injunction restraining a board of commissioners from proceeding to erect a bridge across a river at a certain point, though there is no public highway leading to such point, where the court finds that the board has in contemplation the opening of a public road to such point, and that arrangements have been made for that purpose. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58, (1905).

When Bridge Not Part of Highway.—It is ultra vires for county commissioners to accept a bridge to be maintained at the county's cost, where it appears it is not a part of a public road, in existence or in contemplation of being made—and they may be enjoined from doing so. Greenleaf v. Board, 123 N. C. 30, 31 S. E. 264 (1898).

Where a citizen, at his own expense, constructed a bridge and opened up the public roads over his lands leading to the bridge on both sides of the river, and the board of commissioners accepted said bridge as a public bridge and have kept it in repair ever since, the fact that the commissioners paid him only a part of the cost of its construction did not change its character as a part of the public highway, subject to the control of the commissioners, as all other bridges in the county. Glenn v. Commissioners, 139 N. C. 412, 52 S. E. 58 (1905).

Liability of Commissioner in Placing Drawbridge.—When county commissioner commits an honest error in placing, or refusing to place, a drawbridge, he is not liable. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63 (1898).

This subdivision applies to municipalities in closing a public street. Blowing Rock v. Gregorie, 243 N. C. 364, 90 S. E. (2d) 898 (1956).

This subdivision and § 160-200 (11) may be harmonized, and therefore must be construed in pari materia, so that a municipality may not close a public road or street without giving notice by registered mail to individuals owning property adjoining the road or street, and notice by publication in the newspaper published in the county. Blowing Rock v. Gregorie, 243 N. C. 364, 90 S. E. (2d) 898 (1956).

Cited in Salisbury v. Barnhardt, 249 N. C. 549, 107 S. E. (2d) 297 (1959).

(18) To Appoint Commissioners to Open Rivers and Creeks.—To appoint a commissioner to open and clear the rivers and creeks, in the manner prescribed by law within the county, or where such river or creek forms a county line or a part thereof. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

(19) To Grant Right to Bridge Navigable Streams.—To grant, subject to the approval and permission of the War Department, to any person, firm or corporation owning or occupying lands on both sides of any navigable stream or creek lying wholly within the limits of the county, the right to construct and maintain a bridge across the said navigable water between the lands owned or occupied by them upon such terms and conditions and for such time as the said board shall deem advisable and proper. Before any order allowing the construction of the same shall be made, it shall be made to appear to the board that four weeks notice of the application for such right has been given by posting a notice at the courthouse door and four other public places in the county, and also (if there be a newspaper published in the county) by publishing once a week for

four consecutive weeks in some newspaper in the county. Any party aggrieved may appeal from the order of the commissioners to the superior court of the county in term time. (Pub. Loc. 1911, c. 227; C. S., s. 1297.)

Inspection and Licenses

(20) To License Peddlers.—To license peddlers and retailers of spirituous and other liquors as prescribed by law. No license shall be good for more than one year, nor granted to two or more persons to peddle as partners in trade. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

License to Retail Spirituous and Other Liquors.—As to license to sell beverages at retail under the Beverage Control Act of 1939, see §§ 18-76 and 18-77. And see generally chapter 18 of the General Statutes relating to intoxicating liquors. For cases decided prior to the enactment of the statutes comprising said chapter, see Muller & Co. v. Commissioners, 89 N. C. 171 (1883); State v. Voight, 90 N. C. 741 (1884); Jones v. Commissioners, 106 N. C. 436, 11 S. E. 514 (1890); Board v. Smith, 110 N. C. 417, 14 S. E. 972 (1892).

(21) To License Auctioneers.—To license for the term of one year any number of persons to exercise the trade and business of auctioneers in each county, and to take their bonds as prescribed by law. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—See § 85-5.

(22) To Establish Public Landings and Places of Inspection; Inspectors.—To establish such public landings and places of inspection as the board may think proper; and to appoint such inspectors in any town or city as may be authorized by law. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—As to manner of laying out public landings, see § 77-11.

Does Not Bestow Power of Eminent Domain.—This section does not bestow upon the commissioners the power to condemn land under eminent domain; but they are confined to lands already dedicated to a public use sufficient to embrace or include the purpose proposed by them, or they must acquire a site by agreement or purchase. Commissioners v. Bonner, 153 N. C. 66, 68 S. E. 970 (1910).

Poor and Hospitals

(23) To Provide for the Maintenance of the Poor.—To provide by tax for the maintenance, comfort and well-ordering of the poor; to employ, biennially, some competent person as overseer of the poor; to institute proceedings by the warrant of the chairman against any person coming into the county who is likely to become chargeable thereto, and cause the removal of such poor person to the county where he was last legally settled; and to recover by action in the superior court from the said county all the charges and expenses incurred for the maintenance or removal of such poor person. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—As to county poor generally, see § 153-152 et. seq.

Conflict with § 153-9, subdivision (6).—Conceding that this subdivision and § 153-152 constitute special approval of the General Assembly for an unlimited levy for a special purpose, they are general acts and conflict with the provisions of § 153-9, subdivision (6). Atlantic Coast Line R. Co. v. Cumberland County, 223 N. C. 750, 28 S. E. (2d) 238 (1943).

Each County Charged with Support of Its Poor.—It is the manifest purpose of the law to charge each county with the support of its own poor. State v. Elam, 61 N. C. 460 (1868); Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1918).

May Place Paupers in Poorhouse.—Where the county commissioners have provided a poorhouse, they have the right to require that all persons who are cared for at their expense shall be placed in the house which they have provided for the purpose. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Residence or Settlement Governs.—The liability of a county for the support of a pauper does not depend upon the law of

domicile or citizenship but upon that of residence or settlement, as prescribed in § 153-159. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

No Recovery for Officiously Providing for Pauper.—Although a person may be a proper subject of county charge, anyone who officiously provides for such person cannot recover of the county the amount of his outlay. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Under the statute imposing the general duty on county commissioners to provide for the poor, in order to make a binding pecuniary obligation on the county, there must be an express contract to that effect, or the service must be done at the express request of the proper county officer or agent. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

(24) To Establish Public Hospitals and Tuberculosis Dispensaries.—To establish public hospitals, establish and maintain homes for indigent orphan children, for the county in cases of necessity, and to establish and maintain wholly or in part one or more tuberculosis dispensaries or sanatoria, and to make rules, regulations and bylaws for preventing the spread of contagious and infectious diseases, and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the State; and to raise by taxation the necessary moneys to defray the charges and expenses so incurred. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1923, c. 81.)

Cross Reference.—As to establishment and maintenance of tuberculosis sanatoria, see §§ 131-29 through 131-33.

Editor's Note.—The 1923 amendment inserted "establish and maintain homes for indigent orphan children."

Summary of Powers Granted.—In reference to the powers conferred by law upon boards of county commissioners, by this subdivision, they can establish public hospitals for their several counties in cases of necessity, and make rules, regulations and bylaws for preventing the spread of contagious and infectious diseases and for taking care of those afflicted thereby—the same not being inconsistent with the laws of the state. Prichard v. Board, 126 N. C. 908, 36 S. E. 353 (1900).

Cannot Burn Infected Residence.—By no reasonable construction of this subdivision can it be held that the board of county commissioners can burn a residence-house to prevent the spread of contagious and infectious diseases. A proper disinfection would be the extent of their powers in respect to property thus tainted or infected. Prichard v. Board, 126 N. C. 908, 36 S. E. 353 (1900).

Liability of Commissioners.—County commissioners are not liable for failure to establish hospitals under this section. Bell v. Commissioners, 127 N. C. 85, 37 S. E. 136 (1900).

Obligation to Quarantine.—The obligation on municipal corporations to quarantine and care for persons afflicted with certain contagious and infectious diseases is created entirely by statute. Board v. Henderson, 163 N. C. 114, 79 S. E. 442 (1913).

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

Prisons and Prisoners

(25) To Provide for a House of Correction.—To make provision for the erection in each county of a house of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed; to regulate the employment of labor therein; to appoint a superintendent thereof, and such assistants as are deemed necessary, and to fix their compensation. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

(26) To Provide for Employment of Prisoners.—To provide for the employment on public works in the county of all persons condemned to imprisonment with hard labor, under § 148-32 and not sent to the penitentiary. All prisoners sentenced to jail for any term less than thirty days may, as a part of such sentence, by the court in which such prisoners are tried and convicted, be sentenced to work at hard labor on the public streets of any city or town, the county farm, or any other public works of the county wherein such prisoners are tried and con-

victed. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1931, c. 302.)

Cross Reference.—As to authority of counties and towns to hire out certain prisoners, see § 153-191.

Townships

(27) To Divide County into Townships.—To divide each county into convenient districts, called townships, and to determine the boundaries and prescribe the names of said townships. A map and survey of said townships shall be filed in the office of the clerk of the board of commissioners, and also in the office of the Secretary of State. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Cross Reference.—See subdivision (28) of this section and note thereto.

(28) To Erect, Divide and Alter Townships.—To erect, divide, change the names of, or alter townships in the manner following: In any county, any three freeholders of each township to be affected may, after the notice presently to be mentioned, apply by petition to the board of Commissioners to erect a new township, or divide an existing township, or change the name of or alter the boundaries thereof. Notice of the application shall be posted in one or more public places in each of such townships and published in a newspaper printed in the county, if there is one, for at least four weeks preceding the meeting at which the application is made to the board. No township shall have or exercise any corporate powers whatsoever, unless authorized by an act of the General Assembly, to be exercised under the supervision of the board of commissioners. (1868, c. 20, s. 8; 1876-7, c. 141, ss. 3, 5; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

Legislative Power to Subdivide and Bestow Corporate Functions.—It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with corporate functions. It is not essential that such subdivisions of territory shall be created directly by legislative enactment. Certain agencies may be required by statute to establish them. McCormack v. Commissioners, 90 N. C. 441 (1884).

Townships are within the power and control of the General Assembly, just as are counties, cities, towns and other municipal corporations. It may confer upon them, or any single one of them, corporate powers, with the view to accomplish any lawful purpose. Such powers may be conferred for a single purpose as well as many. Brown v. Commissioners, 100 N. C. 92, 5 S. E. 178 (1885); Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890).

Former Corporate Powers and Trustees of Townships.—As to former corporate powers of townships and former boards of township trustees, see Mitchell v. Board, 71 N. C. 400 (1874); Wallace v. Board, 84 N. C. 164 (1881); Jones, etc., Co. v. Commissioners, 85 N. C. 278 (1881); Brown v. Commissioners, 100 N. C. 92, 5 S. E. 178 (1885); Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890). As to liability of trustees for torts, see Price v. Board, 172 N. C. 84, 89 S. E. 1066 (1916).

County Officers May Be Charged with Township Duties.—The townships are constituent parts of the county organization, and the county officers may well be charged with duties and authority in respect to debts they may be allowed by statute to contract. Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890).

County Bonds Not to Be Issued upon Note of One Township.—While the building of public roads has been held a necessary expense, the application of the principle may not be extended to instances where a statute requires the county to issue its bonds for road purposes to obtain aid for a township or local taxing district therein, upon the approval of the voters of the particular district alone, and without benefit to the others. Commissioners v. Lacy, 174 N. C. 141, 93 S. E. 482 (1917).

Commissioners' Power to Issue Township Bonds.—The county commissioners are not authorized to issue bonds on the credit of a township for the construction of a railroad. Graves v. Board, 135 N. C. 49, 47 S. E. 134 (1904).

Cited in Atlantic Coast Line R. Co. v. Beaufort County, 224 N. C. 115, 29 S. E. (2d) 201 (1944).

(29) To Apportion Funds between Altered Townships.—When a township has been altered, erected, or divided, to apportion, in its discretion, the public funds of such township between the new township divisions or subdivisions, and the warrant of the board upon the treasurer for the apportionment shall constitute a valid voucher for the payment thereof. (Ex. Sess. 1913, c. 44; C. S., s. 1297.)

Miscellaneous

(30) To Authorize Chairman to Issue Subpoenas.—To authorize the chairman to issue subpoenas to compel the attendance before the board of persons, and the production of books and papers relating to the affairs of the county, for the purpose of examination on any matter within the jurisdiction of the board. The subpoena shall be served by the sheriff or any constable to whom it is delivered; and upon return of personal service thereof, whoever neglects to comply with the subpoena or refuses to answer any proper question shall be guilty of contempt and punishable therefor by the board. A witness is bound in such cases to answer all the questions which he would be bound to answer in like case in a court of justice; but his testimony given before the board shall not be used against the witness on the trial of any criminal prosecution other than for perjury committed on the examination. The chairman of the board of county commissioners for each county is authorized in his official capacity to administer oaths in any matter coming before either of such boards. Any member of such board while temporarily acting as such chairman has and may exercise like authority. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

(31) To Audit Accounts.—To audit accounts against the county, and direct the raising of the moneys necessary to defray them. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

The board of commissioners must audit and pass upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. If after the hearing they refuse to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904); Reed v. Farmer, 211 N. C. 249, 189 S. E. 882 (1937).

At a Regular Meeting.—A claim against a county must be audited and approved at a regular meeting of the board of commissioners. First Nat. Bank v. Warlick, 125 N. C. 593, 34 S. E. 687 (1899).

Account Must Be Itemized and Verified.—No account shall be audited by a board of county commissioners unless it is itemized and verified. Turner v. McKee, 137 N. C. 251, 49 S. E. 330 (1904).

Court Cannot Interfere with Discretionary Power of Commissioners.—The courts cannot interfere with the exercise of the discretion of the board of county commissioners in ordering an investigation by public accountants of the books of the various departments of the county government. Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043 (1915).

Decision Not Subject to Review.—The board of county commissioners is not such a judicial tribunal, that its decision in passing upon claims against the county can be reviewed on appeal. The proper remedy to test the validity of a rejected claim is by civil action. Jones v. Commissioners, 88 N. C. 56 (1883).

(32) To Appoint Proxies.—To appoint proxies to represent in any annual or other meetings the shares or other interest held by any county in a railroad company, or other corporation, under the charter of such corporation, or under any special acts of the General Assembly, authorizing county subscriptions in such cases. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

(33) To Procure Weights and Measures.—To procure for each county sealed weights and measures, according to the standard prescribed by Congress; and to elect a standard keeper, who shall qualify before the board and give bond approved by the board, as prescribed by law. (R. C., c. 117, s. 4; 1868, c. 20, s. 26; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

(34) To Adopt a County Seal.—To adopt a seal for the county, a description and impression of which shall be filed in the office of superior court clerk and of the Secretary of State. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297.)

(35) To Promote Farmers' Co-Operative Demonstration Work; Rules Governing Leave, etc., of County Extension Employees.—To co-operate with the State and national departments of agriculture to promote the farmers' co-operative demonstration work, and to appropriate such sum as they may agree upon for the purpose.

The rules and regulations adopted by the North Carolina Agricultural Extension Service governing annual leave, sick leave, hours of employment, and holidays for county extension employees shall be effective except when modified as follows: When a board of county commissioners has adopted rules and regulations governing such matters for other employees under its jurisdiction, that board of county commissioners may modify the rules and regulations of the North Carolina Agricultural Extension Service governing such matters with respect to that county's extension employees to conform to the rules and regulations applicable to the other employees of the county; and the modified rules and regulations shall then be effective in such county. (1911, c. 1; C. S., s. 1297; 1957, c. 1004, s. 5.)

Cross Reference.—As to authority of county commissioners to co-operate in cotton grading program, see § 106-427.

Editor's Note.—The 1957 amendment added the second paragraph to this subdivision.

(35½) To Promote Farm Soil Conservation Work.—To cooperate with the National Soil Conservation Service and the State Soil and Water Conservation agencies and districts to promote soil and water conservation work, and to appropriate from nontax revenue such sums as they may deem advisable for this purpose. This subdivision shall apply only to the following counties: Alamance, Alexander, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Camden, Caswell, Chatham, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guilford, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Nash, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rowan, Rutherford, Sampson, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Wayne, Wilkes and Yadkin. (1959, c. 1213; 1961, cc. 266, 290, 301, 579, 581, 582, 584, 656, 693, 705, 809, 1126; 1963, cc. 290, 701.)

Editor's Note.—The 1959 amendment added this subdivision.

The first 1961 amendment inserted "Martin" in the list of counties, the second 1961 amendment inserted "Guilford," the third 1961 amendment inserted "Bertie," the fourth 1961 amendment inserted "Montgomery," the fifth 1961 amendment inserted "Granville," the sixth 1961 amendment inserted "Davie" and the seventh 1961 amendment inserted "Lincoln" therein.

The eighth 1961 amendment rewrote the first sentence. The ninth 1961 amendment inserted "Rutherford" in the list of counties. The tenth 1961 amendment inserted "Wilkes," the eleventh 1961 amendment inserted "Stokes" and the twelfth 1961 amendment inserted "Currituck."

The first 1963 amendment inserted "Jackson" and the second 1963 amendment inserted "McDowell" in the list of counties.

(36) To Appropriate for the National Guard.—To appropriate such sums of money to the various organizations of the National Guard, and at such times, as the board may deem proper. (1915, c. 259; C. S., s. 1297.)

Cross References.—See § 127-101. As to power of county to support family of members of militia, see § 127-86.

(37) To Make Appropriations for Libraries.—Together with the county board of education of any county in which there is a public city or town library, in their discretion, to co-operate with the trustees of said library in extending the service of such library to the rural communities of the county, and to appropriate out of the funds under their control an amount sufficient to pay the expense of such library extension service. (1917, c. 149; C. S., s. 1297.)

Cross Reference.—As to establishment of library and levy of taxes therefor, see § 160-65.

Cited in Jamison v. Charlotte, 239 N. C. 682, 80 S. E. (2d) 904 (1954).

(38) Homes for Indigent and Delinquent Children.—To provide for the establishment and maintenance, with the approval of the State Board of Charities and Public Welfare, of such home or homes for indigent and delinquent children in said county, as to them may seem proper or necessary, or to co-operate with the board of county commissioners or other governing authority in any other county or counties in the establishment and maintenance, at some mutually agreeable point, of a district home for such purposes, said district to be established by agreement and said home to be established and maintained upon such terms as may be agreed upon by the boards of county commissioners of the several counties concerned. (1927, c. 248.)

Local Modification.—Anson: 1939, c. 343.

Editor's Note.—The first provision for a home for indigent children was inserted by the 1923 amendment to subdivision (24) of this section. However, that provision merely refers to indigent and delinquent orphan children. This subdivision, containing a more detailed and broader provision for the establishment and maintence of a home for indigent and delinquent children, was added by the 1927 amendment.

The name of the Board referred to in this subdivision is now State Board of Public Welfare. See §§ 108-1, 108-1.1.

(39) County Fire Departments.—Any county shall have power to provide for the organization, equipment, maintenance and government of fire companies and fire department; and, in its discretion, may provide for a paid fire department, fix the compensation of the officers and employees thereof, and make rules and regulations for its government. The board of commissioners of the county may make the necessary appropriations for the expenses thereof and levy annually taxes for the payment of same as a special purpose, in addition to any allowed by the Constitution. (1945, c. 244.)

Local Modification.—Lenoir: 1959, cc. 539, 981.

(39a) County Fire Marshal.—The board of commissioners of any county may appoint a county fire marshal, to serve at the will of the board, to receive such compensation as the board may determine, to have such assistants and employees as the board may provide, and to perform such duties as the board may require. The duties of the county fire marshal may include, but shall not be limited to

a. The coordination of all fire fighting activities in the county which are within the jurisdiction of the board of commissioners,

b. The coordination of all fire prevention activities in the county which are within the jurisdiction of the board of commissioners, and

c. The making of inspections and reports of the public schools required by article 17, chapter 115, of the General Statutes: Provided, that the county fire marshal shall not make the electrical inspections required by said article unless he is qualified to do so under the provisions of G. S. 160-122.

In lieu of appointing a county fire marshal, the board may impose any duties, which could be imposed upon a county fire marshal if one were appointed, on any other officer or employee of the county. The board of commissioners may make necessary appropriations to cover expenses incurred pursuant to the provisions of this subdivision. (1959, c. 290.)

Editor's Note.—The 1959 amendment added this subdivision.

(40) County Planning Board.—The county commissioners are authorized to create a board to be known as the planning board, whose duty it shall be to make a careful study of the resources, possibilities and needs of the county, particularly with respect to the conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the county. The commissioners shall appoint to the board such number of persons as in its discretion appears desirable, but such number of persons shall not be less than three and shall not exceed in number the number of townships in the county, and no act heretofore done, or that may hereafter be done, and no expenditure of funds heretofore made or that may hereafter be made, by any county planning board or by any county board of commissioners in connection with or on behalf of any county planning board, shall be held invalid on account of the number of persons composing the county planning board.

The planning board, when established, shall make a report at least annually to the county commissioners, giving information regarding the condition of the county, and any plans or proposals for the development of the county and estimates of the cost thereof.

The county commissioners may appropriate to the planning board such amount as they may deem necessary to carry out the purposes of its creation and for the improvement of the county, and shall provide what sums, if any, shall be paid to such board as compensation.

The county commissioners are hereby authorized to enter into any agreements with any other county, city or town for the establishment of a joint planning board.

Any planning board established under the authority of this subdivision by any one county, city, or town or any joint planning board or agency established by agreement, pursuant to this subdivision, between two or more city or county governing bodies may, with the concurrence of the governing body or bodies to which it is responsible,

a. Enter into and carry out contracts with the State or federal government or any agencies thereof under which said government or agencies grant financial or other assistance to said planning board,

b. Accept such assistance or funds as may be granted by the State or federal government with or without such a contract,

c. Agree to and comply with any reasonable conditions which are imposed upon such grants,

d. Make expenditures from any funds so granted.

The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers. Any planning agency established pursuant to general or special act of the North Carolina General Assembly which has been granted extraterritorial planning jurisdiction, or a joint planning agency of two or more political subdivisions that have been granted joint planning jurisdiction or a county-wide planning agency shall be deemed a regional or metropolitan planning agency for the purpose of accepting such assistance or funds as may be granted by the federal government.

Any planning board or agency established by special act of the General

Assembly shall have the same power and authority as granted in the preceding paragraph to planning boards and agencies established pursuant to the general law.

Any planning board established under the authority of this section, or pursuant to a special act of the General Assembly, may, with the concurrence of the governing body or bodies to which it is responsible,

a. Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to furnish technical planning assistance to such other planning board or boards; or

b. Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to pay such other planning board or boards for technical planning assistance to be furnished by the staff of such other board or boards.

The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers.

Said governing bodies are authorized to make such appropriations as may be necessary to carry out any activities or contracts authorized by this section, and to levy annually taxes for the payment of the same as a special purpose, in addition to any allowed by the Constitution. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390.)

Local Modification.—Chatham, Stanly, Vance: 1945, c. 1040, ss. 2½, 3; Wayne: 1955, c. 191.

Editor's Note.—The 1955 amendment added the last two paragraphs of this subdivision.

The 1957 amendment rewrote and greatly extended the second sentence of the first paragraph of this subdivision.

The first 1959 amendment inserted the words "State or" in subparagraphs a and b of the fifth paragraph. The second 1959 amendment added the last three paragraphs. Session Laws 1959, c. 659, provides that the amendments shall not apply to Lenoir County.

(41) Expenditure of Surplus Funds for Library Purposes.—The board of county commissioners of any county is hereby authorized, in its discretion, to expend any surplus funds, which may be available, for the erection and/or purchase of library buildings and equipment. (1949, c. 1222.)

(42) Delinquent Taxes.—To pay into the general fund all or any part of the proceeds of taxes which are, when collected, two or more years delinquent. (1953, c. 827.)

Local Modification.—Edgecombe: 1959, c. 1097; Franklin: 1959, c. 808; McDowell: 1953, c. 827; Montgomery: 1959, c. 967.

Editor's Note.—For brief comment, questioning the constitutionality of this subdivision, see 31 N. C. Law Rev. 442.

(43) Tax Levies for Certain Special Purposes in Certain Counties.—The board of county commissioners of any county is hereby authorized, in its discretion, to levy annually on all taxable property in the county any one or more of the following special taxes for the special purposes indicated, and the General Assembly does hereby give special approval for the levy of such taxes, and the authority granted in this subdivision is in addition to and not in substitution for existing powers of boards of commissioners, whether such existing powers be granted by general or special act:

a. For the special purpose of paying the salary and office expenses of the county accountant made necessary for the performance of his duties as prescribed in the County Fiscal Control Act, being article 10 of chapter 153 of the General Statutes of North Carolina;

b. For the special purpose of paying the salaries and expenses of the

farm demonstration agent and the home demonstration agent and other expenses incurred in farm and home demonstration;

c. For the special purpose of paying the salary and expenses of the veteran's service officer and other expenses incurred in maintaining a veteran's service office.

The provisions of this subdivision shall apply only to the following counties: Alamance, Beaufort, Buncombe, Carteret, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Edgecombe, Forsyth, Franklin, Greene, Halifax, Haywood, Henderson, Hertford, Hoke, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Montgomery, Orange, Perquimans, Randolph, Richmond, Robeson, Rutherford, Stokes, Tyrrell, Union, Warren, Wayne, Wilkes and Yadkin. (1953, c. 895; 1955, cc. 201, 234, 363, 473, 717, 918, 931, 944; 1957, cc. 388, 389, 868, 896, 1033; 1959, cc. 388, 394, 625, 724, 860, 1317; 1961, cc. 193, 631, 1045, 1082, 1083; 1963, c. 314.)

Editor's Note.—Chapters 201, 234, 363, 473, 717, 918, 931 and 944 of the 1955 Session Laws added to the list of counties in the last paragraph the following, respectively: Wilkes, Warren, Stokes, Currituck, Hertford, Macon, Lincoln, Madison.

Chapters 388, 389, 868, 896 and 1033 of the 1957 Session Laws added to the list of counties, respectively: Chowan, Tyrrell, Richmond, Martin and Franklin.

The 1959 amendments inserted Beaufort, Carteret, Greene, Henderson, Hoke, Montgomery and Yadkin in the list of counties.

Session Laws 1959, c. 388, provides for inserting "Beaufort" between "Alamance" and "Bertie." Note that there is no "Bertie" mentioned in the section.

Session Laws 1959, c. 64, provides that paragraph b of this subdivision shall apply to Johnson County.

The first 1961 amendment inserted "Halifax" in the list of counties. The second 1961 amendment inserted "Cleveland," the third 1961 amendment inserted "Robeson," the fourth 1961 amendment inserted "Wayne" and the fifth 1961 amendment inserted "Edgecombe" therein.

The 1963 amendment inserted "Perquimans" in the list of counties.

(44) Obtaining Liability Insurance and Waiver of Immunity from Liability for Damages.—The board of county commissioners of any county, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive the county's governmental immunity from liability for damage by reason of death, or injury to person or property, caused by the negligence or tort of the county or by the negligence or tort of any official or employee of such county when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that the county is indemnified by insurance from such negligence or tort.

Any contract of insurance purchased pursuant to this subdivision must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State, and such contract of insurance may cover such negligent acts or torts and such officials and employees as the board of county commissioners may decide. The board may purchase one or more contracts of insurance pursuant to this subdivision, each such contract covering different negligent acts or torts or different officials or employees from every other contract. Any company or corporation which enters into a contract of insurance as above described with a county by such act waives any defense based upon the governmental immunity of such county.

Every board of county commissioners is authorized and empowered to pay, as a necessary expense, the lawful premiums for such insurance.

Any person sustaining damages, or in case of death his personal representative, may sue a county insured under this subdivision for the recovery of such damages in any court of competent jurisdiction in such

county; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of such county, if, and to the extent, such county has insurance coverage as provided in this subdivision.

Except as hereinbefore expressly provided, nothing in this subdivision shall be construed to deprive any county of any defense whatsoever to any such action for damages, or to restrict, limit, or otherwise affect any such defense which said county may have at common law or by virtue of any statute; and nothing in this subdivision shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said county or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A county may incur liability pursuant to this subdivision only with respect to a claim arising after the board of county commissioners has procured liability insurance pursuant to this subdivision and only during the time when such insurance is in force.

No part of the pleadings which relates to or alleges facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this subdivision. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall ask for a jury trial thereon. (1955, c. 911, s. 1.)

Local Modification.—Davie and Scotland: 1955, c. 911, s. 1½.

Editor's Note.—The 1955 amendment added this subdivision. Section 2 of the amendatory act validated the action of the board of county commissioners of any county which has prior to May 11, 1955, taken out liability insurance of the type provided for in this subdivision.

Cited in Walker v. Randolph County, 251 N. C. 805, 112 S. E. (2d) 551 (1960).

(45) Designating the Names of Roads or Streets in Unincorporated Areas.—The board of county commissioners of any county is hereby authorized, in its discretion, to designate, change, alter or add to the name of any street, road, highway, or other thoroughfare open to the public outside of the corporate limits of any incorporated city or town, and to assign street numbers to be used on said roads or streets. This power may be exercised on the same street, road, highway, or other thoroughfare open to the public as often as the board deems it expedient.

Before exercising any power granted herein, the board shall make such effort as it deems expedient to make certain that a new name assigned to a street, road, highway, or other thoroughfare open to the public will not duplicate or be confused with the name of any existing street, road, highway, or other thoroughfare open to the public in the vicinity or within the corporate limits of any nearby city or town.

Nothing herein shall be construed to allow the board to change the number assigned to any street, road, highway, or other thoroughfare by the State Highway Commission; but the board may give such street, road, highway, or other thoroughfare a name in addition to its number.

After the board of county commissioners has designated, changed, altered, or added to the name of any street, road, highway, or other thoroughfare open to the public, and assigned street numbers, if any, it shall notify the local postmaster, the State Highway Commission, and

any nearby city or town of its action. Provided, that this subdivision shall not affect the provisions of chapter 945 of the Session Laws of 1953. (1957, c. 1068.)

Editor's Note.—The 1957 amendment added this subdivision and by virtue of § 136-1.1 "State Highway Commission" was substituted for "State Highway and Public Works Commission."

(46) Water Systems and Sanitary Sewer Systems.—To acquire, construct, reconstruct, extend, improve, operate, maintain, lease and dispose of water systems and sanitary sewer systems, to contract for the operation, maintenance and lease of any such systems, and to contract for a supply of water and the disposal of sewage. (1957, c. 266, s. 3.)

Editor's Note.—The 1957 amendment added this subdivision.

This subdivision is constitutional, violating neither § 5 nor § 17 of Art. I of the N. C. Constitution. Ramsey v. Board of Comm'rs for Cleveland County, 246 N. C. 647, 100 S. E. (2d) 55 (1957).

The limitation upon the counties contained in N. C. Const., Art. VII, § 7, requiring that bonds for the construction of water and sewer systems be approved by the voters in such county, does not impair the constitutionality of the grant of the power to construct such systems in any respect. Ramsey v. Board of Comm'rs for Cleveland County, 246 N. C. 647, 100 S. E. (2d) 55 (1957).

(47) County Plumbing Inspectors.—The county commissioners may designate and appoint one or more plumbing inspectors whose duties shall be: To inspect and approve the installation of all plumbing and water systems, either or both, hereafter installed in unincorporated areas; to issue certificates of approval of such inspections; to enforce regulations pertaining to plumbing as adopted by respective county boards of health; to collect inspection fees, determined by the county commissioners, and deliver same to the county treasurer; and to furnish a surety bond approved by the county commissioners. The county commissioners may pay the plumbing inspector a fixed salary, or apply inspection fees collected in lieu thereof, for services rendered. It shall be unlawful for the plumbing inspector to be financially connected in any way with persons, firms or corporations who install plumbing systems or sell plumbing fixtures, and his services may be terminated when deemed wise and necessary by the county commissioners.

This subdivision shall apply only to Bladen, Buncombe, Cumberland, Durham, Forsyth, Granville, Guilford, Haywood, Lee, Montgomery, Orange, Pamlico, Rockingham, Rowan, Stanly, Stokes, Surry, Transylvania and Wake counties. (1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 1031; 1961, cc. 763, 884, 1036; 1963, c. 868.)

Editor's Note.—Prior to the 1957 amendments, the statute affected fewer than ten counties and therefore was not codified, but the amendments added the number requisite for codification.

By Session Laws 1953, c. 984, this subdivision was made applicable to Bladen, Buncombe, Forsyth, Guilford and Pamlico counties.

Session Laws 1955, cc. 144, 942 and 1171 added Surry, Rowan and Stokes, respectively, to the list of counties. And Session Laws 1957, cc. 415, 456, 1286 and 1294 added Stanly, Montgomery, Granville and Durham, respectively, to the list.

The 1959 amendments added Cumberland and Wake to the list of counties.

The first 1961 amendment inserted "Transylvania" in the list of counties, the second 1961 amendment inserted "Rockingham" and the third 1961 amendment inserted "Haywood" in the list.

The 1963 amendment added Lee and Orange to the list of counties.

(48) Funds for Defense of Election Officials.—The board of county commissioners of any county is authorized to appropriate funds for the payment of reasonable fees for counsel employed to defend any election officer or election board of the county in actions brought or now pending against such officials on account of orders, acts or decisions rendered in the

discharge of official duties pertaining to the administration of the election laws. (1957, c. 436.)

Editor's Note.—The 1957 amendment added this subdivision.

(49) Office Hours, Workdays, and Holidays.—The board of county commissioners of any county may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the county, and the officers and employees of the county may observe such office hours, workdays, and holidays, notwithstanding any other provision of law. (1959, c. 251.)

Editor's Note.—The 1959 amendment added this subdivision.

(50) Mapping and Discovery Contracts.—The board of county commissioners of any county may enter into contracts for the mapping of the lands of the county and the discovery of lands therein not listed for taxes. The board may enter into continuing contracts for these purposes, some portion of which or all of which may be performed in an ensuing fiscal year, but no such contract shall be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The board of county commissioners shall, in the budget resolution of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G. S. 153-130 to be printed, written, or typewritten on all contracts, agreements, or requisitions requiring the payment of money shall be placed on a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made. (1959, c. 683, s. 5.)

Editor's Note.—The 1959 amendment added this subdivision.

(51) Special Tax Levy; Revaluation Expense.—The boards of county commissioners of the several counties are hereby authorized to levy such special property tax at such rate as may be necessary for the special purpose of meeting the expense of the revaluation of real property as required by G. S. 105-278; such special property tax shall be in addition to any tax allowed by law for such purpose and shall be in addition to the rate allowed by the Constitution for general expenses. (1959, c. 704, s. 5.)

Editor's Note.—The 1959 amendment added this subdivision.

(52) County Building Inspectors.—The board of county commissioners may appoint one or more building inspectors to serve at the will of the board, whose duties shall be: To enforce the State Building Code adopted under article 9 of chapter 143 of the General Statutes; to enforce any county building regulations adopted under G. S. 143-138 (b) or 143-138 (e); to enforce any county zoning ordinance or ordinances; to collect inspection fees determined by the board of county commissioners, which the board is hereby authorized to impose, and deliver same to the county treasurer; to furnish a surety bond for the faithful performance of his duties and the safeguarding of any public funds coming into his hands, approved as to amount, form, and solvency of sureties by the board of county commissioners; and to carry out such related duties as may be specified by the board of county commissioners.

In lieu of appointing a separate building inspector, the board of county commissioners may designate as county building inspectors:

a. A building inspector of any other county or counties, with the approval of the board of county commissioners of such other county or counties;

b. A municipal building inspector of any municipality or municipalities within the county, with the approval of the municipal governing body;

c. The county fire marshal;

d. A county electrical inspector appointed under the provisions of G. S. 160-122;

e. A county plumbing inspector appointed under the provisions of G. S. 153-9 (47); or

f. Any other person or persons whom they deem to be qualified.

The board of county commissioners may pay a building inspector a fixed salary or may in lieu thereof reimburse him for his services by paying over any inspection fees which he collects. The board of county commissioners may make necessary appropriations for the special purpose of paying the salary or salaries of county building inspectors and any expenses pertaining to building inspection.

The board of county commissioners may enter into and carry out contracts with any municipality or municipalities within the county, or with any other county or counties, under which the parties agree to support a joint building inspection department. The board of county commissioners and the municipal governing body may make any necessary appropriations for such a purpose.

On official request of the governing body of any municipality within the county, the board of county commissioners may direct the county building inspector to exercise his powers within said municipality, and he shall thereupon be empowered to do so until such time as the municipal governing body officially withdraws its request.

This subdivision shall not apply to Cherokee, Clay, Graham, Harnett, Lenoir, Macon and Scotland counties. (1959, c. 940; 1963, c. 639.)

Editor's Note.—The 1959 amendment added this subdivision.

The 1963 amendment deleted New Hanover from the last sentence of this subdivision.

(53) Suppression of Riots, Insurrections, etc.; Tax for Additional Expense.—The board of county commissioners of any county is hereby authorized to take action to suppress riots or insurrections or to handle any extraordinary breach of law and order which occurs or which threatens to occur within the county. The board may levy annually on all taxable property in the county a special tax for the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the county, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 1250, s. 1.)

Editor's Note.—The 1959 amendment added this subdivision.

(54) To Regulate and Control Parking of Motor Vehicles on County Owned Property.—To regulate and control by resolution the parking of motor vehicles on county owned property, and to provide that violation of regulations adopted pursuant to such resolution shall be a misdemeanor punishable by a fine of not more than one dollar ($1.00): Provided,

that such resolution shall not apply to streets, roads or highways in the county. (1961, c. 191.)

Editor's Note.—The 1961 amendment added this subdivision.

(55) Regulate and Prohibit Certain Activities.—In that portion of the county, or any township of the county, lying outside the limits of any incorporated city or town, or lying outside of the jurisdiction of any incorporated city or town, to prevent and abate nuisances, whether on public or private property; to supervise, regulate, or suppress or prohibit in the interest of public morals, public recreations, amusements, and entertainments; to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience and welfare of the people including but not limited to the regulation and prohibition of the sale of goods, wares and merchandise on Sunday; and to make and enforce any other types of local police, sanitary, and other regulations: provided, that the board of county commissioners may make such regulations applicable within the limits of any incorporated city or town, or within the jurisdiction of any incorporated city or town, whose governing body, by resolution, agrees to such regulation, and during such time as the governing body continues to agree to such regulation. Nothing herein shall affect the authority of local boards of health to adopt rules and regulations for the protection and promotion of public health.

This subdivision shall not apply to the following counties: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Caldwell, Carteret, Catawba, Chatham, Cherokee, Clay, Craven, Dare, Duplin, Gaston, Graham, Halifax, Harnett, Hoke, Jackson, Johnston, Jones, Lee, Lenoir, Macon, Madison, Onslow, Pamlico, Pasquotank, Pender, Pitt, Polk, Randolph, Richmond, Rowan, Rutherford, Scotland, Stokes, Surry, Swain, Transylvania, Warren, Watauga, Wilkes, Wilson and Yancey. (1963, c. 1060, ss. 1, 1½.)

Editor's Note.—The 1963 amendment added this subdivision.

Section 2 of Session Laws 1963, c. 1060, provides that all laws and clauses of laws in conflict with the act are repealed, except any other law specifically prohibiting the sale of certain articles on Sunday.

§ 153-9.1. Contract for photographic recording of instruments and documents filed for record.—The board of county commissioners of any county in North Carolina is hereby authorized and empowered to contract for the photographic recording of any instruments or documents filed for record in the offices of the register of deeds, the clerk of the superior court and other county offices, and such recording shall constitute a sufficient recording, provided the original sizes of such instruments or documents are not reduced to less than two-thirds the original sizes; and provided further that no such contract shall be made for such photographic service, for a longer period than five years from the date of the commencement of such contracted service, except that the contract may contain a provision for automatic extensions for additional five year periods in the absence of a sixty day written notice by either party to contract, given sixty days or more before the expiration of any five year period, terminating the contract at the end of such period. (1945, c. 286, s. 1; 1953, c. 675, s. 23.)

Cross References.—As to provision for photostatic copies of plats, etc., see § 47-32. As to prior provision for photographic or photostatic registration, see § 47-22. For subsequent provisions as to photographic reproduction of records, see §§ 153-15.1 through 153-15.6. As to photographic copies of business and public records as evidence, see §§ 8-45.1 through 8-45.4.

Editor's Note.—The 1953 amendment substituted "given" for "giving" near the end of the section.

§ 153-9.2. Original instruments and documents constitute temporary recording; return to owners.—The register of deeds of any county, where such photographic recording is contracted for, shall use the original instruments or documents as a temporary recording, and shall keep them in a temporary binder arranged in the chronological order of filing for record, assigning to each page a number which shall be arranged in a consecutive order, and shall, at all times, keep a temporary index thereto. When the photographic copies are substituted for the originals, the photographic copies shall be set up in a permanent binder and in the same order as to time and page numbers, as in the temporary binder, and permanently indexed. When the photographic copies are substituted for the originals, then the originals shall be returned to the persons entitled thereto, if known, but in no event, where return is to be made, no such return shall be delayed more than sixty days from the date of filing. The same procedure shall apply to the temporary and permanent records of the several classes of instruments or documents, such as wills, judgments, reports, and corporate charters, in the office of the clerk of the superior court of any such county, from and after such contract for photographic recording becomes effective. (1945, c. 286, s. 2.)

§ 153-9.3. Preservation and use of film or sensitized paper.—Wherever the contract for such photographic recording is for the initial photographing on film or sensitized paper, the board of county commissioners shall provide a fire resisting vault space or lease lockbox space in which to permanently keep such film or sensitized paper, and to permit use of such film or sensitized paper from which to make copies, under such regulations as such board may prescribe. (1945, c. 286, s. 3; 1945, c. 944.)

§ 153-9.4. Removal of originals for photographing.—The official of any such county so contracting for photographic recording, who is in charge of any instruments or documents left with such official for recording, may permit temporary removal of the originals from the courthouse or other building for photographing, provided such originals are returned to such building within ten hours; provided further, that the board of county commissioners may when it appears necessary to complete the work, extend the time in which said photographing must be completed and returned to the courthouse of the county. (1945, c. 286, s. 4; 1945, c. 944.)

§ 153-9.5. Removal of public records for photographing.—The official of any county, who is in charge of any public records, may permit temporary removal of such records from the county courthouse or other building for the purpose of photographing a portion or all of such records, provided such records are returned within ten hours and provided, that the board of county commissioners may when it appears necessary to complete work, extend the time in which said photographing must be completed and returned to the courthouse of the county. (1945, c. 286, s. 5; 1945, c. 944.)

§ 153-9.6. Photographic recording of public records; preservation and use of film or sensitized paper.—The board of county commissioners of any county in North Carolina may also contract for the photographing on film or sensitized paper of any county records, and, if such contract is made, such board of county commissioners shall provide a fire resisting vault space or lease lockbox space in which to keep such film or sensitized paper, and shall have authority to permit copies to be made from such film or sensitized paper, under such regulations as such board may prescribe. (1945, c. 286, s. 6; 1945, c. 944.)

§ 153-9.7. Sections 153-9.1 to 153-9.7 confer additional powers.—Sections 153-9.1 to 153-9.7 shall not be construed as a limitation on the powers of the several boards of county commissioners; but shall be construed as an enabling act only and in addition to existing powers of such boards. (1945, c. 286, s. 7.)

§ 153-10. Local: Authority to interdict certain shows.—The boards of commissioners of the several counties shall have power to direct the sheriff or tax collector of the county to refuse to issue any license to any carnival company and shows of like character, moving picture and vaudeville shows, museums and menageries, merry-go-rounds and Ferris wheels, and other like amusement enterprises conducted for profit under the same management and filling week-stand engagements or in giving week-stand exhibitions, whether under canvas or not, whenever in the opinion of the board of county commissioners the public welfare will be endangered by the licensing of such companies. This section shall apply only to the counties of Anson, Bladen, Burke, Cabarrus, Carteret, Caswell, Catawba, Duplin, Edgecombe, Forsyth, Greene, Harnett, Haywood, Iredell, Lee, Madison, Martin, Mitchell, Nash, Orange, Pamlico, Pasquotank, Polk, Randolph, Robeson, Scotland, Tyrrell, Washington, Wayne, Wilkes, Wilson, Yadkin. (1919, c. 164; C. S., s. 1298; 1949, c. 111; 1951, cc. 1071, 1174; 1953, c. 102; 1961, cc. 279, 452.)

Local Modification.—Harnett: 1951, c. 809.

Editor's Note.—The 1949 amendment inserted "Harnett" in the list of counties.

The 1951 amendments inserted "Edgecombe" and "Wilkes" in the list of counties.

The 1953 amendment inserted "Caswell" in the list of counties.

The first 1961 amendment inserted "Martin" in the list of counties, and the second 1961 amendment inserted "Wayne" therein.

§ 153-10.1. Local: Removal and disposal of trash, garbage, etc.—The board of county commissioners is hereby authorized and empowered, in its discretion, to issue, pass and promulgate ordinances, rules and regulations governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county. A violation of any of the ordinances, rules or regulations issued, passed or promulgated under the authority of this section shall be a misdemeanor, and upon plea of nolo contendere, or a plea of guilty, or upon a conviction, any offender shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty (30) days, and each week that any such violation continues to exist shall be a separate offense.

The provisions of this section shall apply to Cabarrus, Gates, Graham, Guilford, Henderson, Hertford, Hoke, Jackson, McDowell, Martin, Mecklenburg, Northampton, Polk, Scotland, Stokes, Transylvania, Wayne and Wilson counties. (1955, c. 1050; 1957, cc. 120, 376; 1961, cc. 40, 711, 803; c. 806, s. 1.)

Local Modification.—Town of Brevard: 1961, c. 806, s. 1½.

Cross Reference.—As to garbage collection and disposal generally see article 22 of this chapter, § 153-272 et seq.

Editor's Note.—The act from which this section was codified made it applicable to Gates, Jackson, McDowell, Mecklenburg and Polk counties. The first 1957 amendment made it apply to Graham County, and the second 1957 amendment made it applicable to Cabarrus, Guilford, Henderson, Hertford, Martin, Northampton, Scotland and Wilson counties.

The first 1961 amendment added "Wayne" to the list of counties. The second 1961 amendment inserted "Stokes" in the list. And the third and fourth 1961 amendments inserted "Hoke" and "Transylvania."

§ 153-11. To settle disputed county lines.—When there is any dispute concerning the dividing line between counties, the board of commissioners of each county interested in the adjustment of said line, a majority of the board consenting thereto, may appoint one or more commissioners, on the part of each county, to settle and fix the line in dispute; and their report, when ratified by a majority of the commissioners in each county, is conclusive of the location of the true line, and shall be recorded in the register's office of each county, and in the office of the Secretary of State. If the board of commissioners of any county refuses upon request of the other county or counties to appoint one or more commissioners pursuant to this section to settle and fix the line or lines in dispute, then, and in such

event, the county or counties making such request may file a verified petition before the resident judge of the district in which the said county or counties lie, or the judge holding the courts thereof for the time being, and in the event that said counties shall lie in more than one judicial district, to the resident judge or the judge holding the courts of either district, setting forth briefly the line or lines which are in dispute; the refusal of the other county or counties to settle and fix the line in dispute, pursuant to this section; whereupon, such judge before whom such petition is filed shall issue a notice to the other county or counties, returnable before him within not less than ten nor more than twenty days, and if it appear to such judge upon hearing said notice, and he shall find as a fact that there is bona fide dispute as to the true location of the boundary line or lines referred to in the petition and that the county or counties have refused to settle and fix the line in dispute as provided in this section, such judge shall thereupon appoint three (3) persons, one person from each of the counties and some disinterested person from some adjoining county, who shall go upon the ground, hear such evidence and testimony as shall be offered and make report to the said judge as to the true location of the boundary line or lines in dispute. The judge shall thereupon ratify the report and a copy thereof shall be recorded in the office of the register of deeds of each of the counties and shall be indexed and cross indexed and shall also be recorded in the office of the Secretary of State and the location so fixed shall be conclusive. If it shall appear to the judge that the services of a surveyor are necessary he shall appoint such surveyor and fix his compensation. The cost thereof shall be defrayed by the two counties in proportion to the number of taxable polls in each. (1836, c. 3; R. C., c. 27; Code, s. 721; Rev., s. 1322; C. S., s. 1299; 1925, c. 251.)

Editor's Note.—Prior to the 1925 amendment this section consisted of the first sentence.

§ 153-11.1. Contributions by counties and cities to governmental agencies in war effort.—The several boards of county commissioners in the State of North Carolina and the governing bodies of the municipalities of the State are authorized, in their discretion, to appropriate from the general fund of their respective counties and municipalities such funds as they may determine to be a necessary and proper contribution to local organizations of official State and federal governmental agencies engaged in the war effort, including defense councils and Office of Price Administration: Provided, that in no event shall any contribution be made in the way of compensation to members of the boards of such agencies, or any panels thereof. The provisions of this section shall not apply to Avery, Buncombe, Clay, Cumberland, Currituck, Davie, Forsyth, Graham, Hyde, Macon, Surry, Swain and Transylvania counties. (1943, c. 711.)

§ 153-11.2. Appropriations for construction of water and sewer lines.—The board of county commissioners in any county in North Carolina is authorized and empowered to appropriate, make available and spend from any surplus funds or any funds not derived from tax sources which are available to said board to be used in such amounts in the discretion of said boards for the purpose of building water and sewer lines from the corporate limits of any municipality in said county to communities or locations outside the corporate limits of any municipality therein. Said water lines shall be built and constructed for the purposes of public health and to promote the public health in communities and locations in the State where large groups of employees live in and around factories and mills and where said water and sewerage is necessary to promote industrial purposes. (1955, c. 370.)

§ 153-12. How commissioners sworn and paid.—Such commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace; and they, with all others employed, shall be allowed reasonable pay for their labors. (Code, s. 722; Rev., s. 1323; C. S., s. 1300.)

§ 153-13. Compensation of county commissioners.—Except where otherwise provided by law, each county commissioner shall receive for his services and expenses in attending the meetings of the board not exceeding two dollars per day, as a majority of the board may fix upon, and they may be allowed mileage to and from their respective places of meeting, not to exceed five cents per mile. (Code, s. 709; Rev., s. 2785; 1907, c. 500; C. S., s. 3918.)

Local Modification.—Alamance: 1951, c. 112; 1959, c. 150; Alleghany: 1957, c. 254; Brunswick: 1953, c. 541; Cabarrus: 1945, c. 165; Catawba: 1953, c. 462; Cumberland: 1945, c. 315; Gaston: 1951, c. 115; 1959, c. 935, s. 2; 1963, c. 1069; Hyde: 1953, c. 606, s. 1; Orange: 1953, c. 281, s. 2; 1963, c. 182; Richmond: 1947, c. 235, s. 2; 1953, c. 862; 1955, c. 1138; Scotland: 1947, c. 641; Transylvania: 1957, c. 174, s. 5.

Mileage Allowed.—Members of the board of county commissioners are only entitled to mileage for the distance by the usual route traveled to attend such meeting of the board as the statute has prescribed, and returning from such meeting; they cannot charge mileage for each day, although they may actually return to their homes at the close of each day of a meeting. State v. Norris, 111 N. C. 652, 16 S. E. 2 (1892).

When Mileage Allowance Erroneous but Innocent.—Where a board of county commissioners audited in favor of its members for mileage, to which they were not entitled and it was found as a fact that they did so under advice and without any corrupt or fraudulent motive, it was held that the members of the board were not indictable either under § 14-234 or at common law. State v. Norris, 111 N. C. 652, 16 S. E. 2 (1892).

Compensation Not Allowed Commissioner for Inspecting Bridge.—A member of the board of county commissioners who, under the direction of the board, inspected and reported upon a bridge cannot recover in his action for the services rendered or mileage; he is forbidden to do so as a county commissioner under this section, and is indictable if claiming compensation for extra services under either an express or implied contract with the board, under § 14-234. Davidson v. Guilford County, 152 N. C. 436, 67 S. E. 918 (1910).

§ 153-14. Approving insufficient bond misdemeanor.—If any county commissioner shall approve any official bond which he knows or believes to be insufficient in the penal sum, or in the security thereof, he shall be guilty of a misdemeanor, and on conviction shall be removed from office and forever disqualified from holding or enjoying any office of honor, trust or profit under the State. (1869-70, c. 169, s. 70; Code, s. 1880; Rev., s. 3573; C. S., s. 1301.)

Cross References.—As to duty of approving bonds, see § 153-9, subdivision (11). As to civil liability of commissioner for approving bond he knows to be insufficient, see § 109-13. As to liability for failure to comply in good faith with provisions for bonding sheriffs, see § 162-11.

§ 153-15. Neglect of duty misdemeanor.—If any county commissioner shall neglect to perform any duty required of him by law as a member of the board, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of two hundred dollars for each offense, to be paid to any person who shall sue for the same. (Code, s. 711; Rev., s. 3590; C. S., s. 1302.)

Cross References.—As to failure to make reports and discharge other duties, see § 14-231. As to willfully failing to discharge duties, see § 14-230.

In General.—See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934) wherein this section is construed with §§ 153-1, 153-9 and 153-49 to show implied legislative authority to levy taxes to keep county buildings in repair.

Remedy by Mandamus.—When the county commissioners have failed in the performance of their duties, as to permit and require an interference of the court by civil process, the remedy is by mandamus. Board v. Commissioners, 150 N. C. 116, 52 S. E. 724 (1909).

Approving Account Not Itemized and Verified.—A complaint before a justice alleging the nonpayment of the penalty accrued under this section for neglect of duty as a member of the board of commissioners for his failure to require an itemized account, fully verified by the oath of the claimant, before he audited and approved such account, as required by § 153-64, states a cause of action. Turner v. McKee, 137 N. C. 251, 49 S. E. 330 (1904).

Error in Honest Exercise of Judgment.—A county commissioner is liable to the penalty imposed when he acts corruptly or grossly, intentionally and willfully neglects or refuses to perform his duty; but where he commits an error in the honest exercise of his judgment he is not liable to the penalty. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63 (1898).

Failure to Declare Sheriff's Office Vacant.—A member of a board of county commissioners is liable for the penalty pre-

scribed by this section, for failure of the board to declare the office of sheriff vacant and fill the same, when such sheriff has not complied with the requirements of the statutes, in respect to the renewal of his official bonds and accounting for public moneys received by him. Bray v. Creekmore, 109 N. C. 49, 13 S. E. 723 (1891).

Failure to Levy School Taxes.—A failure on the part of the commissioners to levy taxes to finance the public schools for the minimum term of six months is an indictable offense under this section. Board v. Commissioners, 150 N. C. 116, 63 S. E. 724 (1909).

Taking Excessive Mileage.—The essence of the offense created by the section is the "neglect to perform any duty required by law," and an indictment drawn under it cannot be sustained by proof of the act of willfully taking a greater sum as mileage than was due. State v. Norris, 111 N. C. 652, 16 S. E. 2 (1892).

When Defendant to Seek Bill of Particulars.—If a defendant desires further particulars, under an indictment for neglect of duty as a public officer, he should ask for a bill of particulars. State v. Leeper, 146 N. C. 655, 61 S. E. 585 (1908).

Cited in Moffitt v. Davis, 205 N. C. 565, 172 S. E. 317 (1934).

Article 2A.

Photographic Reproduction of Records.

§ 153-15.1. Authority to acquire equipment, etc., for making reproductions; filing, docketing or recording of reproductions.—Any board of county commissioners in the State of North Carolina is hereby authorized and empowered to purchase, lease, rent, contract for or otherwise acquire the necessary equipment, supplies and service for the photocopying, photographing or microphotographing of instruments, documents, or papers filed for docketing or for record, or which have heretofore been filed, docketed, or recorded in the offices of the clerk of the superior court, the register of deeds, and all other county offices, and the filing, docketing, and recording of such public or official records of photocopying, photographing or microphotographing shall in all respects constitute sufficient filing, docketing and recording of same in the same manner as if such reproductions were originals. (1951, c. 19, s. 1.)

Cross References.—See §§ 153-9.1 through 153-9.7. As to photographic copies of business and public records as evidence, see §§ 8-45.1 through 8-45.4.

§ 153-15.2. Authority to cause reproductions to be made; reproducing material and device; preservation and use of film.—An official, person in charge of, or head of any office, or department, or board of any county government may, with the consent of the board of county commissioners, cause any or all papers, documents, books and records kept by such official person in charge of, or head of any department or board to be photocopied, photographed or microphotographed or reproduced on film or otherwise by the use only of such equipment or system as provided by the board of commissioners. Such film or reproducing material shall be of durable material, and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details. The board of commissioners shall provide for the preservation of such films in conveniently accessible files or vaults, of fire resisting material, in order that the films may be permanently kept, and shall permit the use of such films from which to make copies, as provided by law under such regulations as the board may prescribe. (1951, c. 19, s. 2.)

§ 153-15.3. Reproductions to be deemed originals; facsimiles, etc.—Such photocopy, photograph, microphotograph or photographic film or reproduction of the original papers, documents, books and records kept and on file shall be deemed to be an original file or record for all purposes, and shall be admissible in evidence in all courts or administrative agencies of this State. A facsimile, photocopy, certified or exemplified copy thereof shall, for all purposes recited herein, be deemed to be a photocopy, certified or exemplified copy of the original papers or records as fully as if said papers had been typed or written in longhand in the records. (1951, c. 19, s. 3.)

§ **153-15.4. Disposition of originals.**—Whenever an official, person in charge of, or head of any office or department, or board of county government shall have photographed, photocopied, microphotographed, or otherwise reproduced all or any part of the papers on file or any records kept by said person in a manner and on film or other material that complies with the provisions of this article, and said reproductions are placed in conveniently accessible files and provisions made for preserving, examining and using same, as herein set out, and said official being of the opinion that said inactive papers, documents, books and records kept and on file in the office of the clerk of superior court, the register of deeds, or any of the county offices are consuming valuable space, and have no practical or historical value, may destroy or otherwise dispose of said original papers, documents, books and records upon a resolution being adopted by the board of county commissioners giving authority therefor, and when entered in the minutes of said board, and with the consent of the North Carolina State Department of Archives and History, or its successors: Provided, that said official person shall first furnish the State Department of Archives and History a complete description of the kind and type of papers, documents, books and public records intended to be destroyed or otherwise disposed of and turn over to the Department of Archives and History all or any of such papers, documents, books and records as the Department may desire to preserve. (1951, c. 19, s. 4; 1953, c. 675, s. 24; 1957, c. 330, s. 3.)

Editor's Note.—The 1953 amendment inserted the comma after "official" near the beginning of the section. The 1957 amendment deleted the former last sentence.

§ **153-15.5. Authority to execute contracts; joint use of facilities by two or more counties.**—In order to provide for the services herein set forth, the board of commissioners of any county may execute such contracts or agreements as in its opinion will promote efficiency and economy in the county government, in the carrying out of the purposes of this article. In order to make the benefits of this article available to the counties at the least possible expense, the several boards of county commissioners are hereby specifically authorized to contract between or among themselves for the use of any facilities or equipment provided by any board of county commissioners for use in the reproduction of records pursuant to this article, for the purpose of enabling two or more counties to utilize the same facilities and equipment; and in order to facilitate the joint use of such facilities and equipment any board of county commissioners is hereby authorized to remove from any of the several county offices any of the records intended to be reproduced pursuant to this article, and whenever necessary for such reproductions, to transport, under the direct control of an agent appointed by the board of county commissioners, any such records into any other county where such facilities and equipment are available; provided, that no such record so removed shall be kept out of the office of its regular legal custodian for a longer period than 24 hours at any one time, except under a formal resolution of the board of county commissioners of the county extending such period. (1951, c. 19, s. 5.)

§ **153-15.6. Duplicate sets or copies.**—In order to further safeguard public records reproduced pursuant to this article, any board of county commissioners is hereby authorized to cause to be prepared duplicate sets or copies of any such reproductions and to contract for the storage and custody of such duplicate sets or copies in some safe and fireproof depository in a building separate and apart from that in which the original records or reproductions are kept. (1951, c. 19, s. 6.)

Article 3.

Forms of County Government.

§ **153-16. Forms of government.**—Two forms of county government are recognized, to be designated as the County Commissioners Form and the Manager Form. (1927, c. 91, s. 1.)

I. County Commissioners Form.

§ 153-17. County Commissioners Form defined.—The County Commissioners Form of county government shall be that form in which the government is administered by a board of county commissioners, without a county manager. (1927, c. 91, s. 2.)

§ 153-18. Modifications of regular forms.—There may be modifications of the County Commissioners Form, adopted as hereinafter provided, as follows:

(1) The number of commissioners may be increased from three to five or decreased from five to three.

(2) All commissioners may be elected for two years.

(3) At the first election, if the board is to have three members, one may be elected for two years, one for four years, and one for six years, but if the board is to have five members, two may be elected for two years, two for four years, and one for six years. (1927, c. 91, s. 3.)

§ 153-19. How change may be made.—Upon a petition filed with the board of county commissioners, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of either of the modifications above set forth, the board of commissioners shall order an election, but may order such election without petition, which election shall be held under the general law governing elections for members of the General Assembly in the county, presenting the question of making the change asked for in the petition. If a majority of the votes cast at such election shall be in favor of the change designated, it shall go into effect at the expiration of the term of office of the then existing board of commissioners. At the general election for county commissioners next preceding the date when the said change goes into effect, the members of the board shall be elected in accordance with the plan adopted. If the members of the board are to be elected for different terms, the term for which each member is to serve shall be indicated in the election; and the members so elected shall hold office for the terms designated, and at the expiration of the term of each member, his successor shall be elected for a term of six years. (1927, c. 91, s. 4.)

II. Manager Form.

§ 153-20. Manager appointed or designated.—The board of county commissioners may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all the departments of the county government which the board of county commissioners has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a whole-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties. (1927, c. 91, s. 5.)

Adjustment of Compensation.—Under this section adjustment of compensation is limited to such officer or agent as may be designated in lieu of naming a whole-time chairman or county manager, and the term "manager" is used to indicate powers and duties which may be conferred upon a whole-time chairman, other officer or agent who may be acting in lieu of a county manager. Stansbury v. Guilford County, 226 N. C. 41, 36 S. E. (2d) 719 (1946).

Board of commissioners was without legal authority to increase the salary of plaintiff in excess of that expressly fixed by

statute, although resolution recited that chairman was performing duties of whole-time chairman in lieu of county manager. Stansbury v. Guilford County, 226 N. C. 41, 36 S. E. (2d) 719 (1946).

§ **153-21. Duties of the manager.**—It shall be the duty of the county manager

(1) to be the administrative head of the county government for the board of commissioners;

(2) to see that all the orders, resolutions, and regulations of the board of commissioners are faithfully executed;

(3) to attend all the meetings of the board, and recommend such measures for adoption as he may deem expedient;

(4) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(5) to appoint, with the approval of the county commissioners, such subordinate officers, agents, and employees for the general administration of county affairs as the board may consider necessary, except such officers as are required to be elected by popular vote, or whose appointment is otherwise provided by law;

(6) to perform such other duties as may be required of him by the board of commissioners. (1927, c. 91, s. 6.)

§ **153-22. Removal of officers and agents.**—The county manager may remove such officers, agents, and employees as he may appoint, and upon any appointment or removal he shall report the same to the next meeting of the board of commissioners. (1927, c. 91, s. 7.)

§ **153-23. Compensation.**—The county manager shall hold his office at the will of the board of commissioners, and shall be entitled to such reasonable compensation for his services as the board of commissioners may determine. The board shall also fix the compensation of such subordinate officers, agents and employees as may be appointed by the county manager. (1927, c. 91, s. 8.)

Quoted in Stansbury v. Guilford County, 226 N. C. 41, 36 S. E. (2d) 719 (1946).

§ **153-24. Manager Plan adopted by popular vote.**—If the board of county commissioners does not exercise its discretion to appoint or designate a county manager, as above provided, a petition may be filed with the board, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of the Manager Form of county government. Upon the filing of such petition, the board of commissioners shall order an election to be held under the general laws governing elections for members of the General Assembly in the county, presenting the question of the adoption of the Manager Form of county government. If a majority of the votes cast at such election shall be in favor of such Manager Form, the board of commissioners shall proceed to appoint a county manager as provided in this article. (1927, c. 91, s. 9.)

§ **153-25. How often elections may be held.**—Not more than one election may be held within any period of twenty-three months upon the question of modifying the County Commissioners Plan, nor more than one election in any period of twenty-three months upon the question of adopting the Manager Plan, whether or not any such election resulted in favor of the question submitted or against the same. (1927, c. 91, s. 10.)

III. Certain Powers and Duties of the Board.

§ **153-26. Powers and duties of the board.**—The powers and duties of the board of commissioners under the Manager Form, or the County Commissioners

Form, whether modified as herein provided or not modified, shall be the same as now provided by general or local laws for the administration of the county government, and such additional powers and duties as may be given in this article. But whatever form is adopted, or shall be in use in a county, it shall be the duty of the board of county commissioners to provide, so far as possible, consistent with law, for unifying fiscal management of county affairs, for preserving the sources of revenue, for safeguarding the collection of all revenue, for guarding adequately all expenditures, for securing proper accounting of all funds, and for preserving the physical property of the county. (1927, c. 91, s. 11.)

§ 153-27. Purchasing agent.—It shall be the duty of the board of commissioners to provide for the purchasing of supplies for the different departments of the county government in such manner as may prevent waste and duplication in purchasing, and may obtain the advantage of purchasing in larger quantities. To that end the board may designate some competent person, either a member of the board or some other officer or agent of the county, as purchasing agent, whose duty it shall be to superintend the purchasing of all material and supplies for the county, and the board may prescribe the duties of such purchasing agent. (1927, c. 91, s. 12.)

Cited in Board of Education v. Walter, 198 N. C. 325, 151 S. E. 718 (1930).

§ 153-28. Care of county property.—It shall be the duty of the board of commissioners to provide for the regular inspection of and care for all the property of the county, including buildings, machinery, and other property used for county purposes, and the board may designate some member of the board or some other officer or agent of the county, whose duties it shall be to make a regular inspection of the county property and report the condition of the same at such times as the board may direct. (1927, c. 91, s. 13.)

IV. Director of Local Government.

§ 153-29. Director of Local Government to visit local units and offer aid in establishing competent administration.—The terms, "unit," or "local unit," as the same are used in this article, shall be construed to mean "unit" as defined in § 159-2. It shall be the duty of the Director of Local Government to visit the local units of government in the State, and to advise and assist the governing bodies and other officers of said units in providing a competent, economical and efficient administration; to suggest approved methods for levying and collecting taxes and other revenues; to suggest such changes in the organization of local units of government as will best promote the public interests, and to render assistance in carrying the same into effect. (1931, c. 100, s. 1.)

Cross Reference.—As to Local Government Act, see chapter 159.

§ 153-30. Director to devise uniform accounting and recording systems; regular statements from units to Director.—The Director of Local Government shall have the power to devise and prepare for use in the local units uniform accounting and recording systems, together with blanks, books, and necessary methods; uniform classifications of revenue and expenditures, and uniform budget blanks and forms; to revise or prescribe, in his discretion, the records of any department or office of the local unit in order to conform to orderly accounting procedure; to transfer all or any part of the financial records of any department or office of the unit, including school records, to the office of the county accountant, municipal accountant, or other similar officer, and to require said county accountant, municipal accountant, or other similar officer to furnish, at any time, monthly or annual statements to the office of the Director of Local Government in Raleigh or to any department, office, or board of the unit, showing financial conditions or budget position at any date, and financial operations covering any period on forms prescribed by said

Director of Local Government. The Director shall have the power to require the use of such systems, books, forms, classifications and budgets as provided herein by officers or employees of local units, and to enforce the use of the same. Where the accounting system of any unit shall in part or in whole substantially meet the requirements of uniformity as prescribed by the Director of Local Government, the Director may, in his discretion, approve or modify such system as he may deem necessary. As soon as practicable after March 12, 1931, it shall be the duty of the Director of Local Government to proceed, as rapidly as possible, with the installation of uniform records and systems of accounting in each and every local unit of the State. (1931, c. 100, ss. 1, 3.)

§ 153-31. Director to inspect and supervise the keeping of records; unlawful not to furnish Director with requested information.—The Director of Local Government shall have the power to inspect or supervise the keeping of the records of any department or office of any local unit for the purpose of determining that such records are being properly kept and that public money is being properly accounted for, and it shall be unlawful for any officer or employee to fail or refuse to turn over such records or give access to same and give such other information which may be requested of him and relating to the records of his office to the Director or his representative upon request of said Director or representative. (1931, c. 100, s. 1.)

§ 153-32. Violation of two preceding sections misdemeanor.—Any officer or employee of any local unit who shall fail or refuse to observe the provisions of §§ 153-30 and 153-31 shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 100, s. 1.)

V. Miscellaneous.

§ 153-33. All counties affected by this article.—The powers and privileges conferred by this article, and the duties imposed thereby, are conferred and imposed upon every county within the State, whether governed wholly by general laws or governed wholly or in part by local acts. (1927, c. 91, s. 21.)

Article 4.

State Association of County Commissioners.

§§ 153-34 to 153-39: Repealed by Session Laws 1957 c. 317.

Article 5.

Clerk to Board of Commissioners.

§ 153-40. Clerk to board; compensation.—The register of deeds shall be ex officio clerk of, and the compensation for his duties as clerk shall be fixed by, the board of commissioners: Provided, that the board of commissioners in its discretion may, at any time on or after the first Monday in December, one thousand nine hundred and fifty-six, designate some other county officer or employee as ex officio clerk of the board, to serve as clerk at the will of the board, and the compensation of such officer or employee for his duties as clerk shall be fixed by the board. Once a board of county commissioners designates as clerk of the board an officer or employee other than the register of deeds, it shall not thereafter be precluded from again exercising its discretion to designate some other officer or employee, including the register of deeds, as clerk of the board. The proviso appearing next above shall not apply to Alleghany, Avery, Caswell, Catawba, Dare, Davie, Guilford, Hyde, Jones, Polk, Randolph, Richmond, Transylvania, Tyrrell and Washington counties. (Const., art. 7, s. 2; Code, s. 710; 1895, c. 135, s. 4; Rev., s. 1324; C. S., s. 1309; 1955, c. 247, s. 1; 1963, c. 372.)

Local Modification.—Avery: 1957, c. 1022, s. 1; Madison: 1955, c. 261.

Editor's Note.—The 1955 amendment added the proviso and the last two sentences.

Session Laws 1961, c. 172, provides that

the provision of this section, relating to the compensation of the register of deeds as ex officio clerk of the board of county commissioners, shall apply to Caswell County.

The 1963 amendment deleted "McDowell" from the list of counties in the last sentence.

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

§ 153-41. Duties of clerk.—It is the clerk's duty:

(1) To record in a book to be provided for the purpose all the proceedings of the board.

(2) To enter every resolution or decision concerning the payment of money.

(3) To record the vote of each commissioner on any question submitted to the board, if required by any member present.

(4) Repealed.

(5) To keep the books and papers of the board free for the examination of all persons.

(6) To administer oaths to all persons presenting claims against the county, but he shall receive no fee therefor. (Code, s. 712; 1905, c. 530; Rev., s. 1325; C. S., s. 1310; 1953, c. 973, s. 3.)

Cross References.—See § 161-23. As to duty to report public funds to the county commissioners, see § 2-46. As to duty of clerk to record votes of commissioners on approval of bonds and liability for failure to do so, see § 109-12.

Editor's Note.—Session Laws 1953, c. 973, s. 3, effective July 1, 1953, repealed subdivision (4) of this section.

Correction of Record.—The record of a board of county commissioners may be corrected nunc pro tunc to speak the truth by the board itself. Norfolk, etc., R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924).

Where the county commissioners have exercised their statutory authority to loan county funds to the State Highway Commission, anticipating the allotment of State funds for the building of highways within the county, and have lawfully contracted for that purpose, they may not, after the passage of a later act taking away this power, materially change the contract, but the county commissioners nunc pro tunc may correct the entries on their minutes theretofore duly passed and entered of record so as to make the entry speak the truth as to what had been regularly done, and to this end parol evidence is admissible, the time of the correction so made relating back to the time the entry should have been correctly made. Oliver v. Board of Commissioners, 194 N. C. 380, 139 S. E. 767 (1927).

§ 153-42: Repealed by Session Laws 1953, c. 973, s. 3.

Article 6.

Finance Committee.

§ 153-43. Election and duties of finance committee.—The board of commissioners may elect by ballot three discreet, intelligent, tax-paying citizens, to be known as the "finance committee," whose duty it is to inquire into, investigate and report by public advertisement, at the courthouse and one public place in each township of the county, or in a newspaper, at their option, if one is published in the county, a detailed and itemized account of the condition of the county finances, together with any other information appertaining to any funds, misappropriation of county funds, or any malfeasance in office by any county officers. (1838, c. 31, s. 1; R. C., c. 28, s. 17; 1871-2, c. 71, s. 1; Code, s. 758; 1897, c. 513; Rev., s. 1389; C. S., s. 1312.)

Constitutional Power to Create.—The legislature has constitutional power to provide a board of audit and finance for a particular county and to direct that payment of an expert accountant authorized thereunder be made by the county treasurer as a charge against the county's public funds, upon an order made by said board in a certain prescribed manner. Such a power is derived under article VII, § 2, of the State Constitution, providing that the county commissioners shall have control of the county's finances "as may be prescribed by law," taken in connection with § 14 thereof, giving full power to the General Assembly to modify, etc., the provisions of this article and to substitute others, etc. Southern Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283 (1908).

Mistake as to Sum Due.—Money paid under protest should be refunded if it should be shown that there has been a mistake in the report of the finance committee and that the sum was not in fact due. Moore v. Commissioners, 87 N. C. 209 (1882).

When Mandamus Will Lie to Enforce Order.—Upon refusal of a county treasurer to pay from the public funds of a county an order made on him by a board of audit and finance for the payment of moneys authorized and prescribed by a legislative enactment, a mandamus will lie. Southern Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283 (1908).

§ 153-44. Compensation of finance committee.—The members of the finance committee shall each receive such compensation for the performance of his duties as the board of commissioners may allow, not exceeding three dollars per day; but they shall not be paid for more than ten days in any one year. (1871-2, c. 71, s. 5; 1873-4, c. 107; Code, s. 763; Rev., s. 2781; C. S., s. 3915.)

§ 153-45. Oath of members.—The members of the finance committee before entering upon their duties shall, before the clerk of the superior court, subscribe to the following oath or affirmation: I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality. So help me, God. (1871-2, c. 71, s. 4; Code, s. 762; Rev., s. 1390; C. S., s. 1313.)

§ 153-46. Powers of finance committee.—The finance committee has power and authority to send for persons and papers, and to administer oaths; and any person failing to obey their summons, or to produce promptly any paper relating or supposed to relate to any matter appertaining to the duties of the finance committee, is guilty of a misdemeanor, and on conviction in the superior court, shall be fined and imprisoned at the discretion of the court. (1831, c. 31; R. C., c. 28, s. 17; 1871-2, c. 71, s. 2; 1883, c. 252; Code, s. 759; Rev., s. 1391; C. S., s. 1314.)

§ 153-47. Penalty on officer failing to settle.—If any clerk, sheriff, constable, county treasurer, register of deeds, justice of the peace, or other officer or commissioner, who holds any county money, fails duly to account for the same, the finance committee shall give such person ten days previous notice, in writing, of the time and place at which they will attend to make a settlement; and every officer receiving notice and failing to make settlement as required by this chapter shall forfeit the sum of five hundred dollars, to be sued for in the name of the State and prosecuted for the use and at the expense of the county, unless the court releases the officers from the forfeiture. (1831, c. 31, s. 3; R. C., c. 28, s. 19; Code, s. 760; Rev., s. 1392; C. S., s. 1315.)

Cross Reference.—As to duty of county commissioners to sue upon the official bond when officer fails to settle, see § 155-18.

§ 153-48. Annual report of finance committee.—It is the duty of the finance committee to make and publish their reports as hereinbefore directed on or before the first Monday of December in each year. (1871-2, c. 71, s. 3; Code, s. 761; Rev., s. 1393; C. S., s. 1316.)

Cross Reference.—As to failure to publish report, see § 14-231.

Article 6A.

County Officials and Employees.

§ 153-48.1. Boards of commissioners empowered to fix number of salaried county employees.—The several boards of county commissioners of this State are authorized and empowered to fix and determine, in their discretion, the number of salaried deputies, clerks, assistants and other employees which may be employed or appointed in the offices of the clerk of superior court, the register of deeds, the sheriff, and in the other offices of their respective counties. (1953, c. 1227, s. 1.)

§ 153-48.2. Boards of commissioners empowered to fix compensation of county officials and employees.—The several boards of county commissioners

are authorized and empowered to fix, in their discretion, all salaries, travel allowances, and other compensation paid by their respective counties to all elective and appointive county officials and employees, except such as may be paid to the members of the board of county commissioners. (1953, c. 1227, s. 2.)

§ 153-48.3. How compensation to be fixed and paid.—The salaries, travel allowances and other compensation authorized to be fixed by the several boards of county commissioners in the preceding sections are prescribed and regulated as follows:

(1) All salaries, travel allowances and other compensation fixed by the several boards for such positions shall be paid from the general or special funds of the respective counties.

(2) Action to fix salaries, travel allowances, and other compensation may be taken by separate resolution of the board of county commissioners, provided that proper provision for the payment of such salaries, compensation and travel allowances shall have been made in the annual appropriation resolution then governing the finances of the county; or, such salaries, compensation, and travel allowances may be fixed and provided for in the annual appropriation resolution passed in accordance with the provisions of the County Fiscal Control Act.

(3) No salary, travel allowance or compensation presently being paid under acts of the General Assembly specifically fixing the amount of such salary, travel allowance or compensation shall be reduced by any board of commissioners prior to the expiration of the present term of office of such officer or employee.

(4) The salary, travel allowance or compensation of any officer or employee, not specifically fixed by acts of the General Assembly shall not be reduced nor increased by any board of commissioners more than twenty per cent (20%) in any fiscal year nor more than twenty per cent (20%) in any fiscal year as compared with the preceding fiscal year.

(5) No provision of this article shall be construed to diminish the authority of the several boards of commissioners established in §§ 153-218, 153-226 and 155-8 of the General Statutes of North Carolina. (1953, c. 1227, s. 3.)

Editor's Note.—Session Laws 1959, c. 376, s. 2, provides that subdivision (4) shall not apply to Montgomery County.

§ 153-48.4. Article not applicable to employees within jurisdiction of Merit System Council.—This article shall not apply to county employees who come within the jurisdiction of the North Carolina Merit System Council, nor shall anything contained herein be held to repeal or amend the provisions of chapter 126 of the General Statutes of North Carolina. (1953, c. 1227, s. 4.)

§ 153-48.5. Counties to which article applicable.—The provisions of this article shall apply only to the following counties: Alamance, Anson, Ashe, Bertie, Bladen, Buncombe, Caldwell, Carteret, Catawba, Chatham, Cherokee, Columbus, Currituck, Dare, Davidson, Davie, Graham, Greene, Hertford, Hoke, Iredell, Jackson, Johnston, Lee, Lenoir, Lincoln, Martin, Montgomery, Moore, Nash, Northampton, Onslow, Orange, Pamlico, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Rutherford, Sampson, Scotland, Surry, Swain, Transylvania, Union, Wake, Warren, Wayne, Wilkes, Yadkin.

Provided that nothing in this article will authorize the boards of county commissioners to fix the salaries of the elective officials in the counties of Alamance, Graham, Iredell, Lee, Lenoir, Rutherford and Wake, and provided further that nothing in this article will authorize the board of county commissioners of Person County to fix the salary of the judge of the Person County court. (1953, c. 1227, s. 5-A;

1955, c. 1032; 1957, c. 38, s. 2; cc. 165, 233, 435, 580; 1959, c. 206, s. 2; cc. 231, 497; c. 1267, s. 2; c. 1288; 1961, cc. 108, 296; c. 350, s. 2; c. 467, s. 1; c. 492, s. 1; cc. 692, 713, 1135; 1963, c. 30, s. 1; c. 181; c. 208, ss. 1, 2; c. 558; c. 569, s. 2; cc. 580, 799, 1263.)

Local Modification.—Bladen: 1961, c. 467, s. 2.

Editor's Note.—The 1955 amendment inserted Sampson in the list of counties in the first paragraph of this section.

Session Laws 1957, cc. 38, 165, 435 and 580 inserted Hertford, Columbus, Bertie and Bladen, respectively, in the list of counties in the first paragraph; and chapter 233 deleted Hoke from the list of counties in the second paragraph. The act inserting Bladen provided minimum annual salaries for certain named officers of the county.

Session Laws 1959, cc. 206, 231, 497 and 1267 inserted Wayne, Currituck, Catawba and Carteret, respectively, in the list of counties in the first paragraph. The act inserting Catawba provides that the county commissioners of Catawba County shall during the month of February, immediately prior to the day upon which an election of county officers is scheduled by law to be held, fix a minimum salary for the term of each officer to be elected at said election or elections.

Session Laws 1959, c. 1288, inserted "Alamance" in the second paragraph.

The first 1961 amendment inserted "Transylvania" in the list of counties in the first paragraph. The second 1961 amendment inserted "Davie" therein, and the third 1961 amendment inserted "Perquimans." The fourth 1961 amendment deleted "Bladen" from the list of counties in the second paragraph. The fifth 1961 amendment, effective July 1, 1961, inserted "Pitt" in the list of counties in the first paragraph. The sixth and seventh 1961 amendments inserted "Cherokee" and "Martin" and the eighth 1961 amendment inserted "Northampton" therein.

The first 1963 amendment inserted "Ashe" in the list of counties in the first paragraph. Section 2 of the act provides that the authority granted by it to the board of county commissioners shall be applicable to the year ending December 1, 1963, and thereafter.

The second 1963 amendment inserted "Swain" in the first paragraph.

The third 1963 amendment inserted "Person" in the first paragraph and added the second proviso to the second paragraph.

The fourth 1963 amendment inserted "Pasquotank" in the first paragraph.

The fifth 1963 amendment inserted "Jackson" in the first paragraph.

The sixth 1963 amendment inserted "Wilkes" in the first paragraph.

The seventh 1963 amendment deleted "Moore" from the second paragraph.

The eighth 1963 amendment inserted "Greene" in the list of counties in the first paragraph.

Article 7.

Courthouse and Jail Buildings.

§ 153-49. Built and repaired by commissioners.—There shall be kept and maintained in good and sufficient repair in every county a courthouse and common jail, at the expense of the county wherein the same are situated. The boards of commissioners of the several counties respectively shall lay and collect taxes, from year to year, as long as may be necessary, for the purpose of building, repairing and furnishing their several courthouses and jails, in such manner as they think proper; and from time to time shall order and establish such rules and regulations for the preservation of the courthouse, and for the government and management of the prisons, as may be conducive to the interests of the public and the security and comfort of the persons confined. (1741, c. 33, ss. 1, 2, P. R.; 1795, c. 433, s. 1, P. R.; 1816, c. 911, s. 1, P. R.; R. C., c. 30, s. 1; Code, s. 782; Rev., s. 1335; C. S., s. 1317.)

Constitutionality.—The power of limited taxation for the purpose of erecting and maintaining a county courthouse and its exercise is no invasion of the Bill of Rights. Lockhart v. Harrington, 8 N. C. 408 (1821).

Article XI, § 6, of the Constitution (1868) requires that the structure and superintendence of penal institutions of the State be such as to secure the health and comfort of the prisoners. Lewis v. Raleigh, 77 N. C. 229 (1877).

A Necessary Expense.—The building and repairing of a courthouse by the county is a part of its necessary expense. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909); Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

When Legislature Imposes Limit on Expense.—When a special act of the legislature has imposed a limit on the expense of a county to be incurred in improving its courthouse, the commissioners cannot avoid the will of the legislature as therein declared by setting up a general power of

contracting debts for necessary expenses, limited only by the constitutional limitation of taxation, and thus under an entire contract made beforehand expend a larger amount for the purpose than that prescribed by the special act. Burgin v. Smith, 151 N. C. 561, 66 S. E. 607 (1909).

Levy of Taxes to Pay Interest on Bonds.—See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934), wherein this section is treated with §§ 153-1, 153-9, 153-15 and 153-77 to show that taxpayers cannot enjoin the levy of taxes necessary to pay the principal and interest on bonds issued for repairs as designated in this section.

But prior to the enactment of § 153-77, it was held that while the county commissioners have the authority to repair the county's jail and courthouse and to erect new ones in its discretion, it is without authority to levy a special tax to provide for the payment of interest on the bonds issued for that purpose, or to create a sinking fund therefor, for this must be provided for by proper legislation, or paid out of the general revenues and income of the county. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Action of Commissioners Not Reviewable in Absence of Mala Fides.—It is within the sound discretion of the county commissioners to have the courthouse or jail of the county repaired or to erect new ones on the same sites as a necessary county expense, which will not be reviewed in the courts in the absence of mala fides; and should a bill of indictment be drawn by the solicitor, at the request of the judge holding the courts of the county, and a true bill be found by the grand jury thereon, it is open to the commissioners to set up any available defense they may have. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Judge's Request to Solicitor to Draw Indictment Not Duress.—A request from the judge holding court in a county to the solicitor to draw an indictment against the county commissioners for failing in their duty to provide a proper courthouse and jail cannot alone be regarded as a coercion of the commissioners in regard to their discretionary powers, or as duress to invalidate bonds afterwards to be issued by them in pursuance of their resolutions to build a new courthouse and jail upon the sites of the old ones; and the bonds to be so issued will not be restrained either on that ground or the want of jurisdiction of the judge making the request. Jackson v. Commissioners, 171 N. C. 379, 88 S. E. 521 (1916).

Requirements for Prisoner's Comfort.—The least that is required is that persons confined in any public prison shall have a clean place, comfortable bedding, wholesome food and drink, and necessary attendance. Lewis v. Raleigh, 77 N. C. 229 (1877).

Where a sheriff has in an emergency requested a physician to render services to a prisoner in his custody who had been badly wounded resisting arrest, and there is evidence tending to show that under the circumstances he could not have obtained in time an order from the board of county commissioners that would assume responsibility on behalf of the county to pay them, the objection of the commissioners that under such circumstances the county would not pay for them, and the liability would only attach as to those prisoners delivered at the county jail, is untenable. Spicer v. Williamson, 191 N. C. 487, 132 S. E. 291 (1926).

Same—Failure to Provide.—An action cannot be maintained against a county for damages sustained by one while imprisoned in the county jail by reason of the failure of the commissioners to provide adequate means for his health and protection. Manuel v. Commissioners, 98 N. C. 9, 3 S. E. 829 (1887).

Extent of Commissioner's Liability.—"A county is not liable for a nuisance to a citizen in the erection of a jail in the immediate vicinity of his residence, nor for suffering it to become so filthy and disorderly as to be a nuisance to him and his family." The doctrine is that while these corporate agencies must provide the means and employ the men to perform such duties, they are not personally and by their own labor to perform such menial services; and the default to make them liable must be in neglecting to exercise their authority in the use of labor and money for that purpose, and so must it be charged to make a cause of action against them. Threadgill v. Commissioners, 99 N. C. 352, 6 S. E. 189 (1888), quoting Dillon on Municipal Corporations, § 963.

The duty to make proper rules and regulations imposes a discretionary duty on the board of commissioners exercisable only in its corporate capacity, and the commissioners are not liable as individuals unless they corruptly or with malice fail to make proper rules and regulations. Moye v. McLawhorn, 208 N. C. 812, 182 S. E. 493 (1935).

§ 153-49.1. Inspection of jails.—(a) The State Board of Public Welfare is hereby authorized and directed to consult regularly with an advisory committee of sheriffs and police officers regarding the personal safety, welfare, and care of the inmates incarcerated in county and municipal jails and city lock-ups, taking into account variations in the financial ability of cities and counties to maintain up-to-date facilities for prisoners. It shall be the duty of the State Board of Public Welfare through its officers or agents to inspect periodically and regularly each and every

county or district jail and all municipal jails or lock-ups in order to safeguard the welfare of the prisoners kept therein and in connection with said inspections to consult with the governing bodies of the local units.

(b) In the event that such inspections of jails and lock-ups disclose inadequate care or mistreatment of prisoners, or disclose that prisoners are being confined therein under conditions in violation of chapter 153, such findings shall be reported in writing to the governing body of the county or municipality concerned, which governing body shall at its next meeting fully consider the report and consult with the person making such report and findings and take such action with reference to the report and findings as may be found proper and necessary.

(c) In the event such governing body fails to take action to correct the conditions reported, it shall be the duty of the State Board of Public Welfare to present such matters to the attention of the judge of the superior court presiding at the next criminal court in the county in which such jail or lock-up is located to the end that such superior court judge may direct the grand jury of such county to inspect the jail or lock-up described in such report, and present its findings and recommendations to the court at said term.

(d) If conditions in said jail or lock-up continue not to be corrected within a reasonable time after such notice to the grand jury, then the judge of the superior court in his discretion may require immediate compliance with the report of the grand jury. For such purpose the court may convene at any time and place within the judicial circuit in chambers or otherwise. The proceeding shall be without jury and the hearings may be summarily or upon such notice as the court may prescribe.

(e) Pending a substantial compliance with the report and recommendations of the grand jury, the judge of the superior court shall have full power and authority under this section to refuse to allow prisoners to be placed in any jail or lock-up not deemed fit and may direct that any persons coming before him and being convicted of criminal offenses shall be confined only in a jail or lock-up that is deemed a proper place in which to confine prisoners. (1947, c. 915.)

Editor's Note.—For brief comment on section, see 25 N. C. Law Rev. 401.

§ 153-50. Formation of district jail by contiguous counties.—Any two or more counties contiguous to one another or which lie in a continuous group may enter into an agreement for the construction and maintenance of a district jail. Such agreement shall specify the amount of the construction and maintenance cost to be borne by each county and shall fix the terms upon which such jail may thereafter be used by the counties becoming parties to the agreement.

Such counties may also by agreement establish a jail already built, as a district jail, and provide for the improvement, enlargement, maintenance cost and use thereof.

When and if such district jail has been established, all the counties in such district may then sell or dispose of their separate jails upon such terms as the board of county commissioners may decide. (1933, c. 201.)

Editor's Note.—See 11 N. C. Law Rev. 214.

§ 153-51. Jail to have five apartments.—The common jails of the several counties shall be provided with at least five separate and suitable apartments: one for the confinement of white male criminals; one for white female criminals; one for the colored male criminals; one for colored female criminals; and one for other prisoners. (1795, c. 433, s. 4, P. R.; 1816, c. 911, P. R.; R. C., c. 30, s. 2; Code, s. 783; Rev., s. 1336; C. S., s. 1318.)

Cross References.—As to separate apartments for the Cherokee Indians of Robeson County, see § 71-2. As to segregation of county prisoners with tuberculosis, see § 30-115. As to confining prisoners to improper apartments, see § 14-261.

§ 153-52. To be heated.—It is the duty of the board of commissioners in every county to have the common jails so heated by furnaces, stoves, or otherwise,

as to render them warm and comfortable. A failure to discharge the duty herein specified shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1879, c. 25; Code, s. 784; Rev., s. 1337; C. S., s. 1319.)

§ 153-53. Bedding to be furnished.—The board of county commissioners, from time to time, as may be necessary, shall order the sheriff of the county to purchase, for the use of their jail, a certain number of good, warm blankets or other suitable bedclothing, which shall be securely preserved by the jailer, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall report to the board of commissioners the condition and number of such blankets and bedclothing. (1822, c. 1136, P. R.; R. C., c. 87, s. 10; Code, s. 3465; Rev., s. 1338; C. S., s. 1320.)

§ 153-54: Repealed by Session Laws 1957, c. 1373.

Article 8.

County Revenue.

§§ 153-55 to 153-58: Repealed by Session Laws 1953, c. 973, s. 3.

§ 153-59: Transferred to § 153-9 by Session Laws 1953, c. 973, s. 2.

Editor's Note.—Session Laws 1953, c. 973, s. 2, effective July 1, 1953, amended and transferred this section to become subdivision (2½) of G. S. 153-9.

§§ 153-60 to 153-63: Repealed by Session Laws 1953, c. 973, s. 3.

§ 153-64. Demand before suit against municipality; complaint.—No person shall sue any city, county, town or other municipal corporation for any debt or demand arising out of contract when the damages are liquidated unless the claimant has made a demand upon the proper municipal authorities. And every such action shall be dismissed unless the complaint is verified and contains the following allegations:

(1) That the claimant presented his claim to the lawful municipal authorities to be audited and allowed, and that they had neglected to act upon it, or had disallowed it; or

(2) That he had presented to the treasurer of said municipal corporation the claim sued on, which had been so allowed and audited, and that such treasurer had notwithstanding neglected to pay it. (Code, s. 757; Rev., s. 1384; C. S., s. 1330.)

Cross Reference.—For construction as to application of two-year limitation for filing of tort claims, see note to § 1-53.

Editor's Note.—As to notice of tort claims, see 27 N. C. Law Rev. 145.

Purpose of Section.—The purpose of this section was to give the municipality an opportunity to pass upon and pay a claim involving a money demand before it could be subjected to the burden and expense of litigation. It manifestly has no application to suits in equity the object of which is to protect and preserve the rights of complainant as against threatened action by the city or its officers. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Demand Must Be Alleged.—This section expressly requires the demand to be alleged in the complaint. Williams v. Smith, 134 N. C. 249, 46 S. E. 502 (1904). And it is mandatory. R. R. v. Reidsville, 109 N. C. 494, 13 S. E. 865 (1891), citing Love v. Commissioners, 64 N. C. 706 (1870).

Allegation that claimant had made demand for payment of municipal interest coupons upon the city manager of a city operating under Plan D, is insufficient allegation of demand upon the "proper municipal authorities" as required by this section. Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293 (1937).

Same—Failure Taken Advantage of by Demurrer.—It has been uniformly held that failure to allege the demand may be taken advantage of by demurrer. Williams v. Smith, 134 N. C. 249, 46 S. E. 502 (1904), citing Love v. Commissioners, 64 N. C. 706 (1870); Jones v. Commissioners, 73 N. C. 182 (1875).

An action to recover the face value of interest coupons on municipal bonds, payment having been refused except at a lower rate of interest, is an action ex contractu, and this section, requiring as a condition precedent that demand for payment be made upon the proper municipal authorities, is

applicable. Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293 (1937).

Verification of Pleading.—When an action against a city on a money demand is instituted in a justice's court the pleading must be written and verified, since this section so requires, and defendant city's motion to nonsuit should be allowed when the action is instituted by summons without written pleadings. Kalte v. Lexington, 213 N. C. 779, 197 S. E. 691 (1938).

The requirement that when one pleading in a court of record is verified, every subsequent pleading in the same proceeding, except a demurrer "must be verified also," is one which may be waived, except in those cases where the form and substance of the verification is made an essential part of the pleading; as in an action for divorce in which a special form of affidavit is required, § 50-8, in a proceeding to restore a lost record, § 98-14, and in an action against a county or municipal corporation, § 153-64. Calaway v. Harris, 229 N. C. 117, 47 S. E. (2d) 796 (1948).

"Audit" only Applies to Actions Ex Contractu.—In Shields v. Durham, 118 N. C. 450, 24 S. E. 794 (1896), the court said: "We find that all the law dictionaries which we have been able to consult define the word 'audit' to apply only to claims ex contractu. Abbott, Bouvier, Rapalje and Lawrence. And these authorities have aided us in coming to the conclusion that this section does not apply to an action for damages like this. Indeed, we do not see how such a claim as this could be audited. It might be compromised by the parties; but this is much more than auditing the same. It is the work of both parties—the agreement of minds, contract and not an ex parte process of auditing." This case was approved and followed in Sheldon v. Asheville, 119 N. C. 606, 25 S. E. 781 (1896).

When Judgment Obtained Notice Unnecessary.—When a judgment has been obtained against a county or other municipal corporation, it is not necessary that notice as required in certain cases by this section should be given before bringing an action for mandamus to compel the payment of the judgment. Nicholson v. Commissioners, 121 N. C. 27, 27 S. E. 996 (1897).

Includes Claims Ex Contractu for Amount Certain.—Claims against county, including claims ex contractu for amount certain, must be filed as required by this and the following section. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

Not Applicable to Actions Ex Contractu unless Damages Are Liquidated.—Sugg v. Greenville, 169 N. C. 606, 86 S. E. 695 (1915), citing Frishby v. Marshall, 119 N. C. 570, 26 S. E. 251 (1896); Neal v. Marion, 126 N. C. 412, 35 S. E. 812 (1900).

Recovery of Taxes Illegally Collected.—Where a taxpayer has paid his taxes authorized by an unconstitutional statute under protest, and has complied with the provisions of the statute, which regulates and controls actions to recover illegal taxes paid under protest, it is unnecessary to the maintenance of his action to recover them that he follow the provisions of this section, requiring that he present his claim and make his demand, etc. Southern Ry. Co. v. Cherokee County, 177 N. C. 86, 97 S. E. 758 (1919).

Cited in Ivester v. Winston-Salem, 215 N. C. 1, 1 S. E. (2d) 88 (1939); Rivers v. Wilson, 233 N. C. 272, 63 S. E. (2d) 544 (1951); Muncie v. Travelers Ins. Co., 253 N. C. 74, 116 S. E. (2d) 474 (1960).

§ 153-64.1. Annual tax to meet costs of revaluation of real property.—The board of county commissioners, to meet the costs of revaluation of real property as required by G. S. 105-278, shall annually levy a tax on taxable property in the county the proceeds of which, when added to other available funds, is calculated to produce, by accumulation during the period between required revaluations, sufficient funds to pay for revaluation of real property by actual visitation and appraisal as required by G. S. 105-278 and G. S. 105-295. All funds raised and set aside for this purpose from such special levy or from other sources shall be placed in a sinking fund or otherwise earmarked and shall not be available or expended for any other purpose. Any unexpended balance remaining in said fund following a required revaluation shall be retained in said fund for use in financing the next periodic revaluation of real property by actual appraisal under the provisions of G. S. 105-278 and G. S. 105-295. The levy herein authorized is hereby declared to be for a necessary expense and for a special purpose. (1959, c. 704, s. 6.)

"Necessary expenses" within meaning of N. C. Const., Art. VII, § 7. See DeLoatch v. Beamon, 252 N. C. 754, 114 S. E. (2d) 711 (1960).

§§ 153-65 to 153-68: Repealed by Session Laws 1953, c. 973, s. 3.

Article 9.

County Finance Act.

§ 153-69. Short title.—This article shall be known and may be cited as "The County Finance Act." (1927, c. 81, s. 1.)

Cross References.—As to Local Government Act, see chapter 159. As to validation of bonds, see § 159-50 et seq.

Editor's Note.—For act validating certain notes of counties evidencing refunded loans from the State Literary Fund and special building funds of North Carolina and authorizing the issuance of refunding bonds under this article, see Session Laws 1945, c. 404.

Validity.—The County Finance Act was enacted by the General Assembly in compliance with all pertinent constitutional requirements. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

Purpose of Act.—The purpose of the General Assembly in enacting the County Finance Act is manifest. It was to enable the several counties of the State not only to provide for their future needs by issuing bonds for purposes specified therein, but also to fund their valid indebtedness heretofore incurred in good faith by issuing bonds and thus relieve the taxpayers of burdensome annual taxation. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

It is the purpose of this article to put the various counties of the State in a position to live within their incomes. Commissioners v. Assell, 194 N. C. 412, 140 S. E. 34 (1927).

The legislature has prescribed in this article the machinery by which a county may issue lawful and valid obligations for public purposes and necessary expenses, and pledge its faith. Jefferson Standard Life Ins. Co. v. Guilford County, 225 N. C. 293, 34 S. E. (2d) 430 (1945).

Liberally Construed.—This article should be liberally construed to effectuate its intent. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949).

§ 153-70. Meaning of terms.—In this article, unless the context otherwise requires, the words:

"Chief financial officer" means the county accountant, auditor, or other officer designated or appointed by the governing body to supervise the fiscal affairs of the county, unless such officer shall be designated by law.

"Clerk" means the officer acting as clerk of the governing body.

"Governing body" means the board of county commissioners, or the board or body in which the general legislative powers of the entire county are vested.

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the Constitution of North Carolina.

"Published" means printed in a newspaper published in the county, if there be such a newspaper, but otherwise means posted at the courthouse door and in at least three other public places in the county. (1927, c. 81, s. 2.)

§ 153-71. Application and construction of article.—This article shall apply to all counties in the State, except as otherwise provided herein. Every provision of this article shall be construed as being qualified by constitutional provisions whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this article. (1927, c. 81, s. 3.)

§ 153-72. Revenue anticipation loans for ordinary expenses.—Counties may borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loan shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed 50 per cent of the amount of uncollected taxes for the fiscal year in which the loan is made, as determined by the chief financial officer and certified in writing by him to the governing body. (1927, c. 81, s. 4.)

Cross Reference.—As to limitations upon the increase of public debt, see N. C. Constitution, Art. V, § 4.

§ 153-73. Revenue anticipation loans for debt service.—For the purpose of paying the principal or interest of bonds or notes due or to become due within four months, and not otherwise adequately provided for, any county may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the loan is made, or the revenues of the next succeeding fiscal year, and such loan shall be payable not later than the end of such next succeeding fiscal year.

In addition to the foregoing powers, a county may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within four months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the county sufficient to pay the principal and interest thereof. (1927, c. 81, s. 5; 1931, c. 60, s. 63, c. 294; 1933, c. 259, s. 2; 1939, c. 231, s. 2.)

Editor's Note.—The 1933 amendment changed the date in the temporary provisions added by the 1931 amendments. These provisions were omitted from the section when it was brought forward in the General Statutes.

The 1939 amendment added the second paragraph.

§ 153-74. Notes evidencing revenue anticipation loans.—Negotiable notes shall be issued for all moneys borrowed under the two preceding sections, which notes may be renewed from time to time and money may be borrowed upon new notes from time to time for the payment of any indebtedness evidenced thereby; but all such notes and loans shall mature within the time limited by said two sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. All notes herein provided for shall be authorized by a resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix such face amount and rate of interest within the limitations prescribed by such resolution, and the power to dispose of such notes, which shall be executed under the seal of the county by the chairman and clerk of the board, or by any two officers designated by the board for that purpose, and any interest coupons thereto attached shall be signed with the manual or facsimile signature of said clerk or of any other officer designated by the board for that purpose. The resolution authorizing issuance of notes for money borrowed under § 153-73 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1927, c. 81, s. 6; 1931, c. 60, s. 59; 1939, c. 231, s. 2(b).)

Cross Reference.—As to certain powers delegated in issuance of notes for temporary loans, see § 159-43.

Editor's Note.—The 1931 amendment changed this section by striking therefrom: "If such notes mature not more than six months after their date, they may be disposed of either by public or private negotiations, after five days' notice has been given in some newspaper having a general circulation in the county. If such notes mature more than six months after their date, they shall not be disposed of except in accordance with the provisions of this act governing the disposal of bond anticipation notes maturing more than six months from date."

The 1939 amendment added the last sentence.

§ 153-75. Certification of revenue anticipation notes.—No revenue anticipation notes shall be valid unless there shall be written or printed on the face or the reverse thereof a statement signed by the chief financial officer of the county in the words: "This note and all other revenue anticipation notes of the county amount to less than 50 per cent of the amount of uncollected taxes for the current year": Provided, however, that if such notes are issued under the authority given by § 153-73,

said statement may be either in said words or in the words, "This note is issued under § 153-73 of the County Finance Act for the payment of principal or interest of bonds or notes." (1927, c. 81, s. 7.)

§ 153-76. Certain notes of counties validated; proceeds lost in insolvent banks.—All notes heretofore issued by counties pursuant to the provisions of the County Finance Act applicable to notes issued for money borrowed under § 153-73 are hereby validated, notwithstanding that said notes were issued for the purpose of paying the principal or interest of notes evidencing indebtedness incurred under § 153-72: Provided, that this section shall not be construed to validate securities issued to refund or renew notes, the proceeds from which originally were deposited in banks that have failed, causing the loss of such deposits or making them unavailable to the unit of government. (1931, c. 332.)

§ 153-77. Purposes for which bonds may be issued and taxes levied.—The special approval of the General Assembly is hereby given to the issuance by counties of bonds and notes for the special purposes named in this section, and to the levy of property taxes for the payment of such bonds and notes and interest thereon. Accordingly, authority is hereby given to all counties in the State, under the terms and conditions herein described, to issue bonds and notes, and to levy property taxes for the payment of the same, with interest thereon, for the following purposes, including therein purchase of the necessary land and, in the case of buildings, the necessary equipment, and the remodeling, enlarging and reconstructing of any buildings erected or purchased:

(1) Erection and purchase of school houses, school garages, physical education and vocational education buildings, teacherages, lunchrooms, and other similar school plant facilities.

(2) Erection and purchase of courthouse and jails, including a public auditorium within as a part of a courthouse.

(3) Erection and purchase of county office buildings for housing offices, departments, bureaus, and agencies of the county government.

(4) Erection and purchase of county homes for the indigent and infirm.

(5) Erection and purchase of hospitals; housing or quarters for public health departments or local public health departments; hospital facility as the term is defined in subdivision (2) of § 131-126.18.

(6) Erection and purchase of public auditoriums.

(7) Elimination of grade crossings over railroads and interurban railways, including approaches and damages, when not less than one-half of the cost shall be payable to the county at one time, or from time to time, under contract made with a railroad or interurban railway company, the bonds herein authorized to be for the entire cost or any portion thereof.

(8) Acquisition and improvement of lands for public parks and playgrounds.

(9) Funding or refunding of valid indebtedness if such indebtedness be payable at the time of the passage of the order authorizing the bonds or be payable within one year thereafter, or, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the funding or refunding bonds, and all debt not evidenced by bonds which was created for necessary expenses of any county and which remains outstanding on March 7, 1927, is hereby validated. The term "indebtedness" as used in this subdivision includes all valid or enforceable indebtedness of a county, whether incurred for current expenses or for any other purpose, except indebtedness incurred in the name of a county on behalf of a school district or township and not payable by means of taxes authorized to be levied on all taxable property in the county. It also includes indebtedness incurred in the name of a county board of education for the maintenance of schools for the six months' term required by the State Constitution. It includes indebted-

ness evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said indebtedness accrued to the date of the bonds issued. It also includes indebtedness assumed by a county as well as indebtedness created by a county. Bond anticipation notes evidencing indebtedness may, at the option of the governing body, be retired either by means of funding bonds issued under this subdivision or by means of bonds in anticipation of the sale of which the notes were issued. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall not be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year one thousand nine hundred forty shall be funded or refunded.

(10) A portion to be determined by the governing body of the cost of construction of bridges at county boundaries, when an adjoining county or municipality, within or without the State, shall have agreed to pay the remaining cost of construction.

(11) A portion to be determined by the governing body of the cost of public buildings constructed or acquired in order that a part of such buildings may be used for a purpose hereinabove expressed when a municipality within the county shall agree to pay the remaining cost.

(12) Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft.

(13) Acquisition and improvement of lands and the erection thereon of buildings to be used as a civic center or indoor or out of door stadium and as a living memorial to veterans of World War I and World War II.

(14) Erection and purchase of library buildings and equipment.

(15) Purchase of voting machines.

(16) Acquisition, construction, reconstruction, extension and improvement of water systems, either singly or jointly with other counties or municipalities.

(17) Acquisition, construction, reconstruction, extension and improvement of sanitary sewerage systems, either singly or jointly with other counties or municipalities.

(18) Erection of community colleges, including the purchase of land and the erection of classrooms, laboratories, administrative offices, utility plants, libraries, cafeterias and auditoriums and the purchase and installation of equipment therefor: Provided, bonds for such purpose shall be deemed to be school bonds and the statement filed with the clerk after introduction and before final passage of an order authorizing such bonds shall be filed pursuant to the provisions of G. S. 153-83.

(19) To repay any loan made by the State Board of Education from the State Literary Fund to counties for the use of county and city boards of education under the provisions of article 11 of chapter 115 of the General Statutes.

(20) To meet the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the county. (1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, s. 54; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1939, c. 231, s. 2(c); 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3,

c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2.)

Local Modification.—Bertie: 1957, c. 441, s. 2; Davie: 1953, c. 704; Guilford: 1933, c. 566; Halifax: 1949, c. 371; Henderson: 1955, c. 485; Johnston: 1959, c. 82; Lincoln: 1955, c. 906, s. 1; Pamlico: 1953, c. 125, s. 1; Sampson: 1955, c. 925, s. 1; Surry: 1947, c. 315; Washington: 1953, c. 852, s. 2.

Editor's Note.—The 1929 amendment added subdivision (14), and the 1931 amendment changed the date in the first sentence of subdivision (9). The 1933 amendment changed subdivision (9) by deleting a provision which related to refunding serial bonds and adding the second sentence to the definition of "indebtedness." The 1935 amendment added the last four sentences of subdivision (9) and made other changes. The 1939 amendment changed the date at the end of subdivision (9). The 1947 amendments added subdivision (13) and rewrote subdivision (1). The 1949 amendments added subdivision (14) and rewrote subdivision (5).

The 1953 amendment added subdivision (15). The first 1957 amendment added subdivisions (16) and (17), and the second 1957 amendment added subdivision (18).

Section 4 of the 1953 amendatory act, which also amended §§ 153-80, 153-87 and 153-93, provided that "The powers conferred upon counties to authorize bonds pursuant to the County Finance Act, as amended by this act, * * * for the purchase of voting machines, or to raise or appropriate money therefor, as provided in this act, shall be subject to the provisions and limitations of any general, special or local act relating to the use of voting machines enacted before adjournment of the regular session of the General Assembly in 1953."

The first 1959 amendment added subdivision (19), and the second 1959 amendment added subdivision (20).

The first 1961 amendment added at the end of the introductory paragraph the words "and the remodeling, enlarging and reconstructing of any buildings erected or purchased:". It also inserted subdivision (3).

The second 1961 amendment added the words "either singly or jointly with other counties or municipalities" at the end of subdivisions (16) and (17).

For comment on the 1947 amendments, see 25 N. C. Law Rev. 462.

Constitutionality.—This section is constitutional. Evans v. Mecklenburg County, 205 N. C. 560, 172 S. E. 323 (1934).

Subdivisions (16) and (17) Are Constitutional.—The General Assembly may grant to a county the authority to issue bonds for the construction of water and sewer systems when "approved by a majority of those who shall vote thereon in any election held for such purpose" as required by N. C. Const., Art. VII, § 7. Session Laws 1957, c. 266, which added subdivisions (16) and (17) to this section, is constitutional. Ramsey v. Board of Comm'rs for Cleveland County, 246 N. C. 647, 100 S. E. (2d) 55 (1957).

Word "Repair" Implied.—The word "repair" although omitted in the rewriting of this section is "necessarily implied by law" when construed in conjunction with §§ 153-1, 153-9 and 153-49. See Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934).

Necessity for Submission to Voters.—A bond order passed by the board of commissioners of a county in this State, under the authority and subject to the provisions of this and related sections, is subject to the approval of the voters of the county, when a petition signed by the requisite number of voters has been filed with the board of commissioners. Hemric v. Board of Com'rs, 206 N. C. 845, 175 S. E. 168 (1934).

Authority is given the county under this section and § 115-92 to issue without a vote bonds for sanitary improvements for its schoolhouses necessary to maintain the constitutional school term in the county, when the maturity dates of the bonds are within the limits fixed by § 153-80. Taylor v. Board of Education, 206 N. C. 263, 173 S. E. 608 (1934).

The board of commissioners of any county in the State, upon compliance with the provisions of this and the following sections, has authority to issue bonds or notes of the county for the purpose of erecting and equipping schoolhouses and purchasing land necessary for school purposes, and to levy taxes for the payment of said bonds or notes, with interest on the same, without submitting the question as to whether said bonds or notes shall be issued or said taxes levied, in the first instance, to the voters of the county, where such schoolhouses are required for the establishment or maintenance of the State system of public schools in accordance with the provisions of the Constitution. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

Use of Proceeds of Bonds Limited by Bond Order.—Where, pursuant to this and sections following, a bond order approved by the voters of the county authorizes the issuance of bonds in an aggregate amount to finance a new building or buildings to be used as a public hospital and the acquisition of a suitable site therefor, the use of the proceeds of the bonds is limited by the bond order, and the county may not use the surplus left after completing the project contemplated in the bond order toward the construction of a clinic in another municipality of the county. Lewis v. Beaufort County, 249 N. C. 628, 107 S. E. (2d) 77 (1959).

A bond order under § 153-78 must set forth one of the purposes enumerated in this section. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

Indebtedness Incurred for School Pur-

poses.—Where a county under power conferred by special statute has borrowed money from time to time for the maintenance and equipment of its public schools, its bonds to refund the indebtedness so incurred are valid if issued in conformity with the provisions of this section. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

The counties of the State are authorized by this and the following sections to issue bonds and notes for the erection of schoolhouses and for the purchase of land necessary for school purposes, and to levy taxes for the payment of the same, principal and interest, not as municipal corporations, organized primarily for purposes of local government, but as administrative agencies of the State, employed by the General Assembly to discharge the duty imposed upon it by the Constitution to provide a State system of public schools. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

Indebtedness for teachers' salaries was held to come within the purview of subdivision (9) of this section. Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744 (1928).

The construction and operation of a public hospital is not a necessary expense in the sense that expression is used in the Constitution. Bonds cannot, therefore, be issued by a county for the purpose of providing hospital facilities, unless approved by a majority voting at an election held for that purpose. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

Erection of Consolidated School Instead of Remodeling Old School.—Where a bond issue for the remodeling of the old school buildings in a county administrative unit was duly approved by the voters in an election, it was held that the board of county commissioners had the legal authority to allocate funds from this bond issue to the erection of a proposed consolidated high school since this was not a change which involved any change of purpose for which the bonds were issued but was only a change in the manner or method of accomplishing the original purpose. Feezor v. Siceloff, 232 N. C. 563, 61 S. E. (2d) 714 (1950).

Use of Funds for Hospital "Buildings." —Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital uses the word "buildings," and it is later found that a surplus will remain after the erection and equipment of the main hospital building, such surplus may be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. Worley v. Johnston County, 231 N. C. 592, 58 S. E. (2d) 99 (1950).

Refunding Bonds May Be Issued without Submitting Question to Qualified Voters.—Reasonable and necessary expenses incurred in good faith to effect a refunding of county indebtedness authorized by this section held to be a necessary expense of the county, and bonds may be issued therefor without submitting the question to the qualified voters of the county. Morrow v. Board of Com'rs, 210 N. C. 564, 187 S. E. 752 (1936).

Section Does Not Include Teacherage as Necessary Equipment of School.—To hold as a matter of law that a teacherage is a part of the necessary equipment of a rural consolidated school would be to go farther than the General Assembly has gone, and, perhaps, entail some judicial engraftment. This section is not fraught with any dubiety of meaning. A teacherage, which is to be run for profit and solely for the benefit of the teachers, is not included within its terms. Denny v. Mecklenburg County, 211 N. C. 558, 191 S. E. 26 (1937).

Stated, as to subdivision (2), in Wilson v. High Point, 238 N. C. 14, 76 S. E. (2d) 546 (1953).

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937); Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953); as to subdivision (14), Jamison v. Charlotte, 239 N. C. 423, 79 S. E. (2d) 797 (1954); Jamison v. Charlotte, 239 N. C. 682, 80 S. E. (2d) 904 (1954).

§ 153-78. Order of governing body required.—Bonds of a county shall be authorized by an order of the governing body, the term "order" being here used to indicate the order, resolution, or measure which declares that bonds shall be issued, in order to differentiate the same from such subsequent resolution as may be passed in respect of details which such order is not required to contain. Such order shall state:

(1) In brief and general terms, the purpose for which the bonds are to be issued, but not more than one purpose of issue shall be stated, the purposes set forth in any one subdivision of § 153-77 to be deemed as one purpose, but, in the case of funding or refunding bonds, a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness;

(2) The maximum aggregate principal amount of the bonds;

(3) That a tax sufficient to pay the principal and interest of the bonds when

due shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

(4) That a statement of the county debt has been filed with the clerk, and is open to public inspection;

(5) A clause stating the conditions upon which the order will become effective, and the same shall become effective in accordance with such clause, which clause shall be as follows:

a. If the bonds are funding or refunding bonds, that the order shall take effect upon its passage, and shall not be submitted to the voters; or

b. If the issuance of the bonds is required by the Constitution to be approved by the voters, or if the governing body, although not required to obtain the approval of the voters before issuing the bonds, deems it advisable to obtain such approval, that the order shall take effect when approved by the voters of the county at an election as provided in this article; or

c. In any other case, that the order shall take effect thirty days after the first publication thereof after final passage, unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

d. No restriction, limitation, or provision contained in any other law, except a law of State-wide application relating to the issuance of bonds, notes or other obligations of a county, shall apply to bonds or notes issued under this article for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purposes, unless required by the Constitution of this State. The other laws here referred to include all laws enacted prior to the expiration of the regular session of the General Assembly in the year one thousand nine hundred thirty-five. Nothing herein shall be construed, however, as prohibiting a county from issuing bonds or notes under any special or Public-Local law applicable to such county, it being intended that this article shall be cumulative and additional authority for the issuance of bonds and notes. (1927, c. 81, s. 9; 1931, c. 60, s. 55; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1949, c. 497, s. 1.)

Local Modification.—Guilford: 1933, c. 566.

Cross References.—As to necessity of approval of the bond issue by the Local Government Commission, see § 159-7. As to facts influencing the Local Government Commission in determining the advisability of bond issues, see § 159-8. As to provisions which may be included in the order, see § 159-46.

Editor's Note.—The 1933 amendment added the latter part of subdivision (1) relating to description of indebtedness and the proviso to subdivision (3). The 1935 amendment made changes in paragraph d of subdivision (5). And the 1949 amendment rewrote paragraph b of subdivision (5).

A bond order may contain several sections and authorize the issue of bonds for different purposes, and § 153-77 sets out eleven (now twenty) different purposes for which bonds may be issued. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

It Must Set Forth One of Purposes Enumerated in § 153-77.—A bond order under this section must set forth one of the purposes enumerated in § 153-77, but it is not required that it set out in detail the estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds under § 153-107, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

The bond order is the crucial founda-

tion document which supports and explains the proposal to be submitted, and material representations set out in the bond order ordinarily become essential elements of the proposition submitted to the voters. Accordingly, where the bond order contains a stipulation definitely fixing the maximum amount of county funds to be expended on a proposed project, such stipulation, treated as a compact, becomes a limitation upon subsequent official acts based on a favorable vote and may not be materially varied. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Where public funds are to supplement bond moneys, it is not required that the bond order specify, or the voters be advised, that the proceeds of the proposed bond issue are to be used with, or in addition to, a sum of money on hand or otherwise available for the proposed improvement. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Where Bond Order Stipulates Total Sum to Be Expended, Appropriation of Large Additional Sum Is Unauthorized.—While a county may ordinarily expend unallocated nontax moneys for the public purpose of a county hospital even in those instances in which a bond order for the hospital does not specify that the proceeds of the bonds are to be used together with such unallocated nontax moneys, where the bond order specifically specifies that the total maximum amount to be expended by the county for the hospital is not to exceed $465,000 the allocation of an additional supplemental appropriation of over $138,000 out of nontax moneys on hand is a material variance from the compact as set forth in the bond order, and the county should be restrained in a proper suit from issuing the bonds and disbursing county funds in accordance with hospital plans predicated upon such increased appropriation. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Courts Cannot Supply Deficiency in Order.—In order to constitute a valid issue of county bonds under this article, to purchase schoolhouses to comply with the mandate of our Constitution for a six months' term of public schools, as a necessary county expense, without submitting the question to the vote of the people of the county, it is required that the resolution passed by the board of county commissioners so declare the fact to be, and the courts are without authority to supply the deficiency in the order. Hall v. Commissioners, 195 N. C. 367, 142 S. E. 315 (1928).

Restraint of Issuance of Bonds.—Where the taxpayers of a county file suit under this section to restrain the issuance of bonds until authorized by the qualified voters of the county, and there is a controversy as to whether the requisite 15% of qualified voters has been obtained to the petition, as set out in § 153-91, a temporary restraining order will be continued until the sufficiency of the petition can be determined. Scruggs v. Rollins, 207 N. C. 335, 177 S. E. 180 (1934).

Board of Commissioners May Reallocate Proceeds of Bonds.—A bond order issued under § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of the bonds to different projects upon its further finding, after investigation provided for in § 115-83, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

§ **153-79. Order need not specify details of purpose.**—In stating the purpose of a bond issue, an order need not specify the location of any improvement or property, or the material of construction. (1927, c. 81, s. 10.)

§ **153-80. Maturities of bonds.**—All bonds shall mature as hereinafter provided, and no funding or refunding bonds shall mature after the expiration of the period herein fixed for such bonds, respectively; and no other bond shall mature after the expiration of the period estimated by the governing body as the life of the improvement for which the bonds are issued, each such period to be computed from a day not later than one year after the passage of the order. Such periods shall not exceed the following for the respective classes of bonds:

(1) Funding or refunding bonds, fifty years.
(2) Elimination of grade crossings, thirty years.
(3) Lands for public parks and playgrounds, including improvements, buildings, and equipment, forty years.
(4) Public buildings, if they are:
    a. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and

in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, flooring, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is wooden flooring supported by wooden sleepers on top of the fireproof floor, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years;

b. Of non-fireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years;

c. Of other construction, twenty years.

(5) Land for airports or landing fields, including grading and drainage, forty years.

(6) Buildings, equipment and other improvements for airports or landing fields, other than grading and drainage, ten years.

(7) Voting machines, ten years.

(8) Water systems or sanitary sewer systems, forty years. (1927, c. 81, s. 11; 1929, c. 171, s. 2; 1931, c. 60, s. 56; 1933, c. 259, s. 2; 1953, c. 1065, s. 1; 1957, c. 266, s. 2.)

Local Modification.—Bertie: 1957, c. 441, s. 3; Buncombe: 1955, c. 32, s. 2; Lincoln: 1955, c. 906, s. 2; Pamlico: 1953, c. 125, s. 2; Sampson: 1955, c. 925, s. 2; Washington: 1953, c. 852, s. 3.

Cross Reference.—As to power of county to issue bonds for the purpose of voting machines, see § 153-77.

Editor's Note.—The 1929 amendment added subdivisions (5) and (6) to this section. The 1931 amendment struck out former subdivisions (1) and (2) and inserted in lieu thereof subdivisions (1) and (2), which was rewritten by the 1933 amendment.

The 1953 amendment added subdivision (7) and the 1957 amendment added subdivision (8).

§ 153-81. Accelerating maturity of bonds and notes of counties and municipalities.—Any municipality or county may provide that its bonds or notes shall become due and payable before maturity at the election of the holders or a majority in amount of the holders or a representative of the holders, upon the happening of such events and upon such conditions and subject to such limitations (which may include a provision for rescission of action taken in the exercise of said election) as may be set forth in a resolution or ordinance passed before the issuance of the bonds or notes: Provided, however, that such a provision, in order to become effective, must either be set forth in the bonds or notes or incorporated therein by reference to such resolution or ordinance. The negotiability of such bonds or notes shall not be affected by the adoption of such provision or by the recital thereof in the bonds or notes. (1931, c. 418; 1933, c. 258, s. 3.)

Editor's Note.—The 1933 amendment inserted the words "or a majority in amount of the holders" in the first sentence and added the second sentence.

Cited in Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

§ 153-82. Consolidated bond issues.—It shall be lawful to consolidate into one issue bonds authorized by two or more orders for different purposes, in which event the bonds of such consolidated issue shall mature within the average of the periods estimated as the life of the several improvements, taking into consideration the amount of bonds to be issued on account of each item for which a period shall be estimated. (1927, c. 81, s. 12.)

§ 153-83. Sworn statement of debt before authorization of bonds for school purposes.—After the introduction, and at least ten days before the final passage of an order for the issuance of bonds for school purposes, an officer designated

by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt or by assumption of debt, including debt incurred by the county board of education, and including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for school purpose, nor including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(1) The assessed valuation of property as last fixed for county taxation.
(2) Outstanding school debt.
(3) Bonded school debt to be incurred under orders either passed or introduced.
(4) The sum of subdivisions "(2)" and "(3)".
(5) School sinking funds, being money or investments thereof pledged and held for the payment of principal of outstanding school debt.
(6) School credits, being principal sums owing to the county from school districts which are pledged to and when collected will be used in the retirement of outstanding school debt.
(7) Amount of unissued funding and refunding school bonds included in gross debt.
(8) The sum of subdivisions "(5)" and "(6)" and "(7)".
(9) Net school debt, being the sum by which subdivision "(4)" exceeds subdivision "(8)".
(10) The percentage that the net school debt bears to said assessed valuation. (1927, c. 81, s. 13.)

Cross Reference.—As to facts influencing the Local Government Commission in determining the advisability of bond issue, see § 159-8.

Applied in Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 153-84. Sworn statement of debt before authorization of bonds for other than school purposes.—After the introduction and at least ten days before the final passage of an order for the issuance of bonds for other than school purposes, an officer designated by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for other than school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt, or by assumption of the debt, including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for other than school purposes, or including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(1) The assessed valuation of property as last fixed for county taxation.
(2) Outstanding debt for other than school purposes.
(3) Bonded debt to be incurred for other than school purposes under orders either passed or introduced.
(4) The sum of subdivisions "(2)" and "(3)".
(5) Sinking funds (except school sinking funds), being money or investments thereof pledged and held for the payment of principal of debt outstanding for other than school purposes.
(6) Moneys payable to the county by a railroad or interurban railway company, under contract, as all or part of the cost of grade crossing elimination, if such moneys are pledged to and when collected will be used in the retirement of outstanding debt for other than school purposes.
(7) Amount of unissued funding and refunding bonds not for school purposes included in gross debt.

(8) The sum of subdivisions "(5)" and "(6)" and "(7)".
(9) Net debt for other than school purposes, being the sum by which subdivision "(4)", exceeds subdivision "(8)".
(10) The percentage that the net debt for other than school purposes bears to said assessed valuation. (1927, c. 81, s. 14.)

Cross Reference.—As to facts influencing the Local Government Commission in determining the advisability of bond issue, see § 159-8.

Failure to File Statement.—Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with this section, requiring the filing of a true statement of the county debt, the attack upon the order is upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order cannot be maintained under § 153-90. Garrell v. Columbus County, 215 N. C. 589, 2 S. E. (2d) 701 (1939).

§ 153-85. Financial statement filed for inspection.—The sworn statement of debt shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this article, unless it appears, in an action or proceeding commenced within the time limited by this article for actions to set aside bond orders, first, that the representations contained therein could not by any reasonable method of computation be true; or, second, that a true statement would show that the order authorizing the bonds could not be passed. (1927, c. 81, s. 15.)

§ 153-86. Publication of bond order.—As soon as possible after the introduction of the order and the filing of the financial statement hereinabove required, the clerk shall publish the order as introduced. Before publishing the same he shall fix an hour and day for a public hearing upon the order unless the governing body shall itself have fixed such hour and day. The hour and day, if fixed by the clerk, shall be ten o'clock A. M. of the first Monday of the following month, if ten days shall elapse between such publication and the day so fixed, but otherwise shall be ten o'clock A. M. of the first Monday of the next succeeding month. In connection with the publication of the order, and immediately below the same, the clerk shall publish a statement signed by him with blanks properly filled in substantially the following form:

"The foregoing order has been introduced and a sworn statement has been filed under the County Finance Act showing the assessed valuation of the county to be $..... and the net debt for school purposes (substitute net debt for other than school purposes if the proposed bonds are for other than school purposes) including the proposed bonds, to be $..... A tax will be levied for the payment of the proposed bonds and interest, if the same shall be issued. Any citizen or taxpayer may protest against the issuance of such bonds at a meeting of the board of county commissioners to be held at ..... o'clock ..... M. ....., 19.... or an adjournment thereof.

.....
"Clerk of Board of Commissioners."

(1927, c. 81, s. 16.)

Section Is Mandatory.—The proper publication of the notices required by this section is mandatory, and cannot be dispensed with. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

Sufficiency of Publication.—The provisions as to notice given to taxpayers, etc., required by this section, of an opportunity to be heard before the county may issue bonds for various purposes, is sufficiently complied with if several orders of the county commissioners are published in the same advertisement and a date and place fixed for passing upon the objections made, if any, separately placed in the publication and distinctly referring to each of the separate purposes. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

The publication of one statement in connection with three orders was sufficient as a compliance with this section, a statement for each order not being necessary. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-87. Hearing; passage of order; debt limitations.—On the day so fixed for the public hearing, but not earlier than ten days after the first publication of the order, the governing body shall hear any and all citizens and taxpayers who may desire to protest against the issuance of the bonds, but such hearing may be adjourned from time to time. After such hearing, the governing body may pass the order in the form of its introduction, or in an amended form but the amount of bonds to be issued shall not be increased by such amendment, nor the purpose of issuance substantially changed, without due notice and hearing as above required. Provided, however, that no order for the issuance of school bonds shall be passed unless it appears from said sworn statements that the net school indebtedness does not exceed five per cent of said assessed valuation, unless the bonds to be issued are funding or refunding bonds; and no order shall be passed for the issuance of bonds other than school bonds unless it appears from said sworn statement that the net indebtedness for other than school purposes does not exceed five per cent as said assessed valuation, unless the bonds to be issued are funding or refunding bonds: Provided, however, that if the net school debt of any county shall, on March 7, 1927, be in excess of four fifths of the limitation above fixed therefor, such order for the issuance of school bonds may be passed, if the net debt shall not be increased thereby more than two per cent of such assessed valuation; and that if the net debt of any county for other than school purposes shall, on March 7, 1927, be in excess of four fifths of the limitations above fixed therefor, such order may be passed if the net debt for other than school purposes shall not be increased thereby more than two per cent of such assessed valuation: Provided, further, that if any county shall assume all outstanding indebtedness for school purposes of every city, town school district, school taxing district, township or other political subdivision therein, the limit of the net debt of such county for school purposes, including the debt so assumed, shall be eight per cent (8%) and the privilege of creating or assuming an additional gross debt of two per cent (2%) under certain circumstances shall not be allowed such county. No order for the issuance of bonds for the purchase of voting machines may be passed if the amount of the bonds authorized thereby is in excess of two hundred thousand dollars ($200,000.00), and such bonds shall not be exempt from the foregoing limitation of net indebtedness for other than school purposes. (1927, c. 81, s. 17; 1953, c. 1065, s. 1.)

Local Modification.—Buncombe: 1955, c. 32, s. 1; Cabarrus: 1963, c. 602; Carteret: 1953, c. 807; 1947, c. 32; 1955, cc. 562, 713; Columbus: 1959, c. 478; Davidson: 1955, c. 712; Davie: 1959, c. 728; Harnett: 1963, c. 695; Lincoln: 1959, c. 205; Person: 1963, c. 192; Scotland: 1959, c. 1220.

Cross Reference.—As to hearings by the Local Government Commission, see § 159-9.

Editor's Note.—For a discussion of this section, see 8 N. C. Law Rev. 471 et seq.

The 1953 amendment added the last sentence.

Applied in Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Cited in Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3 (1935); Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-88. Material of construction and other details.—The statements as to kind and material of construction, so far as the same constitute conditions upon which maturities of bonds are to be determined under this article, as well as all details of bonds not required to be set forth in the order, may be set forth in resolution or resolutions to be passed on or after the passage of the order, and before the issuance of the bonds. (1927, c. 81, s. 18.)

Amendment of Resolution.—Session Laws 1953, c. 1206, s. 2 provides that any resolution adopted pursuant to this section and prior to April 30, 1953, may be amended so as to provide that any unissued balance of bonds authorized by a bond order, or by two or more bond orders, may be made redeemable prior to their respective maturities as provided in G. S. 153-103.1.

§ 153-89. Further publication of bond order.—A bond order after final passage thereof shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first prop-

erly filled in) with the printed or written signature of the clerk appended thereto, shall be published with the order:

"The foregoing order was finally passed on the ..... day of ....., 19..... and was first published on the ..... day of ..... 19.... Any action or proceeding questioning the validity of said order must be commenced within thirty days after its first publication.

.....
Clerk."

(1927, c. 81, s. 19.)

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-90. Limitation of action to set aside order.—Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon the ground that the order is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the order or supposed order referred to in the notice. After the expiration of such period of limitations, no right of action or defence upon the validity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1927, c. 81, s. 20.)

Constitutionality.—This section has not been construed by the Supreme Court, but statutes requiring notice to be given and providing that failure to give a notice within the time specified will operate as a bar, have been frequently construed and upheld. Kirby v. Board of Commissioners, 198 N. C. 440, 152 S. E. 165 (1930).

Suit to Restrain Issuance of Bonds.—Where the board of county commissioners, under ordinance duly passed and hearing thereon had, are about to issue bonds for the necessary purpose of erecting a jail, etc., contrary to the restrictions of the County Finance Act limiting the amount of bonds, a suit to restrain the issuance of the bonds is required by the express terms of this section to be commenced within thirty days after the publication of the required notice and order, and a suit instituted after the time prescribed cannot be maintained and the validity of the bonds will be upheld. The question of whether the statute is strictly one of limitation or a condition annexed to the cause of action is immaterial. Kirby v. Board of Commissioners, 198 N. C. 440, 152 S. E. 165 (1930).

Action to enjoin issuance of hospital bonds and to restrain disbursement of county funds therefor on the ground of irregularities in the bond order and form of ballot held precluded by this section or § 153-100 because not instituted until after thirty days subsequent to the statement of the result of election. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

When the proposed bond issue contravenes the Constitution, the requirement of this section that actions to restrain issuance of bonds by counties must be instituted within 30 days of the first publication of notice of the adoption of the bond resolution, does not apply. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

Where Order Attacked on Statutory Grounds.—Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with § 153-84, requiring the filing of a true statement of the county debt, the attack upon the order is upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order cannot be maintained under this section. Garrel v. Columbus County, 215 N. C. 589, 2 S. E. (2d) 701 (1939).

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949).

§ 153-91. Petition for referendum on bond order.—A petition demanding that a bond order be submitted to the voters may be filed with the clerk within thirty days after the first publication of the order. The petition shall be in writing and signed by voters of the county equal in number to at least fifteen per centum of the total number of votes cast at the last preceding election for the office of Governor. The residence address of each signer shall be written after his signature. The petition need not contain the text of the order to which it refers. The petition need not be all on one sheet and if on more than one sheet, it shall be verified as to each sheet. The clerk shall investigate the sufficiency of the petition and present it to the governing body, with a certificate stating the result of his investigation. The governing

body, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and the determination of the governing body shall be conclusive. (1927, c. 81, s. 21.)

Bond Order Is Valid in Absence of Petition for Referendum.—Where no petition has been filed within the time prescribed by this section, praying that a bond order duly passed by the board of commissioners of a county, be submitted to the voters of the county, in accordance with the provisions of the County Finance Act, the bond order is valid and effective, without the approval of the voters of the county. Hemric v. Board of Com'rs, 206 N. C. 845, 175 S. E. 168 (1934).

But Approval of Voters Is Required if Petition Filed.—Where a petition is filed in accordance with the provisions of this section, praying that a bond order duly passed by the board of commissioners of a county, authorizing and directing the issuance of bonds of the county for the purpose of procuring money for the purchase, construction, improvement or equipment of schoolhouses required for the maintenance of a school in each of the districts of the county as required by the Constitution of the State, be submitted to the voters of the county, such bond order is not valid or effective, until the same has been approved by the voters of the county as provided. Hemric v. Board of Com'rs, 206 N. C. 845, 175 S. E. 168 (1934).

§ 153-92. What majority required.—If a bond order provides that it shall take effect when approved by the voters of the county, the affirmative vote of a majority of those who shall vote on the bond order shall be required to make it operative. (1927, c. 81, s. 22; 1949, c. 497, s. 2.)

Cross Reference.—See Art. V, § 4 of the Constitution.

Editor's Note.—The 1949 amendment rewrote this section.

For brief comment on amendment, see 27 N. C. Law Rev. 454.

Lands and Equipment for Schools.—The issuance of bonds for school purposes does not require the submission of the question to the voters for the issuance of county bonds for the purchase of additional lands or equipment for established public schools, when the commissioners proceed under this article. The Constitution, Art. VII, § 7 and Art. IX, § 2, does not apply. Frazier v. Board of Commissioners, 194 N. C. 49, 138 S. E. 433 (1927).

Construction of New School Building.—The vote on the question of issuance of bonds by a county for the construction of a new school building, a necessary expense, is not against the registration, and a favorable vote of the majority of those voting in the election is sufficient to validate the bond resolution and authorize the issuance and sale of the proposed bonds. Mason v. Moore County Board of Com'rs, 229 N. C. 626, 51 S. E. (2d) 6 (1948).

Cited in Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

§ 153-92.1. General application of provision as to majority vote.—All provisions of public, public-local, private and special acts relating to counties, municipalities, school districts, or other political subdivisions in the State which require that a proposition for the issuance of bonds or levy of taxes of any such county, municipality, school district or other political subdivisions, or that any other proposition be approved by the vote of a majority of the registered voters of such county, municipality, school district or other political subdivision, are hereby amended so as to require that the same be approved by a majority of the qualified voters who shall vote on any such proposition. The provisions of this section shall be applicable to every such election held subsequent to March 22, 1949, notwithstanding the fact that any procedures or acts or actions required or permitted by statute were taken or had with respect to any such election prior to such date. (1949, c. 497, s. 8.)

Cited in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950); Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

§ 153-93. When election held.—Whenever the taking effect of an order authorizing the issuance of bonds is dependent upon the approval of the order by the voters of a county, the governing body may submit the order to the voters at an election to be held not more than one year after the passage of the order. The governing body may call a special election for that purpose, or may submit the order to the voters at the regular election for county officers next succeeding the

passage of the order, but no such special election shall be held within one month before or after a regular election for county officers. Several orders or other matters may be voted upon at the same election. The governing body shall not call a special election for the sole and exclusive purpose of submitting to the voters the proposition of approving or disapproving an order for the issuance of bonds for the purchase of voting machines, but such order may be submitted at any primary election for the nomination of county officers or at any general election for the election of county officers or at any special election at which another order or another matter is to be voted upon. (1927, c. 81, s. 23; 1953, c. 1065, s. 1.)

Cross Reference.—As to power of county to issue bonds for the purchase of voting machines, see § 153-77.

Editor's Note.—The 1953 amendment added the fourth sentence.

This statute does not declare as a matter of fixed legislative policy that a bond election must be held more than a month before or after any other election, on a day specially set apart for such election. The statute leaves it for the board of commissioners to say whether in their discretion the bond proposition shall be submitted to a special election called for that purpose, or passed on by the voters at the regular election for county officers next succeeding the passage of the bond order. It is only when the board decides to call a special election that the statute inhibits holding the special election within one month "before or after a regular election for county officers." Reider v Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

The term "regular election for county officers," as used in this section, does not include a party primary. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Submission of More than One Question or Proposal at Same Election.—While this section permits the submission of more than one question or proposal in one and the same election, this contemplates questions authorized by law. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 153-94. New registration.—The governing body of the county in which such election is held may in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from 9 A. M. to 6 P. M. on each day, except Sundays and holidays, for three weeks, beginning on a Saturday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case any registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary. (1927, c. 81, s. 24.)

§ 153-95. Notice of election.—A notice of the election shall be deemed sufficiently published if published once not later than thirty (30) days before the election, and thereafter twice before the election, at intervals of at least one week between publications. Such notice shall state the date of the election, the maximum amount of the proposed bonds, and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The notice shall state the places at which the election will be held, but without enumeration thereof may state that the election will be held at the same places at which the last preceding election was held for members of the General Assembly, with such changes as may have been ordered by the governing body. (1927, c. 81, s. 25.)

§ 153-96. Ballots.—The form of the question as stated on the ballot shall be in substantially the words: "For the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor" and "Against the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor." Such affirmative and negative forms shall be printed upon one ballot, containing squares

opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). (1927, c. 81, s. 26.)

This section and § 163-150 are to be construed in pari materia. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Ballot Held to Comply with Section.—A ballot for a school bond election which states the question submitted for approval or disapproval followed by a brief statement of the purposes for which the proceeds of the proposed bonds are to be used and that a tax would be levied to pay the principal and interest on the bonds in event of approval, followed by the word "Yes" and the word "No" and a square opposite each with instructions as to how the ballot should be marked, is held to comply with this section and § 163-150, and the fact that the number of proposed projects necessarily results in a ballot somewhat longer than usual is not objectionable. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

§ 153-97. Returns canvassed.—The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each order submitted but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall determine and declare the result of the election. (1927, c. 81, s. 27.)

§ 153-98. Application of other laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for members of the General Assembly in said county, and governing the registration of electors for such elections. (1927, c. 81, s. 28.)

§ 153-99. Statement of result.—The governing body shall prepare a statement showing the number of votes cast for and against each order submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the governing body and delivered to the clerk, who shall record it in the minutes of the governing body, and file the original in his office and publish it once. (1927, c. 81, s. 29.)

§ 153-100. Limitation as to actions upon elections.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of result as provided in § 153-99. (1927, c. 81, s. 30.)

Suit to Restrain Issuance of Bonds.—See note to § 153-90.

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949); Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ 153-101. Preparation for issuing bonds.—At any time after the final passage of a bond order, all steps preliminary to the actual issuance of bonds under the order may be taken, but the bonds shall not be actually issued unless and until the order takes effect. (1927, c. 81, s. 31.)

§ 153-102. Within what time bonds issued.—After a bond order takes effect, bonds may be issued in conformity with its provisions at any time within five years after the order takes effect, unless the order shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of repeal), unless notes issued in anticipation of the proceeds of the bonds shall be outstanding: Provided, that the provisions of this paragraph shall apply to all bonds authorized by any bond order taking effect on or after July 1st, 1952.

Notwithstanding the foregoing limitations of time which might otherwise prevent the issuance of bonds, bonds authorized by an order which took effect prior to July 1st, 1952, and which have not been issued by July 1st, 1955, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1957, unless such order shall have been repealed, and any loans made under authority

of § 153-108 of this article in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30th, 1957, notwithstanding the limitation of time for payment of such loans as contained in said section. (1927, c. 81, s. 32; 1939, c. 231, s. 2(d); 1947, c. 510, s. 1; 1949, c. 190, s. 1; 1951, c. 439, s. 1; 1953, c. 693, s. 1; 1955, c. 704, s. 1.)

Local Modification.—Buncombe and municipalities therein: 1943, c. 56, s. 1.

Editor's Note.—The 1939 amendment added the proviso at the end of the first paragraph. The 1947 amendment added the second paragraph, and the 1949 and 1951 amendments changed the dates therein.

The 1953 amendment substituted "five years" for "three years" near the beginning of the first paragraph and rewrote the proviso appearing at the end of the first paragraph. It also made changes in the dates appearing in the second paragraph.

The 1955 amendment changed the last three dates in the second paragraph.

For brief comment on the 1947 amendment, see 25 N. C. Law Rev. 453.

Cited in Waldrop v. Hodges, 230 N. C. 370, 53 S. E. (2d) 263 (1949).

§ **153-103. Bonded debt payable in installments.**—The bonds authorized by a bond order, or by two or more bond orders if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series and different provisions may be made for different series. The bonds of each issue or of each series shall mature in annual installments, the first of which installments shall be made payable not more than three years after the date of the bonds of such issue or of such series, and the last within the period determined and declared pursuant to § 153-80. If the bonds so authorized shall be issued at one time as a single issue, no such installment shall be more than two and one-half times as great in amount as the smallest prior installment of such issue. If the bonds so authorized shall be issued in series, the total amount outstanding after the issuance of any particular series shall mature so that the total amount of such bonds maturing in any fiscal year shall not be more than two and one-half times as great in amount as the smallest amount of such outstanding bonds which mature in any prior fiscal year, and the first installment of the bonds of any series subsequent to the first series may mature more than three years after the date of the bonds of the first series. This section shall not apply to funding or refunding bonds. (1927, c. 81, s. 33; 1931, c. 60, s. 57; 1933, c. 259, s. 2; 1951, c. 440, s. 3.)

Editor's Note.—Prior to the 1933 amendment this section applied to funding and refunding bonds except in cases where the debt exceeded ten per cent of the value of county property.

The 1951 amendment rewrote this section.

§ **153-103.1. Redemption of bonds.**—The bonds authorized by a bond order, or by two or more bond orders if the bonds so authorized shall be consolidated into a single issue, may be made subject to redemption prior to their respective maturities with or without premium as the governing body may by resolution provide, with the approval of the Local Government Commission. (1953, c. 1206, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provided that any resolution adopted pursuant to G. S. 153-88 and prior to April 30, 1953, may be amended so as to provide that any unissued balance of bonds authorized by a bond offer, or by two or more bond orders, may be made redeemable prior to their respective maturities as provided in G. S. 153-103.1.

§ **153-104. Medium and place of payment.**—The bonds may be made payable in such kind of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1927, c. 81, s. 34.)

§ **153-105. Formal execution of bonds.**—The bonds shall be issued in such forms as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or if the governing body makes no such designation, then by the chairman of the governing body and by the clerk, and the corporate seal of

county or of the governing body shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the county occurring after the signing and sealing of the bonds. (1927, c. 81, s. 35.)

§ 153-106. Registration and transfer of bonds.—(a) Bonds Payable to Bearer. Bonds issued under this article shall be payable to the bearer, unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

(b) Registration and Effect. A county may keep in the office of a county officer to be designated by the governing body, or in the office of a bank or trust company appointed by the governing body as bond registrar, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

(c) Registration and Transfer Noted on Bond. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond, as to both principal and interest, he shall also cut off and cancel the coupons, and endorse upon the back of the bond a statement that such coupons have been cancelled.

(d) Agreement for Registration. A county may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only, or as to both principal and interest, at the option of the bondholder. (1927, c. 81, s. 36.)

§ 153-107. Application of funds.—The proceeds of the sale of bonds and bond anticipation notes under this article shall be used only for the purposes specified in the order authorizing said bonds, and for the payment of the principal and interest of such notes issued in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. If any notes issued in anticipation of the sale of bonds shall be outstanding and unpaid when the proceeds of the sale of bonds are received, such proceeds, or an amount thereof sufficient to retire such notes, shall be immediately, upon the receipt thereof, placed in a separate fund, which shall be held and used solely for the payment of such notes. If any member of the governing body or any county officer shall vote to apply or shall apply, or shall participate in applying any proceeds of bonds or bond anticipation notes in violation of this section, such member or such officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the State's prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act, and also all damages caused thereby. (1927, c. 81, s. 38.)

Cross Reference.—As to authority to invest proceeds of bonds which cannot be used for purpose of issue, see § 159-49.1.

Right to Transfer and Allocate Funds.—This section does not place a limitation upon the legal right to transfer or allocate funds

from one project to another included within the general purpose for which bonds were issued. The inhibition contained in the statute is to prevent funds obtained for one general purpose being transferred and used for another general purpose. For example, the statute prohibits the use of funds derived from the sale of bonds to erect, repair and equip school buildings, from being used to erect or repair a courthouse or a county home, or similar project. This view is in accord with the provisions of § 159-49.1. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949); Mauldin v. McAden, 234 N. C. 501, 67 S. E. (2d) 647 (1951).

Effect of Bond Order.—A bond order under § 153-78 must set forth one of the purposes enumerated in § 153-77, but it is not required that it set out in detail the estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds under this section, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

Applied in Mauldin v. McAden, 234 N. C. 501, 67 S. E. (2d) 647 (1951).

§ **153-108. Bond anticipation loans.**—At any time after a bond order has taken effect, as provided in § 153-78, a county may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipts of the proceeds of the sale of bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than five years after the time of taking effect of the order authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, at or before the actual retirement of any such loans by any means other than the issuance of bonds under the bond order upon which such loans are predicated, shall amend or repeal such order so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing order shall take effect upon its passage, and need not be published. Negotiable notes shall be issued for all moneys so borrowed. Such notes may be renewed from time to time, and money may be borrowed upon notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by this section for the payment of the original loan. No money shall be borrowed under this section at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount and rate of interest with the limitations prescribed by said resolution, and the power to dispose of said notes. All such notes shall be executed in the manner provided in § 153-105 for the execution of bonds. They shall be submitted to and approved by the attorney for the county before they are issued, and his written approval endorsed on the notes. (1927, c. 81, s. 39; 1953, c. 693, s. 2.)

Editor's Note.—The 1953 amendment substituted "five years" for "three years" in the second sentence, and rewrote the eighth sentence.

Prerequisite to Issuance of Bond Anticipation Note.—No valid bond anticipation note may be issued unless authority exists for the issuance of bonds to provide funds to pay the note. Barbour v. Carteret County, 255 N. C. 177, 120 S. E. (2d) 448 (1961).

§ **153-109. Bonds and notes shall recite the authority for issuance.**—All bonds and notes authorized by this article shall recite that they are issued under and pursuant to this article. (1927, c. 81, s. 40.)

§ **153-110. Taxes levied for payment of bonds.**—The full faith and credit of the county shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this article, including bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the county sufficient to pay

the principal and interest of all bonds issued under this article as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose. The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a county may levy; the General Assembly does here give its special approval to the levy of taxes in the manner and to the extent provided by this article for the payment of obligations incurred pursuant to this article for the special purposes for which such obligations are in this article authorized. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the county. If any member of the governing body or any county officer shall vote to apply or shall apply or participate in applying any taxes in violation of this section, such member or officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the State prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act and also all damages caused thereby.

Nothing in this section shall be construed as authorizing an unlimited tax for the payment of bonds not issued for a special purpose within the meaning of section six of article five of the Constitution of North Carolina. It is the intention of this article, however, to authorize the issuance of funding and refunding bonds and notes as herein provided in cases where taxation for their payment is limited by the Constitution, as well as in other cases. The General Assembly hereby declares that an emergency exists by reason of the present extraordinary financial condition of the counties of this State, and hereby gives it special approval to the levying of taxes to the fullest extent permitted by the Constitution for the purpose of paying bonds and notes issued hereunder to fund or refund or renew indebtedness outstanding on March 3, 1931, or incurred before July first, nineteen hundred and thirty-three, and hereby declares that the payment of such bonds and notes constitutes a special purpose: Provided, in case of funding or refunding bonds which do not mature in installments as provided in § 153-103, a tax for the payment of the principal of the said bonds need not be levied prior to the fiscal year or years said bonds mature, unless it is so provided for in an order or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such order or resolution. (1927, c. 81, s. 41; 1931, c. 60, s. 60; 1933, c. 259, s. 2.)

Cross Reference.—As to statute authorizing counties, with the approval of the Local Government Commission, to avail themselves of the Federal Bankruptcy Act, see § 23-48.

Editor's Note.—The 1931 amendment added the second paragraph, and the 1933 amendment added the proviso thereto.

§ 153-111. Destruction of paid bonds and interest coupons.—All paid bonds and interest coupons of a county may, in the discretion of the board of county commissioners, be destroyed in accordance with one of the following methods:

Method 1. Before any such bonds and coupons are destroyed as hereinafter provided the county accountant shall make a descriptive list of the same in a substantially bound book kept by him for the purpose of recording destruction of paid bonds and coupons. Said list shall include, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, the designation of purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount of coupons. After such list has been made the paid bonds and coupons so described shall be destroyed, either by burning or by shredding, in the presence of the chairman of the board of county commissioners, the

county accountant, the county attorney and the clerk of the board of county commissioners, each of whom shall certify under his hand in such book that he saw such bonds and coupons so destroyed. No paid bonds or coupons shall be so destroyed within one year from their respective maturity dates.

Method 2. The board of county commissioners may contract with any bank or trust company for the destruction, as hereinafter provided, of bonds and interest coupons which are paid and canceled. The contract shall substantially provide, among such other stipulations and provisions as may be agreed upon, that such bank or trust company shall furnish the county, periodically or from time to time, with a written certificate of destruction containing a description of bonds and coupons destroyed, including with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity dates and (vi) total principal amount and, with respect to coupons, designation or purpose of issue and date of bonds to which such coupons appertain, the maturity dates of such coupons and, as to each such maturity date, the denomination, quantity and total amount, and certifying that such paid and canceled bonds and coupons have been destroyed either by burning or by shredding. No paid and canceled bonds or coupons shall be destroyed within one (1) year after their respective maturities or, in the case of bonds paid prior to their maturities, within one (1) year from such payment. Each such certificate shall be filed by the county accountant among the permanent records of his office.

The provisions of G. S. 121-5 and 132-3 shall not apply to the paid bonds and coupons referred to in this section. (1941, c. 293; 1961, c. 663, s. 1; 1963, c. 1172, s. 1.)

Editor's Note.—The 1961 amendment rewrote this section.

The 1963 amendment rewrote the paragraph headed "Method 2," which formerly required the contract to be with a bank or trust company acting as the paying agent of the county.

§ **153-112. Enforcement of article.**—If any boards or officer of a county shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this article to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers and other persons to carry out such order and remove such board or officer who has thus refused to carry out such order. (1927, c. 81, s. 42.)

§ **153-113. Repeals.**—All acts and parts of acts, whether general, special, private or local, authorizing or limiting or prohibiting the issuance of bonds or other obligations of a county or counties, are hereby repealed: Provided, further, that the repeal shall not affect the validity of any bonds or obligations issued or incurred prior to March 7, 1927, nor shall such repeal affect the powers, duties or obligations for providing for the payment of such bonds or obligations or interest thereon. Provided, further, that this article shall not affect any local or private act enacted at the 1927 session of the General Assembly, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the 1927 session of the General Assembly; and any county may at its option proceed under any such local or private act applicable to it enacted at the 1927 session of the General Assembly, without regard to the restrictions imposed by this article, or may proceed under this article without regard to the restrictions imposed by such local or private act: Provided, further, that any county which prior to March 7, 1927, has entered into a valid contract for permanent improvements for which, prior to March 7, 1927, such county was empowered by law to issue bonds in sufficient amount, is hereby authorized to issue such an amount of bonds as may be necessary to comply with said contract, either in the manner provided by this article or in the manner provided by law at the time such contract for permanent improvements was made: Provided, further, that

nothing herein contained shall be applicable to or shall govern the method by which any county board of education may borrow money from the special building fund created by chapter 201, Public Laws of 1925, or from any special building fund of the State created by any law enacted at the regular session of the General Assembly of 1927, or from the State Literary Fund as provided in §§ 115-220 to 115-224, as amended, but the limitations of this article upon the amount of net school debt shall apply to such borrowing.

Provided, further, that except as provided in § 153-78 nothing herein contained shall have the effect of repealing any act in force on March 7, 1927, or enacted by the session of the General Assembly of one thousand nine hundred twenty-seven, requiring the question of issuing bonds by any county to be submitted to a vote of the people. (1927, c. 81, s. 43; 1929, c. 110; 1931, c. 60, s. 61; 1941, c. 266.)

Editor's Note.—The 1931 amendment inserted the reference to § 153-78 in the last proviso. It also struck out the former proviso relating to Rockingham and New Hanover counties. The 1929 amendment had already struck out New Hanover from the proviso.

The 1941 amendment inserted in the next to the last proviso of this section the provisions relating to the State Literary Fund.

Inconsistent Public-Local Law.—This section expressly repeals a public-local law applying to a county when inconsistent with its terms. Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

Article 10.

County Fiscal Control.

§ 153-114. Title; definitions.—This article shall be known and may be cited as "The County Fiscal Control Act."

In this article, unless the context otherwise requires, certain words and expressions have the following meaning:

(1) The "budget year" is the fiscal year for which a budget is being prepared.

(2) "Debt service" means the payment of principal and interest on bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.

(3) The "fiscal year" is the annual period for the compilation of fiscal operations, and begins on the first day of July and ends on the thirtieth day of June.

(4) "Fund" means a sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives and constituting an independent fiscal and accounting entity. Each county shall maintain the following funds and such other funds as the board of county commissioners may require:

a. General fund.

b. County debt service fund.

c. School current expense fund.

d. School capital outlay fund.

e. School debt service fund: Provided that this fund may be combined with the county debt service fund if the board of county commissioners deems it advisable to do so.

f. A fund for each special purpose tax for the levy of which the General Assembly has given its special approval.

g. A bond fund to account for the application of the proceeds of the sale of bonds to the specific purpose for which such bonds were duly authorized.

h. A fund for each subdivision to account for the collection of each special tax levied for a particular function or purpose of such subdivision.

(5) "Subdivision" means a township, school district, school taxing district or other political corporation or subdivision within a county, including drainage and other districts, the taxes for which (taxes as here and

elsewhere used in this article include special assessments) are under the law levied by the board of county commissioners of the county.

(6) The "surplus" of a fund at the close of a fiscal year is the amount by which the cash balance exceeds the current total of liabilities, the encumbrances, and the taxes or other revenue collected in advance. Encumbrances are obligations in the form of purchase orders, contracts, or salary commitments which are chargeable to an appropriation made in the year just closing and which are unpaid at the close of such year. Taxes or other revenue collected in advance are sums received in the year just closing but which are not due until after the beginning of the new fiscal year. (1927, c. 146, ss. 1, 2; 1955, c. 724.)

Local Modification.—Forsyth: 1945: c. 87.

Editor's Note.—The 1955 amendment rewrote §§ 153-114 through 153-141 in their entirety.

Accumulation of Surplus School Sinking Fund Not Authorized.—Prior to the 1955 amendment, the law did not contemplate or authorize the accumulation of a surplus school sinking fund and the exemption of such surplus from the salutary provisions of the "County Fiscal Control Act." Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

The board of county commissioners may amend or clarify their records to make them speak the truth in order to list separately tax levies for general and special purposes as required by this section, and while this power exists only to make bona fide corrections, nothing else appearing, resolutions amending the records will be assumed to be what they purport to be, and not original actions. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

Municipalities.—For decision rendered when County Fiscal Control Act applied to municipalities, see Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

Quoted in Coe v. Surry County, 226 N. C. 125, 36 S. E. (2d) 910 (1946).

Cited in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843 (1931).

§ **153-115. County accountant.**—It shall be the duty of the board of county commissioners in each county in the State to appoint some person of honesty and ability, who is experienced in modern methods of accounting, as county accountant, to hold such office at the will of the board; but, in lieu of appointing a county accountant in counties in which there is an auditor or accountant holding office under the provisions of a special act of the General Assembly, the board shall impose and confer upon such auditor or accountant all the powers and duties herein imposed and conferred upon county accountants; and in any county of the State in which there is no auditor or accountant holding office under the provisions of a special act, the board may impose and confer such powers and duties upon any county officer, except the sheriff or the tax collector or the county treasurer or any person or bank acting as county financial agent or performing the duties ordinarily performed by a county treasurer or county financial agent. The board may set the salary of the county accountant and such other assistants as the board determines are necessary to aid in the performance of his duties, except where such salary or salaries are set by special act. If the duties and powers herein imposed and conferred on county accountants are imposed and conferred on any officer of the county, the board may revise and adjust the salary or compensation of such officer in order that adequate compensation may be paid to him for the duties of his office. Wherever in this article reference is made to the county accountant, such reference shall be deemed to include either the person appointed as county accountant or the officer upon which the powers and duties thereof are imposed and conferred. (1927, c. 146, s. 3; 1955, c. 724.)

Local Modification.—Brunswick: 1931, c. 34; 1941, c. 71; 1943, c. 327; Harnett: 1933, c. 295; Jackson: 1947, c. 17, s. 13; Wayne: 1953, c. 341.

Detailed Accounts to Be Kept.—Under the provisions of this article it is the duty of the county accountant to keep detailed accounts of appropriations and disbursements of county funds and to certify on each warrant or order drawn against the county that provision has been made for its payment and appropriation duly made or a bond or note duly authorized as required by this article. Avery County v. Braswell, 215 N. C. 270, 1 S. E. (2d) 864 (1939), followed in 215 N. C. 279, 1 S. E. (2d) 870 (1939).

Cited in Board of Education v. Walter, 198 N. C. 325, 151 S. E. 718 (1930).

§ 153-116. Additional duties of county accountant.—In addition to the duties imposed and powers conferred upon the county accountant by this article, he shall have the following duties and powers:

(1) He shall act as accountant for the county and subdivisions in settling with all county officers.

(2) He shall keep or cause to be kept a record of the date, source, and amount of each item of receipt, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made; and he shall keep or cause to be kept a copy of every contract made requiring the payment of money.

(3) He shall require and it shall be the duty of every officer and employee receiving or disbursing money of the county or its subdivision to keep a record of the date, source, and amount of each item of receipt, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made.

(4) He shall examine once a month, or at such other times as the board may direct, all books, accounts, receipts, vouchers, and other records of all officers and employees receiving or expending money of the county or of any subdivision thereof, including the county board of education and other subdivisions and including justices of the peace and other judicial officials; provided, that the board of county commissioners may relieve the county accountant of the duty of examining the records of any such officer or employee whose records are audited at least annually by a certified public accountant or by a public accountant registered under chapter 93 of the General Statutes.

(5) He shall require and it shall be the duty of all officers and employees in the county who collect fines, penalties, and other money to be applied to public purposes, to file with him each month, or oftener if the board so directs, a report showing amounts collected by such officers, including a report of all fees collected for the performance of their duties, whether they are entitled to such fees as the whole or part of their compensation or are not entitled to same: Provided, that in the case of elected officials, audits which include fees collected for the performance of their duties and to which they are entitled as a part of their compensation, shall not be required more than once a year and at the end of such official's tenure in office.

(6) He shall, as often as he may be directed by the board of county commissioners, file with the board a complete statement of the financial condition of the county and its subdivisions, showing the receipts and expenditures of the different officers, departments, institutions, and agencies.

(7) He shall advise with the heads of offices, departments, institutions, and agencies of the county and its subdivisions and with State officers as to the best and most convenient method of keeping accounts, and shall inform himself as to the best and simplest methods of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the county and subdivisions.

(8) He shall not allow any bill or claim unless the same be so itemized as to show the nature of the services rendered.

(9) He shall perform such other duties having relation to the purposes of this article as may be imposed upon him by the board of county commissioners. (1927, c. 146, s. 4; 1953, c. 973, s. 1; 1955, c. 724.)

Local Modification.—Mitchell, as to subdivision (5): 1955, c. 1112.

Editor's Note.—The 1953 amendment rewrote subsection (7) as it appeared before the 1955 amendment.

§ 153-117. Heads of offices, departments, institutions, and agencies to file budget statements before June 1.—It shall be the duty of all heads of offices,

departments, institutions, and agencies of the county and its subdivisions to file with the county accountant on such date subsequent to the fifteenth day of March and prior to the first day of June of each year as the county accountant may direct (i) A complete statement of the amounts expended for each object of expenditure in his office, department, institution, or agency, in the fiscal year preceding the then current fiscal year, and (ii) A complete statement of the amount expended and estimated to be expended for each object in his office, department, institution, or agency in the current fiscal year, and (iii) An estimate of the requirements of his office, department, institution or agency for each object in the budget year. Such statements and estimates shall list each object of expenditure in such form and in such detail as may be prescribed by the county accountant, and shall include such other supporting information as may be prescribed by the county accountant. (1927, c. 146, s. 5; 1955, c. 724.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-118. Budget estimate.—Upon receipt of such statements and estimates, the county accountant shall prepare (i) his estimate of the amounts necessary to be appropriated for the budget year for the various offices, departments, institutions, and agencies of the county and its subdivisions, listing the same under the appropriate funds maintained as required by § 153-114, which estimate shall include the full amount of all debt service which the county accountant through the exercise of due diligence determines will be due and payable in the budget year, and also shall include the full amount of any deficit in any fund, and may include a contingency estimate for each fund to meet expenditures for which need develops subsequent to the passage of the budget resolution, and (ii) an itemized estimate of the revenue to be available during the budget year, separating revenue from taxation from revenue from other sources and classifying the same under the appropriate funds maintained as required by § 153-114, and (iii) an estimate of the amount of surplus in each fund as of the beginning of the budget year which he recommends be appropriated to meet expenditures for the budget year. These estimates shall be broken down into as much detail and have appended thereto such information as the board of county commissioners may direct and otherwise to take such form as the county accountant may determine. The estimates of revenue when added to the surplus figure for each fund shall equal the estimates of appropriations for the fund. The county accountant shall also include with such estimates a statement of the rate of tax which will have to be levied in each fund in order to raise the amount of revenue from taxation included in the estimate of revenue: Provided, that the county accountant shall indicate clearly in such statement the percentage of taxes levied which he estimates will be collected in the budget year and on which he has based the rate of tax necessary to raise the amount of revenue from taxation included in the estimate of revenue. Such estimates and statements of the county accountant shall be termed the "budget estimate," and shall be submitted to the board not later than the first Monday of July of each year: Provided, that the budget estimate may be submitted to the board on such earlier date as the county accountant, with the approval of the board, may determine. The county accountant may submit a budget message with the budget estimate which may contain an outline of the proposed financial policies of the county for the budget year, may describe in connection therewith the important features of the budget plan, may set forth the reasons for stated changes from the previous year in appropriation and revenue items, and may explain any major changes in financial policy. (1927, c. 146, s. 6; 1955, c. 724.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-119. Time for filing budget estimate.—Immediately upon the submission of the budget estimate, and at least twenty days before the adoption of the budget resolution, the board shall:

(1) File the budget estimate in the office of the clerk of the board where it shall remain for public inspection, and

(2) Make available a copy of the budget estimate for all newspapers published in the county, and

(3) Cause to be published in at least one newspaper published in the county a statement that the budget estimate has been presented to the board and that a copy of the same is on file for inspection in the office of the clerk of the board, which statement may also include such other information as the county accountant may determine: Provided, however, that if no newspaper be published in the county, such statement shall be posted at the courthouse door and at least three other public places in the county at least twenty days before the passage of the budget resolution. (1927, c. 146, s. 7; 1955, c. 724.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-120. Budget resolution.—It shall be the duty of the board of county commissioners, at least twenty days subsequent to the publication of the statement required by § 153-119 but not later than the twenty-eighth day of July in each year, to adopt and record on its minutes a budget resolution, the form of which shall be prescribed by the county accountant. The budget resolution shall, on the basis of the estimates and statements submitted by the county accountant, make appropriations for the several offices, departments, institutions, and agencies of the county and its subdivisions, and the budget resolution shall provide for the financing of the appropriations so made. The appropriations shall be made in such sums as the board may deem sufficient and proper, whether greater or less than the recommendations of the budget estimate, and the appropriation or appropriations for each office, department, institution, or agency shall be made in such detail as the board deems advisable: Provided, however, that (i) no appropriation recommended by the county accountant for debt service shall be reduced, and (ii) the board shall appropriate the full amount of all lawful deficits reported in the budget estimate, and (iii) no contingency appropriation shall be included in any fund in excess of five per cent (5%) of the total of the other appropriations in the fund: Provided, that before any or all of such contingency appropriation be expended, the board must by resolution authorize the expenditure, and (iv) no appropriations shall be made which will necessitate the levy of a tax in excess of any constitutional or statutory limits of taxation, and (v) the total of all appropriations in each fund shall not be in excess of the estimated revenues and surplus available to that fund. The revenue portion of the budget resolution shall include the following:

(1) A statement of the revenue estimated to be received in the budget year in each fund maintained as required by § 153-114, separating revenues from taxes to be levied for the budget year from revenues from other sources and including such amount of the surplus of each fund on hand or estimated to be on hand at the beginning of the budget year as the board deems advisable to appropriate to meet expenditures of such fund for the budget year; and

(2) The levy of such rate of tax for each fund in the budget year as will be necessary to produce the sum appropriated less the estimates of revenue from sources other than taxation and less that part of the surplus of the fund which is proposed to be appropriated to meet expenditures in the budget year.

In determining the rate of tax necessary to produce such sums, the board shall decide what portion of the levy is likely to be collected and available to finance appropriations and shall make the levy accordingly; and further the board shall not estimate the revenue from any source other than the property tax in an amount in excess of the amount received or estimated to be received in the year preceding the budget year unless it shall determine that the facts warrant the expectation that

such excess amount will actually be realized in cash during the budget year. (1927, c. 146, s. 8; 1955, c. 724.)

Local Modification.—Mecklenburg: 1941, cc. 38, 72.

§ 153-121. Copies of resolution filed with county treasurer and county accountant.—A copy of the budget resolution shall be filed with the county treasurer or other officer or agent performing the functions ordinarily assigned to the county treasurer, and another copy thereof shall be filed with the county accountant, both copies as so filed to be kept on file for their direction in the disbursement of county funds. (1927, c. 146, s. 9; 1955, c. 724.)

§ 153-122: Repealed by Session Laws 1955, c. 724.

§ 153-123. Publication of statement of financial condition of county.—As soon as practicable after the close of each fiscal year, the county accountant shall prepare and cause to be published in a newspaper published in the county, or if no newspaper be published in the county, then by posting at the courthouse door and at least three other public places in the county, a statement of the financial condition of the county, containing such figures and information as the county accountant may consider it advisable to publish, which statement as so published or posted may include a statement of the assets and liabilities of the several funds of the county as of the close of the preceding fiscal year together with a summary statement of the revenue receipts and expenditures of such funds in the preceding year, a statement of the bonded debt of the county as of the close of the preceding fiscal year, and a statement of assessed valuations, tax rates, tax levies, and uncollected taxes for the preceding three fiscal years. (1927, c. 146, s. 11; 1955, c. 724.)

Local Modification.—Harnett: 1959, c. 1199.

§ 153-124: Repealed by Session Laws 1955, c. 724.

§ 153-125. Failure to raise revenue a misdemeanor; emergencies.—Any county commissioner of any county who shall fail to vote to raise sufficient revenue for the operating expenses of the county as provided for in § 153-120, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court; provided, that in case of an emergency upon application to the Local Government Commission such Local Government Commission may permit the board of commissioners for any county to anticipate the taxes of the next fiscal year by not more than five per cent (5%) of the tax levy for the current year. (1929, c. 321, s. 1; 1955, c. 724.)

§ 153-126. Execution of notes in anticipation of taxes.—In the event of the approval of such anticipation of the taxes of the next fiscal year by the Local Government Commission, the county commissioners of any such county are authorized to provide by resolution for the issuance of a note or notes in an amount not in excess of the amount authorized by such Local Government Commission, and such note or notes shall be payable not later than June thirtieth of the next fiscal year and shall be paid by a special tax levied for such purpose. Any such note or notes shall be issued in a manner consistent with the provisions of the County Finance Act. (1929, c. 321, s. 2; 1955, c. 724.)

§ 153-127. Amendments to the budget resolution.—The board of county commissioners, in the event the members thereof deem it necessary, may by resolution amend the budget resolution after its passage in any or all of the following ways:

(1) By transferring the unencumbered balance of any appropriation, or any portion of such balance, to any other appropriation within the same fund or to any new appropriation within the same fund;

(2) By making a supplemental appropriation in any fund in all or any portion of the amount of the unappropriated surplus of such fund or the amount by which total revenue receipts have exceeded total estimated revenues in such fund as of the date of the making of the supplemental appropriation;

(3) By transferring all or any portion of the unencumbered balance of any appropriation in the general fund to any existing appropriation or to any new appropriation in another fund or by making a supplemental appropriation in another fund financed by unappropriated surplus or excess revenue receipts of the general fund: Provided, that no amendment to the budget resolution shall be made if the effect of such amendment is to authorize an expenditure for a purpose which could not have been legally authorized in the original budget resolution.

Copies of any resolution made pursuant to this section shall be made available to the county treasurer, county accountant, and the head of each office, department, institution, or agency affected thereby. (1927, c. 146, s. 13; 1955, c. 724.)

§ **153-128. Interim appropriations.**—In case the adoption of the budget resolution is delayed until after the beginning of the budget year, the board of county commissioners may make appropriations for the purpose of paying salaries, the principal and interest of indebtedness, the stated compensation of officers and employees, and the usual ordinary expenses of the county and its subdivisions for the interval between the beginning of the budget year and the adoption of the annual budget resolution. The interim appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual budget resolution for the year. (1927, c. 146, s. 14; 1955, c. 724.)

§ **153-129:** Repealed by Session Laws 1955, c. 724.

§ **153-130. Provisions for payment.**—No contract or agreement requiring the payment of money, or requisition for supplies or materials, shall be made, and no warrant or order for the payment of money shall be drawn upon the treasury of the county, or a subdivision, unless provision for the payment thereof has been made by (i) an appropriation as provided by this article, or (ii) through the means of bonds or notes duly authorized by the General Assembly and by the board of county commissioners, and further authorized, in all cases required by law or by the Constitution, by a vote of qualified voters or taxpayers, or otherwise; nor shall such contract, agreement, or requisition be made unless the unencumbered balance of such appropriation or provision remains sufficient for such payment. No contract or agreement or requisition requiring the payment of money shall be valid unless the same be in writing, and unless the same shall have printed, written, or typewritten thereon a statement signed by the county accountant, as follows: "Provision for the payment of moneys to fall due under this agreement has been made by appropriation duly made or by bonds or notes duly authorized, as required by the 'County Fiscal Control Act'." Such certificate shall not, however, make valid any agreement or contract made in violation of this section. Before making such certificate, the county accountant shall ascertain that a sufficient unencumbered balance of the specific appropriation remains for the payment of the obligation, or that bonds or notes have been so authorized the proceeds of which are applicable to such payment, and the appropriation or provision so made shall thereafter be deemed encumbered by the amount to be paid on such contract or agreement until the county is discharged therefrom. (1927, c. 146, s. 15; 1955, c. 724.)

Cited in Sherrill v. Graham County, 205 N. C. 178, 170 S. E. 636 (1933).

§ **153-131. Warrants for payment.**—No bill or claim against the county or any subdivision shall be paid unless the same shall have been approved by the head of the office, department, institution, or agency for which the expense was incurred

nor unless the same shall have been presented to and approved by the county accountant, or in case of his disapproval of such bill or claim, by the board of county commissioners. The board shall not approve any bill or claim which has been disallowed by the county accountant without entering upon the minutes of the board its reason for approving the same in such detail as may show the board's reason for reversing the county accountant's disallowance. No bill or claim against the county or any subdivision shall be paid except by means of a warrant or order on the county treasurer or county depository, and no warrant, or order, except a warrant or order for payment of maturing bonds, notes, or interest coupons thereto appertaining, and except a warrant or order for the payment of any bill or claim approved by the board of county commissioners over the disallowance of the county accountant, as above provided, shall be valid unless the same shall bear the signature of the county accountant below a statement which he shall cause to be written, printed, or typewritten thereon containing the words: "Provision for the payment of this warrant (or order) has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'County Fiscal Control Act'."

The board of county commissioners may provide, by appropriate resolution, for the use of facsimile signature machines or signature stamps in connection with the affixing of signatures or countersignatures to some or all of such warrants or orders, whether such signatures or countersignatures are required by this section, or by any other law, or by any resolution of the board. The board shall fix upon one or more bonded officers or employees of the county or its subdivisions the responsibility for the custody and use of any such signature machine, or the signature plate or plates used in any such machine, and for the custody and use of any such signature stamp. The officers and employees on whom such responsibility is fixed, and the sureties on their official bonds, shall be liable for any illegal, improper, or unauthorized use of such machines, plates or stamps. (1927, c. 146, s. 16; 1935, c. 382; 1955, c. 724; 1957, c. 213.)

Editor's Note.—The 1957 amendment added the second paragraph. Section 2 of the amendatory act provided: "This act shall not repeal any local or special acts permitting or affecting the use of such facsimile signature machines or stamps."

§ 153-132. Contracts or expenditures in violation of preceding sections.—If any county accountant shall make any certificate on any contract, agreement, requisition, warrant, or order as required by G. S. 153-130 or G. S. 153-131, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be personally liable for all damages caused thereby. If any officer or employee shall make any contract, agreement, or requisition without having obtained the certificate of the county accountant as required by G. S. 153-130, or if any officer or employee shall pay out or cause to be paid out any funds in violation of the provisions of G. S. 153-131, he shall be personally liable for all damages caused thereby. (1955, c. 724.)

Vouchers to Be Certified by Accountant.—The duties of the county accountant in certifying county vouchers is clearly set forth in the County Fiscal Control Act, which duties are special in character and are in addition to and not in substitution for the duties and functions of other county officers, and even if it be conceded that the signing of the voucher by the chairman of the board was malfeasance, the accountant and his surety may not avoid liability on the ground that some other officer was guilty of negligence or malfeasance. Avery County v. Braswell, 215 N. C. 270, 1 S. E. (2d) 864 (1939), followed in 215 N. C. 279, 1 S. E. (2d) 870 (1939).

§ 153-133. Accounts to be kept by county accountant.—Accounts shall be kept by the county accountant for each appropriation made in the budget resolution or amendment thereto, which appropriations shall be classified under the various funds maintained as required in G. S. 153-114, and every warrant or order upon the county treasury shall state specifically against which of such funds the warrant or order is drawn; information shall be kept for each such account so as to show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid

obligations charged against it, and the unencumbered balance to the credit thereof. (1927, c. 146, s. 17; 1955, c. 724.)

§ 153-134. Bond of county accountant.—The county accountant shall furnish bond in some surety company authorized to do business in North Carolina, the amount to be fixed by the board of commissioners in a sum not less than five thousand dollars ($5,000.00), which bond shall be approved by the board of county commissioners and shall be conditioned for the faithful performance of his duties under this article: Provided, that where the powers and duties of the county accountant have been imposed and conferred as provided in G. S. 153-115 or an auditor or accountant holding office under the provisions of a special act, and such auditor or accountant is required to give bond under the terms of a special act, the bond required of such auditor or accountant under the special act shall be sufficient compliance with this section, and no additional bond shall be required of such officer to cover his duties as county accountant. (1927, c. 146, s. 18; 1955, c. 724.)

Approval of Bond in Smaller Amount.—See Ellis v. Brown, 217 N. C. 787, 9 S. E. (2d) 467 (1940).

§ 153-135. Daily deposits by collecting or receiving officers.—Every public officer and employee whose duty it is to collect or receive any funds or money belonging to any county or subdivision thereof shall deposit the same daily, or if the board of county commissioners grants its approval he shall be required to deposit the same only when he has as much as two hundred fifty dollars ($250.00) in his possession, with the county treasurer or in a bank, banks, or trust company designated by the board of county commissioners in an account approved by the county accountant and secured as provided in G. S. 159-28, and he shall report the same immediately following such deposit to the county accountant by means of a treasurer's receipt or duplicate deposit ticket signed by the depository: Provided, that a deposit shall in any event be made on the last business day of each month. He shall settle with the county accountant monthly, or oftener if the board of county commissioners so directs, reporting to the county accountant at such time the amount of money collected or received from each of the various sources of revenue. If such officer or employee collects or receives such public moneys for a taxing district for which he is not an officer or an employee, he shall pay over periodically, as directed by the board of county commissioners, to the proper officer of such district the amount so collected or received and take receipt therefor.

The board of county commissioners is hereby authorized and empowered to select and designate, by recorded resolution, some bank or banks or trust company in this State as official depository or depositories of the funds of the county, which funds shall be secured in accordance with G. S. 159-28.

It shall be unlawful for any public moneys to be deposited by any officer or employee in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting in such violation shall be guilty of a misdemeanor and punished by fine or imprisonment or both, in the discretion of the court. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134; 1955, c. 724.)

Local Modification.—Guilford: 1953, c. 369.

Requiring Bonds and Interest of Bank Appointed County Financial Agent.—See note under § 155-3.

Applied in United States Fidelity, etc., Co. v. Hood, 206 N. C. 639, 175 S. E. 135 (1934); Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33 (1935).

§ 153-136. Conduct by county accountant constituting misdemeanor.—If a county accountant shall knowingly approve any fraudulent, erroneous, or otherwise invalid claim or bill, or make any statement required by this article, knowing the same to be false, or shall willfully fail to perform any duties imposed upon him by this article, he shall be guilty of a misdemeanor and punishable for each offense by

a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty days, or both fine and imprisonment, in the discretion of the court, and shall be liable for all damages caused by such violation or failure. (1927, c. 146, s. 20; 1955, c. 724.)

§ 153-137. Liability for damages for violation by officer or person.—If any county officer or head of any office, department, institution, or agency or other official or person of whom duties are required by this article shall willfully violate any part of this article, or shall willfully fail to perform any of such duties, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty days, or both fine and imprisonment, in the discretion of the court, and shall be liable for all damages caused by such violation or failure. (1927, c. 146, s. 21; 1955, c. 724.)

§ 153-138. Recovery of damages.—The recovery of all damages allowed by this article may be made in the court having jurisdiction of the suit of the county, any subdivision thereof, or any taxpayer or other person aggrieved. (1927, c. 146, s. 22; 1955, c. 724.)

§ 153-139. Chairman of county commissioners to report to solicitor.—It shall be the duty of the chairman of the board of county commissioners to report to the solicitor of the district within which the county lies all facts and circumstances showing the commission of any offense as defined herein, and it shall be the duty of the solicitor to prosecute. At the request of the solicitor, the board of county commissioners is authorized, within its discretion, to provide legal assistance to the solicitor in prosecuting such cases and any other case involving official misconduct or violation of a public trust within such county and pay the cost of same out of the general fund of the county. (1927, c. 146, s. 23; 1939, c. 112, s. 1; 1955, c. 724.)

§ 153-140. Purpose of article.—It is the purpose of this article to provide a uniform procedure for the preparation and administration of budgets to the end that every county in the State may balance its budget on the basis of actual cash receipts within the budget period and carry out its functions without incurring deficits. Its provisions are intended to enable boards of county commissioners to make financial plans to meet expenditures, to insure that county officials administer their respective offices, departments, institutions, and agencies in accordance with these plans, and to permit taxpayers and bondholders to form intelligent opinions based on sufficient information as to the financial policies and administration of the counties in which they are interested. (1927, c. 146, s. 24; 1955, c. 724.)

§ 153-141. Construction and application of article.—Section 105-339 and all other laws and parts of laws heretofore or hereafter enacted, whether general, local, or special, which are in conflict with this article are hereby repealed, except a law hereafter enacted expressly repealing or amending this article. (1927, c. 146, s. 25; 1955, c. 724.)

§ 153-142. Local units authorized to accept their bonds in payment of certain judgments and claims.—The governing bodies of the various counties, cities, towns, and other units in the State are hereby authorized in their discretion to accept their own bonds, at par, in settlement of any and all claims which they may have against any person, firm, or corporation, on account of any money of said unit held in any failed bank or on account of any judgment secured against any person, firm, or corporation on account of the funds in said bank.

Upon an order issued by the governing authorities of the county, city, town, or other unit, the treasurer of the county, city, town, or other unit is hereby authorized and empowered to accept the bonds of said unit in settlement of said claim, as set out in the preceding paragraph, and to mark said claim satisfied in full, whether the same has been reduced to judgment or not. (1933, c. 376.)

Article 10A.

Capital Reserve Funds.

§ 153-142.1. Short title.—This article may be cited as "The County Capital Reserve Act of one thousand nine hundred and forty-three." (1943, c. 593, s. 1.)

Editor's Note.—For comment on this article, see 21 N. C. Law Rev. 357.

§ 153-142.2. Meaning of terms.—The terms "fiscal year," "surplus revenues," "unencumbered balance," "debt service," and "fund," as used in this article shall have the same meaning as expressed in § 153-114, the same being a part of the County Fiscal Control Act. The terms "governing body," "clerk," "necessary expenses," and "published" as used in this article shall have the same meaning as expressed in § 153-70, being a part of the County Finance Act. The term "financial officer," as used in this article means the officer of a county having charge or custody of the moneys of the county, including moneys of the county board of education. (1943, c. 593, s. 2.)

§ 153-142.3. Powers conferred.—In addition to all other funds now authorized by law a county is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1943, c. 593, s. 3.)

§ 153-142.4. Sources of capital reserve fund.—The capital reserve fund may consist of moneys derived from any one or more of the following sources:

(1) Unappropriated surplus revenues and unencumbered balances itemized as to:
   a. Collections of ad valorem taxes levied on all taxable property in the county separately stated as to purpose for which such taxes were levied;
   b. Proceeds from the sale of county property or property of the county board of education, separately stated;
   c. Proceeds from insurance collected by reason of loss of county property or property of the county board of education, separately stated;
   d. Receipts from revenues derived from sources other than ad valorem taxes which are not pledged or otherwise applicable by law to the payment of existing debt and separately stated as to the fund to which such revenues may lawfully accrue.

(2) Appropriation or appropriations included in the annual appropriation resolution: Provided, however, the sources of revenues from which each such appropriation shall be payable shall be itemized in said appropriation resolution as to amount and class of sources stated in clauses b, c and d of subdivision (1) of this section;

(3) Proceeds from the sale of county property not included in the estimated revenues appropriated for the current fiscal year;

(4) Proceeds from the sale of property of the county board of education not included in the estimated revenues appropriated for the current fiscal year;

(5) Proceeds from insurance collected by reason of loss of county property which are not included in the estimated revenues appropriated for the current fiscal year;

(6) Proceeds from insurance collected by reason of loss of property of the county board of education which are not included in the estimated revenues appropriated for the current fiscal year;

(7) Collections of revenues from sources other than ad valorem taxes in excess of such revenues estimated and appropriated for the current fiscal year

and separately stated as to the fund to which such revenues may lawfully accrue. (1943, c. 593, s. 4; 1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment deleted from the latter part of the preliminary paragraph the words "except that no money shall be deposited in such capital reserve fund after July tenth, one thousand nine hundred forty-five."

§ 153-142.5. How the capital reserve fund may be established.—When a county elects under this article to establish a capital reserve fund the governing body shall pass an order authorizing and declaring that the same shall be established. Said order shall state such itemized sources provided in § 153-142.4 from which moneys are available for deposit in the capital reserve fund at the time of passage. In said order the governing body shall designate some bank or trust company as depository in which moneys shall be deposited for the capital reserve fund. Said order shall further contain a request to the Local Government Commission that the provisions thereof be approved by said Commission. Upon passage of said order the same shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the Local Government Commission. (1943, c. 593, s. 5.)

§ 153-142.6. When the capital reserve fund shall be deemed established.—The capital reserve fund shall be deemed established when the order passed under the provisions of § 153-142.5 is approved by the Local Government Commission. After action is taken upon the provisions of said order by the Local Government Commission the secretary of said Commission shall notify the clerk in writing of the approval by said Commission or disapproval, if the Commission declines to approve the order, and the reasons therefor. Upon receipt of the notice of such approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the designated depository the moneys stated as available in said order for the capital reserve fund and simultaneously report said deposit to the Local Government Commission. (1943, c. 593, s. 6; 1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment struck out the former provision relating to the duty of the financial officer to make deposits and report same to the Local Government Commission.

§ 153-142.6½. Increases to capital reserve fund.—No increase to a capital reserve fund shall be made except by resolution adopted by the governing body and the provisions thereof approved by the Local Government Commission, which resolution shall state the source or sources of moneys from which such increase is intended to be made and the amount of the money from each such source, but each increase shall be from moneys derived from the identical source or sources as those stated in the order establishing the capital reserve fund or in an amendment thereto. The clerk shall transmit a certified copy of such resolution to the Local Government Commission. After action is taken upon the provisions of said resolution by the Local Government Commission the secretary of such Commission shall notify the clerk in writing of the approval by said Commission or disapproval, if the Commission declines to approve the resolution, and the reasons therefor. Upon receipt of the notice of approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the duly designated depository the moneys stated in said resolution and simultaneously report such deposit to the Local Government Commission. Deposits required in § 153-142.18 shall not be construed as increases of a capital reserve fund within the meaning of this section. (1945, c. 464, s. 2.)

§ 153-142.7. Amendments to order authorizing capital reserve fund.—At any time or from time to time after the capital reserve fund is established, the governing body may amend the order authorizing the establishment of such fund for the purpose of including additional sources provided in § 153-142.4 or for the purpose

of changing the designated depository. Each such amendment shall contain a request to the Local Government Commission that the provisions thereof be approved by said Commission. Each such amendment shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy thereof to the Local Government Commission. No such amendment shall be effective until the provisions thereof have been approved by said Commission. (1943, c. 593, s. 7.)

§ 153-142.8. Security for protection of deposits.—Any bank or trust company designated as depository of the capital reserve fund shall furnish such security for deposits made in said fund as is required by law for other funds of the county. (1943, c. 593, s. 8.)

§ 153-142.9. Purposes for which a capital reserve fund may be used.—A capital reserve fund may be withdrawn in whole or in part at any time or from time to time, and applied to or expended for:

(1) Any one or more of the following improvements or properties:

a. Erection and purchase of schoolhouses, erection of additions to schoolhouses, school building equipment, acquisition of lands for school purposes;

b. Erection and purchase of courthouse and jails, including public auditorium within and as a part of a courthouse, erection of additions to courthouse and jails, acquisition of lands for same;

c. Erection and purchase of county homes for the aged and infirm, erection of additions to county homes, acquisition of lands for county homes;

d. Erection and purchase of hospitals, erection of additions to hospitals, acquisition of lands for hospitals;

e. Erection and purchase of public auditoria and acquisition of lands therefor;

f. Acquisition and improvement of lands for public parks and playgrounds;

g. Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft;

h. Supplementing proceeds of the sale of bonds or bond anticipation notes of the county issued for any one or more of the purposes stated in paragraphs b, c, d, e, f and g of this subdivision, or supplementing federal or State grants for any one or more of such purposes;

i. Supplementing proceeds of sale of bonds or bond anticipation notes of the county issued for the purpose stated in paragraph a of this subdivision, or supplementing loans from the State Literary Fund, or supplementing federal or State grants for such purpose;

j. Carrying out any of the purposes set forth in subdivision (46) of § 153-9, as the same appears in the 1959 Supplement to the General Statutes, to the extent and in such amounts as such capital reserve funds do not represent ad valorem tax levies of the county.

(2) Temporary borrowing for meeting appropriations made for the current fiscal year in anticipation of the collections of taxes and other revenues of such current fiscal year: Provided, however, the aggregate amount of such withdrawal or withdrawals for meeting appropriations shall not at any time exceed twenty-five per centum of the total appropriations of the fiscal year in which such withdrawal or withdrawals shall be made in an ensuing fiscal year unless and until the capital reserve fund has been fully repaid for the amount or amounts so previously withdrawn. Each such withdrawal shall be repaid not later than thirty days after the close of the fiscal year in which made;

(3) Purchasing at market prices and retiring outstanding bonds of the county maturing more than five years from the date of such withdrawal;

(4) Investment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the State of North Carolina, or in bonds of the county;

(5) Payment of maturing serial bonds or notes and interest on bonds or notes of the county in accordance with a determined plan of amortization;

(6) When the order authorizing and establishing a capital reserve fund contains, as provided in clause a of subdivision (1) of § 153-142.4, collections of ad valorem taxes levied for a special purpose, such special purpose. (1943, c. 593, s. 9; 1945, c. 464, s. 2; 1949, c. 196, s. 1; 1961, c. 430.)

Local Modification.—Halifax: 1957, c. 99.

Editor's Note.—The 1945 amendment made subdivision (4) applicable to certificates of indebtedness, and the 1949 amendment added subdivision (6).

The 1961 amendment inserted paragraph j of subdivision (1).

§ 153-142.10. Restrictions upon use of the capital reserve fund.—No part of the capital reserve fund consisting of collections of ad valorem taxes levied for a special purpose within the meaning of the Constitution of North Carolina shall be withdrawn and extended for any purpose except that for which such taxes were levied, but such collections may be used for either of the purposes stated in subdivisions (2), (4) and (6) of § 153-142.9, except that collections of taxes levied for debt service may be expended for either of the purposes stated in subdivisions (3) and (5) of said § 153-142.9. Upon written petition of the county board of education to the governing body requesting that any moneys deposited in the capital reserve fund, which prior to such deposit had been in the custody or control of the county board of education, be withdrawn and turned over to the county board of education for expenditure for the purposes stated in paragraphs a and/or i of subdivision (1) of § 153-142.9, it shall be the duty of the governing body and other officers of the county to do all things necessary within the provisions of law to perfect such withdrawal and such moneys so withdrawn shall be deemed necessary for expenditure by the county as an administrative agency of the State for maintenance of the six months school term required by the Constitution of North Carolina. (1943, c. 593, s. 10; 1945, c. 464, s. 2; 1949, c. 196, s. 2.)

Editor's Note.—The 1945 amendment rewrote the second sentence, and the 1949 amendment inserted the reference to subdivision (6) in the first sentence.

§ 153-142.11. Authorization of withdrawal from the capital reserve fund.—A withdrawal for any one of the purposes contained in subdivisions (2), (3), (4), (5) and (6) of § 153-142.9 shall be authorized by resolution duly adopted by the governing body. Each such resolution shall specify the purpose of the withdrawal, the amount of such withdrawal, the sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source. Each such resolution shall contain a request to the Local Government Commission for its approval of the provisions thereof, shall be spread upon the minutes of the governing body and the clerk shall transmit a certified copy of such resolution to the Local Government Commission. A resolution authorizing a withdrawal for the purpose stated in subdivision (2) of § 153-142.9 shall further specify the total appropriations contained in the annual appropriation resolution of the fiscal year in which such withdrawal is authorized and shall state the total amount of such withdrawals previously made in such fiscal year and the date upon which the withdrawal shall be repayable to the capital reserve fund. In any case where all or any part of the capital reserve fund has been withdrawn and invested in bonds, notes or certificates of indebtedness of the United States of America which are about to mature and it is desired to continue investment of like kind, such continuance may be effected by exchange of said maturing bonds, notes or certificates of indebted-

ness through the Treasury of the United States, or an authorized agent thereof, for bonds, notes or certificates of indebtedness of the United States of America of like principal amount and of later maturity or maturities: Provided, however, each such continuance and exchange shall first be authorized by resolution adopted by the governing body and the provisions thereof approved by the Local Government Commission.

A withdrawal for any one of the improvements or properties contained in subdivision (1) of § 153-142.9 shall be authorized by order duly passed by the governing body which order shall state:

(1) In brief and general terms the purpose for which the withdrawal is to be made;

(2) The amount of the withdrawal;

(3) The sources of moneys in the capital reserve fund for such withdrawal and the amount to be withdrawn from each such source;

(4) One of the following provisions:

a. If the purpose of such withdrawal is for necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if such withdrawal is for either necessary expenses or other than necessary expenses and the source of all the moneys available therefor is from other than ad valorem taxes, the order shall take effect thirty days after its first publication unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

b. If the purpose of such withdrawal is for other than the payment of necessary expenses and the source of moneys available therefor is in whole or in part ad valorem taxes, or, if the governing body, although not required to obtain the assent of the voters to such withdrawal, deems it advisable to obtain such assent, that the order shall take effect when approved by the voters of the county at an election as provided in this article.

Each order authorizing a withdrawal from the capital reserve fund shall be spread upon the minutes of the governing body and the clerk shall submit a certified copy thereof to the Local Government Commission. (1943, c. 593, s. 11; 1945, c. 464, s. 2; 1949, c. 196, s. 3.)

Local Modification.—Halifax: 1957, c. 99.

Editor's Note.—The 1945 amendment added the last sentence to the first paragraph, and the 1949 amendment inserted the reference to subdivision (6) near the beginning of the paragraph.

§ 153-142.12. Approval of order or resolution for withdrawal by the Local Government Commission.—No order passed by the governing body authorizing a withdrawal from the capital reserve fund shall be published as provided in this article nor shall the question of approval of the provisions thereof be submitted to the voters until said provisions have first been approved by the Local Government Commission. A certified copy of such order filed by the clerk with the Commission shall be deemed a request to the Commission for its approval of the provisions thereof. The Commission shall pass upon the provisions of such order in the same manner as it passes upon an application for approval of the issuance of bonds or notes under the Local Government Act, and may require such information and evidence pertaining to the necessity and expediency and adequacy of amount of the proposed withdrawal as it deems necessary before acting upon said order.

No resolution adopted by the governing body authorizing a withdrawal shall become effective until the provisions thereof have been approved by the Local Government Commission. (1943, c. 593, s. 12.)

§ 153-142.13. Publication of order for withdrawal.—Upon approval by the Local Government Commission of an order authorizing a withdrawal from the

capital reserve fund, the clerk shall cause said order to be published once in each of two consecutive weeks over the following appendage (the blanks being first properly filled in):

The foregoing order was passed on the ..... day of ..... 19.., and was first published on the .... day of ..... 19... Any action or proceeding questioning the validity of said order must be commenced within thirty days after its first publication.

.....
Clerk.

(1943, c. 593, s. 13.)

§ 153-142.14. Limitation of action setting aside an order for withdrawal.—Any action or proceeding in any court to set aside an order authorizing a withdrawal from the capital reserve fund, or to obtain any other relief upon the grounds that such order is invalid, must be commenced within thirty days after the first publication made under § 153-142.13. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any grounds whatever, except in an action or proceeding commenced within such period. (1943, c. 593, s. 14.)

§ 153-142.15. Elections on order authorizing withdrawal.—The provisions of §§ 153-91 through 153-100 relating to petition for referendum and election on a bond order shall apply to an order authorizing a withdrawal from the capital reserve fund: Provided, however, the majority of the qualified voters of the county, as required by the Constitution of North Carolina, shall be necessary only if the purpose stated in the order authorizing such withdrawal is for other than a necessary expense and the source of moneys in the capital reserve fund for such withdrawal is in whole or in part ad valorem taxes. In all other cases where the provisions of such order may be required to be approved by the voters, the affirmative vote of the majority of the voters voting on such order shall be sufficient to make it operative and in effect: Provided, further, a notice of election required by this article to be published shall state the amount of the proposed withdrawal and the purpose thereof, as well as the date of the election, and: Provided, further, the ballot to be furnished each qualified voter may contain the words, "For the order authorizing $..... withdrawal from the capital reserve fund of ..... County (briefly stating the purpose)" and "Against the order authorizing $..... withdrawal from the capital reserve fund of ..... County (briefly stating the purpose.)" (1943, c. 593, s. 15.)

§ 153-142.16. How a withdrawal may be made.—No withdrawal from the capital reserve fund shall be made except pursuant to authority of the governing body by resolution or order which has taken effect. Each withdrawal shall be for the full amount authorized, except a withdrawal for the purpose stated in subdivision (5) of § 153-142.9 which may be made for all or a part thereof from time to time according to the plan of amortization, and shall be by check drawn on the depository signed by the financial officer of the county and payable to said financial officer, except that a check evidencing withdrawal for the purpose of investment may be made payable to the obligor or to the vendor of such bonds, notes or certificates of indebtedness in which investment has been duly authorized. Each such check shall bear a certificate on the face or reverse thereof signed by the secretary of the Local Government Commission or by his duly designated assistant that the withdrawal evidenced thereby has been approved under the provisions of the County Capital Reserve Act of one thousand nine hundred and forty-three, and such certificate shall be conclusive evidence that such withdrawal has been approved by the Local Government Commission: Provided, however the State of North Carolina

shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such certificate. (1943, c. 593, s. 16; 1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment added the exception clause to the second sentence.

§ **153-142.17. Accounting for the capital reserve fund.**—It is the intention of this article that the deposits in and withdrawals from the capital reserve fund shall be as one account with the depository but it shall be the duty of the financial officer to maintain accounts of each source, entering the credits thereto and withdrawals therefrom, and of the purpose for which each authorized withdrawal is made. (1943, c. 593, s. 17.)

§ **153-142.18. Certain deposits mandatory.**—Each withdrawal shall be used only for the purpose specified in the resolution or order authorizing the same and shall constitute an appropriation duly made for said purpose: Provided, however, that if for any reason any part of such withdrawal is not applied to or is not necessary for such purpose, such unexpended or unused part thereof shall be promptly deposited in the capital reserve fund and credits of such deposit shall be entered to the various sources prorated on the basis upon which the withdrawal was made.

All receipts of earnings from and realizations of investments shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all withdrawals made for investment.

Receipts for repayment of moneys withdrawn for the purpose of meeting appropriations shall be promptly deposited in the capital reserve fund and credits of such deposits shall be entered to the various sources in said fund prorated on the basis of all such withdrawals made.

All deposits required in this section shall be made in the duly designated depository of the capital reserve fund and it shall be the duty of the financial officer to simultaneously report each such deposit to the Local Government Commission, (1943, c. 593, s. 18; 1945, c. 464, s. 2.)

Editor's Note.—The 1945 amendment added the last paragraph.

§ **153-142.19. Action of Local Government Commission.**—Any action required by this article to be taken by the Local Government Commission may be taken by the executive committee of said Commission. Such action taken by said executive committee shall be subject to review by the Commission in the same manner as action taken upon the issuance of bonds. (1943, c. 593, s. 19.)

§ **153-142.20. Provision for sinking funds.**—Before allocating all or any part of unappropriated surplus revenues and unencumbered balances to a capital reserve fund a county may make allocation thereof to a sinking fund for the retirement of term bonds of the county, but such allocation or allocations, together with all other assets of the sinking fund, shall not exceed the amount of the term bonds outstanding and unpaid. (1943, c. 593, s. 20.)

§ **153-142.21. Termination of power to establish or increase a capital reserve fund.**—No order establishing a capital reserve fund, or amendment thereto for including additional sources, shall be passed nor shall a resolution providing for increase of a capital reserve fund be adopted after July tenth, one thousand nine hundred forty-seven. (1945, c. 464, s. 2.)

Validation of Former Increase.—Session Laws 1945, c. 464, § 3, provides: "Any increase heretofore made to a capital reserve fund with money from the same source or sources stated in the ordinance or order establishing said fund in accordance with the provisions of either the Municipal Capital Reserve Act of one thousand nine hundred forty-three or the County Capital Reserve Act of one thousand nine hundred forty-three, or stated in an amendment to said ordinance or order, is hereby validated."

Article 11.

Requiring County, Municipal, and Other Officials to Make Contracts for Auditing and Standardizing Bookkeeping Systems.

§ **153-143. Director of Local Government.**—At such time as any board of county commissioners, board of education or other county officials, or the governing body or officials of any city, town, special charter district or other subdivision in the State of North Carolina proposes to employ any certified public accountants or auditors other than the official county auditor, county accountant, municipal accountant or other similar officer for making any statement or for the auditing of any books of the county, city, town, special charter district or other subdivision the Director of Local Government shall be notified of such purpose and it shall be the duty of a representative of the Director of Local Government to advise with the officials with respect to the scope of such audit and the nature of same and to furnish such officials all information available for their guidance in the making and entering into contracts or engagements for said audit or examination. (1929, c. 201, s. 1; 1931, c. 99, s. 1.)

Editor's Note.—The 1931 amendment made this article applicable to cities, towns, special charter districts or other subdivisions, and substituted "Director of Local Government" for "County Government Advisory Commission."

§ **153-144. Contracts must be in writing; approval.**—All contracts or engagements made shall be reduced to writing and shall include all of the terms and conditions of the contract before the same shall become legal and binding upon the county, city, town, special charter district or other subdivision officials and shall be endorsed and approved as to the terms and provisions thereof by the Director of Local Government and such contracts shall be null and void and no payments shall be made on such contracts until the same shall have been reduced to writing and approved as aforesaid by the Director of Local Government. Said contracts when so executed shall be recorded on the minutes of the board of county commissioners, board of education or such governing body of a city, town, special charter district or other subdivision and the original filed in their records. The terms and provisions of said contracts shall not in any way be varied or changed by either party unless and until such changes shall be reduced to writing and approved by the Director of Local Government in the same manner as the original contract and no verbal agreements made between the officials of the county and the auditors aforesaid shall affect in any way to vary the terms and conditions thereof. (1929, c. 201, s. 2; 1931, c. 99, s. 2.)

§ **153-145. Approval of systems of accounting.**—With a view of standardization and simplification of the methods of accounting in the various counties, cities, towns, special charter districts and other subdivisions of the State, the Director of Local Government is hereby authorized and empowered to advise with said boards as to the proper methods of accounting for such counties, cities, towns, special charter districts and other subdivisions and no system or books shall be installed until same shall have been submitted to the Director of Local Government. (1929, c. 201, s. 3; 1931, c. 99, s. 3.)

§ **153-146. Copy of report filed with Director of Local Government.**—Any certified public accountant or auditor other than the official county auditor, county accountant, municipal accountant or other similar officer employed by any board of county commissioners, board of education, the governing body of any city, town, special charter district or other subdivision, or the officials thereof shall upon completion of all work performed in accordance with the terms of a contract, prepare a report embodying all statements and comments relating to his findings and shall file a copy of said report with the Director of Local Government, said report to be either printed or typewritten. The Director of Local Government shall have the

power to prescribe or approve the form of said report. (1929, c. 201, s. 4; 1931, c. 99, s. 4.)

§ 153-147. Claims for auditing to be approved by Director of Local Government.—All bills or claims presented to the governing body of any county, city, town or special charter district for the payment of any public or certified public accountant or auditor for the performance of any service as may be agreed upon in accordance with the provisions of this article shall be approved by the Director of Local Government, and it shall be unlawful for any of such governing bodies to pay or permit the payment of such bill or claim out of any public funds without first securing the said approval of said Director of Local Government. (1931, c. 99, s. 5.)

Article 12.

Sinking Funds.

§ 153-148. Counties and municipalities authorized to apply sinking funds to purchase of own bonds.—The county commissioners of the several counties of the State, and all persons or officers having charge of sinking funds and the commissioners and aldermen and governing bodies of all incorporated cities and towns are authorized and directed to apply the sinking funds on hand to the purchase and retirement of the specific bonds, issued by such municipality, for the payment whereof, at maturity, such fund has been provided, notwithstanding any contrary provisions in any act, special or general, under which the said bonds have been issued: Provided, however, that where bonds have been issued and sold to run for a stated term without option of prior payment, nothing herein shall be construed to compel the owners or holders thereof to accept payment or surrender said bonds except at their option. Municipalities shall not be required to purchase such bonds for a greater sum than the face thereof, with accrued interest at the time of purchase. (1931, c. 413, s. 1.)

§ 153-149. Investment of sinking funds.—County commissioners of the several counties and all persons or officers having charge of sinking funds and the governing bodies of all incorporated towns and cities shall keep such sinking funds as may not be applied to the purchase and retirement of bonds as required in the preceding section safely invested in such bonds or securities as are approved for such investment by the Local Government Act of nineteen hundred and thirty-one (§§ 159-1 et seq.), where such investment will promote the public interest or provide a greater rate of interest therefor. (1931, c. 413, s. 2.)

Cross Reference.—As to investment in bonds guaranteed by the United States government, see § 53-44.

§ 153-150. Petition of taxpayers to have sinking funds applied to purchase of bonds or invested.—Any citizen and taxpayer of a county or municipality, on behalf of himself and other citizens and taxpayers interested, who may or may not join therein, may petition the board of county commissioners or any governing board of a city or town, setting forth in said petition that said county, city or town has an amount of sinking fund provided for the payment of a certain issue or issues of bonds, that the bonds, or a portion of them, may be purchased and retired, and fully setting forth any benefit which would accrue to the county, city or town from purchase and retirement of said bonds, and demanding the application of the sinking fund thereto.

A like petition may be made to require the investment of sinking funds as provided in this article. Such petition shall fully set out the facts regarding the fund in question and the benefit to be derived from its investment. Upon receiving such petition the board of county commissioners or governing body of the city or town to which the same may be addressed, shall ascertain the facts with reference to the

matters alleged, and act thereon without delay; and the petition shall be sustained and the relief granted if the facts are such that the provisions of this article are applicable; and such sinking fund shall be applied to the purchase and retirement of such bonds as may be obtainable, of the class or issue to the payment whereof at maturity such fund might be applied, or shall be invested without delay, in the event such bonds are not obtainable, and such investment will be advantageous to the taxpayers interested. (1931, c. 413, s. 3.)

§ **153-151. Appeal to Local Government Commission.**—An appeal shall lie from the action of the board of county commissioners or governing body of any town or city to the Local Government Commission, who shall hear the matter de novo and determine the same. The Local Government Commission shall make such order as they may deem best in the premises, and fix therein such time as they may deem reasonable for compliance therewith.

Upon failure or delay to act upon any petition for a period of thirty days after it has been received by any board of county commissioners or governing body of any city or town, direct application may be made to the Local Government Commission, which shall, on such failure or refusal to act, have original jurisdiction in the premises and shall proceed to act, after five days' notice to such board of commissioners or governing body of a town or city to whom the petition was addressed.

The orders of the Local Government Commission may be enforced by writ of mandamus in a proceeding in the Superior Court of Wake County or of the county affected, or in which the town or city concerned, or any part thereof may be located, and such proceeding may be brought by the Local Government Commission or any petitioning taxpayer, in behalf of himself and others like interested. (1931, c. 413, s. 4.)

Article 13.

County Poor.

§ **153-152. Support of poor; superintendent of county home; paupers removing to county; hospital treatment.**—The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering. They may employ biennially some competent person as superintendent of the county home for the aged and infirm, and may remove him for cause. They may institute proceedings against any person coming into the county who is likely to become chargeable thereto, and cause his removal to the county where he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person. The board of county commissioners of each county is hereby authorized to levy, impose and collect special taxes upon all taxable property, not to exceed five cents on the one hundred dollars valuation, required for the special and necessary purposes set forth above in addition to any taxes authorized by any other special or general act and in addition to the constitutional limit of taxes levied for general county purposes, it being the purpose of the General Assembly hereby to give its approval for the levy of such special taxes for such necessary purposes.

The board of commissioners of each county, when deemed for the best interest of the county, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions located within or without the county to provide for the medical treatment and hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed; provided the annual payments required under such contract shall not be in excess of ten thousand ($10,000.00) dollars. The full faith and credit of each county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the General Assembly is hereby given to the execution thereof and to the levy of a special ad valorem tax in addition to other taxes authorized by law for the special purpose of the payment of the amounts to become due thereunder.

The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses and for a special purpose within the meaning of the Constitution of North Carolina and for which the special approval of the General Assembly is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the County Fiscal Control Act and acts amendatory thereof: Provided, that the county commissioners of Lincoln County shall not enter into any such contract except after a public hearing at the county courthouse, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The commissioners of Catawba County shall not act under this paragraph until a majority of the people of the county have voted favorably. This paragraph shall not apply to the counties of Ashe, Avery, Bertie, Buncombe, Clay, Columbus, Cumberland, Durham, Edgecombe, Forsyth, Gaston, Gates, Guilford, Halifax, Henderson, Iredell, Jackson, Johnston, Lee, McDowell, Macon, Mecklenburg, Moore, New Hanover, Pasquotank, Pitt, Richmond, Robeson, Rockingham, Rowan, Stanly, Surry, Transylvania, Union, Vance, Warren, Washington, Wilkes, Yadkin and Yancey. (Code, s. 3540; 1891, c. 138; Rev., s. 1327; C. S., s. 1335; 1935, c. 65; 1945, c. 151; 1945, c. 562, s. 1; 1947, cc. 160, 672; 1951, cc. 734, 790; 1961, c. 838.)

Local Modification.—Currituck: 1961, c. 838; Martin: 1961, c. 1017.

Cross References.—As to county tuberculosis hospitals, see §§ 131-29 through 131-33. As to conflict between this section and other laws, see notes to § 153-9, subdivision (6).

Editor's Note.—The 1935 amendment added the second paragraph. The 1945 amendments added the last sentence of the first paragraph, and struck out "Chowan" from the list of counties appearing at the end of the section. The 1947 amendments struck out "Sampson" and "Haywood" from such list, and the 1951 amendments struck out "Nash" and "Brunswick." The 1961 amendment deleted "Currituck" from the list of counties at the end of the second paragraph.

Extent of Relief Vested in Discretion of Commissioners.—The general duty of providing for the poor is here imposed; the place, method and extent of relief being vested in the judgment and discretion of the county commissioners. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Express Contract or Express Request for Service Necessary to Bind County.—Under this section in order to make a binding pecuniary obligation on the county, there must be an express contract to that effect, or the service must be done at the express request of the proper county officer or agent. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

The legislature may delegate authority to the county officials to provide and care for one class of the indigent or unfortunate inhabitants of the State, and to disburse a part of the fund devoted by the Constitution to the support of the poor, by appropriating it more directly to another class, whose wants, in the opinion of the lawmakers, can be best supplied through public agencies of a different kind. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

Ascertainment of Indigent Entitled to Support.—It is the exclusive right of the legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

Wardens of the poor elected by the old county courts, under the provisions of the act of 1846, ch. 64, were not subjected to any penalty for refusing to accept the appointment. Smithwick v. Williams, 30 N. C. 268 (1848).

Tax Not Subject to Limitation on Tax Rate Imposed by Constitution.—The tax contemplated is for a special, necessary purpose, with special approval of the General Assembly, and is not, therefore, subject to the limitation on the tax rate imposed by Art. V, § 6 of the Constitution. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

Tax for Medical Care May Be Levied without Approval of the Qualified Voters.—The tax to provide funds necessary for the medical care and hospitalization of the indigent sick of a county is for a necessary expense of the county, and may be levied without the approval of the qualified voters of the county. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935). See Art. VIII, § 7 of the Constitution.

Contract Not Held Invalid Because of Duration.—Where the General Assembly has authorized a county to enter into a contract with a public hospital for the care of its indigent sick for a period of thirty years, and the board of commissioners of the county, in the exercise of the discretion vested in the board by the statute, has agreed to contract for that period, the contract will not be held invalid because of its

duration. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

Applied in Rex Hospital v. Wake County Board of Com'rs, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

Cited in Atlantic Coast Line R. Co. v. Beaufort County, 224 N. C. 115, 29 S. E. (2d) 201 (1944); Board of Managers of James Walker Memorial Hospital v. Wilmington, 237 N. C. 179, 74 S. E. (2d) 749 (1953).

§ 153-153. County home for aged and infirm.—All persons who become chargeable to any county shall be maintained at the county home for the aged and infirm, or at such place or places as the board of commissioners select or agree upon. (Code, s. 3541; 1891, c. 138; Rev., s. 1328; C. S., s. 1336.)

§ 153-154. Records for county, how to be kept.—The keeper or superintendent in charge of each county home in North Carolina, or the board of county commissioners in each county where there is no county home, shall keep a record book showing the following: Name, age, sex, and race of each inmate; date of entrance or discharge; mental and physical condition; cause of admission; family relation and condition; date of death if in the home; cost of supplies and per capita expense of home per month; amount of crops and value, and such other information as may be required by the board of county commissioners or the State Board of Public Welfare; and give a full and accurate report to the county commissioners and to the State Board of Public Welfare. Such report to be filed annually on or before the first Monday of December of each year. (1919, c. 72; C. S., s. 1337; 1961, c. 139, s. 1.)

Cross Reference.—As to change of name of State Board of Charities and Public Welfare to State Board of Public Welfare, see § 108-1.1.

Editor's Note.—The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 153-155. Support of county home.—The board of commissioners may provide for the support of the persons admitted by them to the home for the aged and infirm by employing a superintendent at a certain sum, or by paying a specified sum for the support of such persons to anyone who will take charge of the county home for the aged and infirm, as said board may deem for the best interest of the county and the cause of humanity. (1876-7, c. 277, s. 3; Code, s. 3543; Rev., s. 1329; C. S., s. 1338.)

Overseer of Poor Liable to Indictment.—An overseer of the poor is a public officer and liable to indictment at common law for any neglect of his duties or abuse of his powers. State v. Hawkins, 77 N. C. 494 (1877).

Same—Defective Indictment.—Where such officer is indicted for cruel treatment of paupers, and the indictment neither sets out the names of such paupers nor states that their names are unknown, the said indictment is defective, and judgment thereon should be arrested. State v. Hawkins, 77 N. C. 494 (1877).

Evidence.—Upon the trial of an indictment against a public officer for neglect or omission of duty, evidence of acts of positive misfeasance is inadmissible. State v. Hawkins, 77 N. C. 494 (1877).

§ 153-156. Property of indigent to be sold or rented.—When any indigent person who becomes chargeable to a county for maintenance and support in accordance with the provisions of this article, owns any estate, it is the duty of the board of commissioners of any county liable to pay the expenses of such indigent person to cause the same to be sold for its indemnity or reimbursement in the manner provided under article 3 of the chapter entitled Insane Persons and Incompetents, or they may take possession thereof and rent the same out and apply the rent toward the support of such indigent person. When such indigent person has no guardian, or said guardian refuses or neglects to act, then the county maintaining and supporting said indigent person in its county home, or otherwise, may bring an action in its own name against the owner and the parties having an interest in the property sought to be sold, to sell, mortgage or rent the personal property or real estate of such indigent person, which action shall be a special proceeding and conducted as other special proceedings before the clerk of the superior court and said clerk of court

shall have power to make all necessary and proper orders therein. (1866, c. 49; Code, s. 3547; Rev., s. 1330; C. S., s. 1339; 1941, c. 24.)

Cross References.—As to manner in which special proceedings are conducted, see § 1-393 et seq. As to sale of estates of insane persons and incompetents, see § 35-10 et seq.

Editor's Note.—The 1941 amendment added the second sentence. For comment on amendment, see 19 N. C. Law Rev. 485.

The three-year statute of limitations applies to an action brought by a county against an inmate of county home to secure reimbursement or indemnity for sums expended for her upkeep in the home. Guilford County v. Hampton, 224 N. C. 817, 32 S. E. (2d) 606 (1945).

§ **153-157. Families of indigent militiamen to be supported.**—When any citizens of the State is absent on service as a militiaman or member of the State Guard, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (1779, c. 152, P. R.; R. C., c. 86, s. 14; Code, s. 3546; Rev., s. 1331; C. S., s. 1340.)

§ **153-158. Paupers not to be hired out at auction.**—No pauper shall be let out at public auction, but the board of commissioners may make such arrangements for the support of paupers with their friends or other persons, when not maintained at the county home for the aged and infirm, as may be deemed best. (1876-7, c. 277, s. 2; Code, s. 3542; Rev., s. 1332; C. S., s. 1341.)

§ **153-159. Legal settlements; how acquired.**—Legal settlements may be acquired in any county, so as to entitle the party to be supported by such county, in the manner following, and not otherwise:

(1) By One Year's Residence.—Every person who has resided continuously in any county for one year shall be deemed legally settled in that county: Provided, that every person who has legal settlement in any county of this State shall, after having resided continuously in any other county for three months, be deemed legally settled in such other county, for purposes of the county poor law codified as article 13 of chapter 153 of the General Statutes.

(2) Married Women to Have Settlement of Their Husbands.—A married woman shall always follow and have the settlement of her husband, if he have any in the State; otherwise, her own at the time of her marriage, if she then had any, shall not be lost or suspended by the marriage, but shall be that of her husband, till another is acquired by him, which shall then be the settlement of both.

(3) Legitimate Children to Have Settlement of Father.—Legitimate children shall follow and have the settlement of their father, if he has any in the State, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

(4) Illegitimate Children to Have Settlement of Mother.—Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any in the State. But neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein.

(5) Settlement to Continue until New One Acquired.—Every legal settlement shall continue till it is lost or defeated by acquiring a new one, within or without the State; and upon acquiring such new settlement, all former settlements shall be defeated and lost. (1777, c. 117, s. 16, P. R.; R. C., c. 86, s. 12; Code, s. 3544; Rev., s. 1333; C. S., s. 1342; 1931, c. 120; 1943, c. 753, s. 2; 1959, c. 272.)

Editor's Note—The 1943 amendment struck out the provision relating to settlement of paupers coming into the State which had been added to this section by the 1931 amendment.

The 1959 amendment added the proviso to subdivision (1).

Requirement of Year's Residence.—Prior to 1959, no one shall gain a settlement in a county unless by continuous residence for

one year. State v. Elam, 61 N. C. 460 (1868).

Settlement Not Ipso Facto Obtained by Birth.—Neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein. State v. Elam, 61 N. C. 460 (1868).

Settlements Not Governed by Law of Domicile or Citizenship.—The law applicable to pauper settlements is regulated by statute, and is in no way governed by the law of the domicile or citizenship. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

When Domicile and Settlement Different.—Although in most cases the county of domicile and the county of settlement are the same, yet they are sometimes different and in such case the county of settlement is chargeable with the maintenance of a bastard child. State v. Elam, 61 N. C. 460 (1868).

Each County Charged with Support of Its Poor.—It is the manifest purpose of the law in regard to pauper settlements to charge each county with the support of its own poor. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

Legal Settlement Determines Liability.—The legal settlement of the pauper determines the liability. Commissioners v. Commissioners, 121 N. C. 295, 28 S. E. 412 (1897).

Pauper Injured in Another County.—Where a pauper, temporarily absent from the county where he has a "legal settlement," is so disabled as to require immediate medical services and is furnished by the authorities of another county with such attention and board, the latter is entitled to recover the expenses thereof from the county where the pauper has his settlement. Commissioners v. Commissioners, 121 N. C. 295, 28 S. E. 412 (1897).

Liability for Bastard Child Fixed by Mother's Settlement.—The liability of the county for the maintenance of a bastard child is fixed not by its birth but by the settlement of its mother at the time of its birth. State v. Elam, 61 N. C. 460 (1868).

An illegitimate child, who has not gained a new settlement by a year's residence in some other county, is, for the purpose of being apprenticed, subject to the jurisdiction of the court of that county in which its mother was settled at the time of its birth. Ferrell v. Boykin, 61 N. C. 9 (1866).

When Mother of Bastard Child without Settlement.—A bastard, born in this State of a mother who has not resided in it "for twelve months," is chargeable for maintenance upon the county in which it is born. Since our act did not contemplate the case of foreign paupers, the question of settlement is left as at common law. State v. McQuaig, 63 N. C. 550 (1869).

Loans for Care of Paupers Ultra Vires.—Contracts for the loan of money made by the late county courts for the support of the paupers in their respective counties were ultra vires, and therefore void. Daniel v. Board, 74 N. C. 494 (1876).

Duration of Settlement.—A legal settlement continues until a new one is acquired. Commissioners v. Commissioners, 121 N. C. 295, 28 S. E. 412 (1897).

§ 153-160. Removal of indigent to county of settlement; maintenance; penalties.—Upon complaint made by the chairman of the board of county commissioners, before a justice of the peace, that any person has come into the county who is likely to become chargeable thereto, the justice by his warrant shall cause such poor person to be removed to the county where he was last legally settled; but if such poor person is sick or disabled, and cannot be removed without danger of life, the board of commissioners shall provide for his maintenance and cure at the charge of the county; and after his recovery shall cause him to be removed, and pay the charges of his removal. The county wherein he was last legally settled shall repay all charges occasioned by his sickness, maintenance, cure and removal, and all charges and expenses whatever, if such person die before removal. If the board of commissioners of the county to which such poor person belongs refuses to receive and provide for him when removed as aforesaid, every commissioner so refusing shall forfeit and pay forty dollars, for the use of the county whence the removal was made; moreover, if the board of commissioners of the county where such person was legally settled refuses to pay the charges and expenses aforesaid, they shall be liable for the same. If any housekeeper entertains such poor person without giving notice thereof to the board of commissioners of his county, or one of them, within one month, the person so offending shall forfeit and pay ten dollars. Nothing contained herein shall be construed to prevent any county from rendering assistance to needy persons living within the county even though such persons may not have lived in the county for the length of time required to establish legal settlement and if such needy persons are eligible for old age assistance, aid to dependent children or any type of general assistance in which State and federal funds are involved, assistance may be granted,

provided funds are available. (1777, c. 117, s. 17, P. R.; 1834, c. 21; R. C., c. 86, s. 13; Code, s. 3545; Rev., s. 1334; C. S., s. 1343; 1945, c. 562, s. 2.)

Editor's Note.—The 1945 amendment added the last sentence.

Liability of Commissioners.—It is thus provided that the board of commissioners of the county to which such poor person belongs shall receive and provide for him, under a penalty for refusal to do so, and they are made liable if they refuse to pay the expenses mentioned in the section. Commissioners v. Commissioners, 101 N. C. 520, 8 S. E. 176 (1888).

§ 153-161. Burial of indigent veterans of the World War.—The county commissioners of any county in North Carolina are authorized, empowered, and directed to appropriate out of the general fund of the county a sum of not more than twenty-five dollars ($25.00) to provide for the burial of any former member of the army, navy, or marine corps, who served in the recent World War, who shall die within the boundaries of the said county and whose estate or relatives are unable to provide for the burial of said veteran, and whose burial has not otherwise been provided for. (1923, c. 119; C. S., s. 1343(a).)

Editor's Note.—This section was reviewed in 1 N. C. Law Rev. 296.

Article 14.

District Hospital-Home.

§ 153-162. Two or more adjacent counties may establish; trustees.—Any two or more adjacent counties may by action of the county commissioners in said counties, as hereafter provided, establish a district hospital-home for the aged and infirm, to be located at some suitable place within the counties composing the district, location and purchase to be controlled by a board of trustees appointed by the county commissioners of the respective counties owning and controlling said hospital-home, each county to have one representative. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 129, s. 1.)

Editor's Note.—This article was codified from the act of 1931, which is very similar to and takes the place of Public Loc. Laws 1923, c. 611, s. 1, made a public law by Public Laws 1927, c. 192.

§ 153-163. Present properties to be sold; application of proceeds.—The county commissioners of the aforesaid counties are hereby authorized and empowered to sell and convey by deed all properties held by the aforesaid counties for the care and maintenance of their county's poor, and from the proceeds of such sale appropriate so much as may be required to meet said county's proportionate part of the funds necessary to perfect the completion of said community home for the aged and infirm as provided herein. (1931, c. 129, s. 2.)

§ 153-164. Funds raised by taxation.—Should it be deemed wisest not to sell said properties, or should any county not have said properties in its possession, or should any counties have said properties which would not be for sale, the necessary funds shall then be raised by direct taxation within the county or counties preferring this method of raising their pro rata part. (1931, c. 129, s. 3.)

§ 153-165. Appointment of trustees.—The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district hospital-home for the aged and infirm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district hospital-home for the district comprising ..... counties; the members of said board of trustees shall be appointed every two years by the boards of county commissioners, the term of office for said trustees shall be two years, and until their successors are chosen and qualified; all vacancies shall be filled by the

several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 129, s. 4.)

§ 153-166. Organization meeting; site and buildings.—This board of trustees shall, as soon as possible after appointment, assemble and organize by the election of a chairman, a secretary and a treasurer, which last officer shall be bonded. They shall proceed promptly with the purchase of a site for such hospital-home, including, if they deem it desirable, a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities, and shall then cause to be erected suitable plain, substantial, comfortable and permanent buildings for the accommodation of those for whom this article is intended, giving due regard to the separation of the sexes and races, and such other plans for segregation as their judgment and existing conditions may suggest. Said buildings are to be furnished with plain, substantial furniture, and such other equipment as conditions demand. Necessary hospital facilities may be included, but provisions for such facilities and equipment shall have the approval of the State Board of Public Welfare and the State Board of Health. (1931, c. 129, s. 5; 1961, c. 139, s. 1.)

Editor's Note.—The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 153-167. Apportionment of cost.—The several counties constructing, equipping, and operating a district hospital-home shall pay for the site and for the construction and equipment of the plant in proportion to the population of the individual county to the total population of the several counties comprising the district, but each county shall pay for the number of persons maintained at the hospital-home at the actual per capita cost of such maintenance. (1931, c. 129, s. 6.)

§ 153-168. Plans and specifications for hospital-home.—The State Board of Public Welfare shall have prepared plans for such district hospital-home and shall furnish such plans on request to any board of trustees of any district hospital-home at cost; and all such hospital-homes shall be built in accordance with plans furnished or approved by the State Board of Public Welfare. (1931, c. 129, s. 7; 1961, c. 139, s. 1.)

Editor's Note.—The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 153-169. Closing of county homes.—As soon as the district hospital-home is ready for occupancy the several county homes or poorhouses, heretofore owned by the several counties, shall be closed and occupants shall be transferred and located in the district hospital-home for the aged and infirm herein provided for. (1931, c. 129, s. 8.)

§ 153-170. Superintendent and employees.—The board of trustees of the said district hospital-home shall elect a capable superintendent or matron, preferably a woman who is a trained nurse, and such other employees as it may deem necessary to the efficient management of said district hospital-home, and shall fix their salaries with due regard to number and condition of inmates occupying said district hospital-home. (1931, c. 129, s. 9.)

§ 153-171. Meetings of trustees.—The board of trustees shall meet at least twice a year for the transaction of such business as the provisions of this article may require. They shall have the general conduct and management of the district hospital-home's affairs. They shall meet at the call of the chairman whenever he shall deem it necessary, or upon call issued by a majority of the board. (1931, c. 129, s. 10.)

§ 153-172. Purpose of special meetings set out in call.—The matter to be considered at any special meeting shall be set out in the call for the special meeting, but any business may be transacted at special meetings which received a two-thirds'

vote of the entire board of trustees, although not mentioned in the call. (1931, c. 129, s. 11.)

§ 153-173. Powers of trustees.—The board is vested with all powers not already mentioned which are possessed by boards supervising State institutions. (1931, c. 129, s. 12.)

§ 153-174. Sending of inmates to institution.—The counties constructing, operating and maintaining a district hospital-home for the aged and infirm shall, as required by law now in force for the care and maintenance of those not able to care for themselves, send such person or persons to the district hospital-home for the aged and infirm in lieu of the county home if it appears to the commissioners and the director of public welfare that such persons need institutional care. (1931, c. 129, s. 13; 1961, c. 186.)

Editor's Note.—The 1961 amendment substituted "director" for "superintendent" near the end of the section.

§ 153-175. Annual report on affairs of institution.—As soon after the first day of January of each year as may be practicable the board of trustees shall cause a report to be made of the hospital-home, which report shall show the number of inmates, the county admitting them, date of admission, age, condition of health, sex, color, educational acquirements, diagnosis of disease if diseased, total number of inmates received during the year, average number cared for per month, names and disposition of those dismissed, pro rata cost of maintenance, the total amount of money expended, the total amount of money received from each county, and such information as the State Board of Public Welfare and the board of trustees of the district hospital-home may request. It shall also show an inventory and appraisement of property, real and personal, and give a strict account of receipts from farm and expenditure thereon, and such other information as may be required to check up the institution from all viewpoints. (1931, c. 129, s. 14; 1961, c. 139, s. 1.)

Editor's Note.—The 1961 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 153-176. Copies of report to county commissioners.—A copy of the said report of the said board of trustees shall be furnished the county commissioners of the respective counties interested in and providing said district hospital-home. (1931, c. 129, s. 15.)

Article 14A.

Medical Care of Sick and Afflicted Poor.

§ 153-176.1. Authority to provide hospitalization and medical care; contracts with hospitals.—Authority is hereby granted to the board of commissioners of any county in the State now or hereafter having a population of sixty thousand (60,000) or over and a city within its borders now or hereafter having a population of thirty thousand (30,000) or over to provide adequate hospitalization, medical care and attention of the indigent sick and afflicted poor of such county or city. The board of commissioners of any such county and the governing body of any such city are hereby authorized and empowered, separately or jointly, to enter into a contract with public, quasi-public or private hospitals or joint municipally owned hospitals providing for the hospitalization, medical care and medical attention of the indigent sick and afflicted poor of said county and city, upon such terms, over such periods of time and in such amount or amounts as the said county commissioners and the governing body of any such city may determine necessary, proper and appropriate for said purposes, acting separately or jointly. (1953, c. 878, s. 1; 1963, c. 505.)

Editor's Note.—The 1963 amendment substituted "thirty thousand (30,000)" for "forty-four thousand" in the first sentence.

Contracting Hospital Not a State Agency

Subject to Federal Interdiction.—Funds paid to a memorial hospital by a city and county under contract, as provided in this section, did not make the hospital a State agency and hence subject to federal interdiction. Eaton v. Board of Managers of James Walker Memorial Hospital, 261 F. (2d) 521 (1958).

Cited in Eaton v. Board of Managers of James Walker Memorial Hospital, 164 F. Supp. 191 (1958).

§ 153-176.2. Appropriations and taxes for cost of services.—The exercise of the authority granted by this article and the appropriations and taxes for and covering the cost of the services aforesaid are hereby declared to be for necessary expenses and for a special purpose within the meaning of the Constitution of North Carolina and for which the special approval of the General Assembly of North Carolina is hereby given, and any such expenditures and any contract made and entered into as in this article authorized shall be binding without a vote of the majority of the qualified voters of such county or of such city and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the County Fiscal Control Act and acts amendatory thereof. The full faith and credit of any such county and any such city shall be deemed to be pledged for the payment of the amounts due under said contract or contracts and the special approval of the General Assembly of North Carolina is hereby given to the execution thereof and to the levy of a special ad valorem tax necessary for the purposes aforesaid in addition to other taxes for other purposes authorized by law and for the special purpose of the payment of amounts due and to become due under the provisions of this article. The governing body of any such city is also authorized to levy for the purposes herein authorized and provided a special ad valorem tax in addition to other taxes levied for other purposes authorized by law for the purpose of payment of any amount or amounts due or to become due under the provisions of this article. (1953, c. 878, s. 2.)

§ 153-176.3. Expenditures not provided for by contract.—The commissioners of any such county and the governing body of any such city are hereby authorized and empowered, acting separately or jointly, to appropriate and pay to any hospital as set forth in G. S. 153-176.1, such amounts as they or either of them deem necessary to cover the cost of hospitalization and medical care of the indigent sick and afflicted poor, certified to any such hospital for such attention, during any fiscal year or part thereof, for which such cost has not otherwise been provided for by contract, as authorized by this article. Expenditures made as authorized by this section are hereby found and declared to be necessary expenses of any such county and city. (1953, c. 878, s. 3.)

§ 153-176.4. Supplementary legislation granting additional powers.—The powers granted by this article are in addition to, and not in substitution for, existing powers of counties and cities to provide for the medical care of the indigent sick and afflicted poor, and this article shall be construed to be as additional and supplementary legislation to existing powers on this same subject matter and shall not repeal the provisions of article 2B of chapter 131 of the General Statutes. (1953, c. 878, s. 4.)

Article 15.

County Prisoners.

§ 153-177. Bonds of prisoner in criminal case returned to court.—Every bond taken of any person confined for an offense, or otherwise than on process issuing in a civil case, shall be returned to the court by whose order or process such person is confined, or which may be entitled to cognizance of the matter, and shall be of the force and effect of a recognizance. On breach thereof it shall be forfeited and collected as a forfeiture in the name and for the use of the State, and applied as other

forfeited recognizances. (R. C., c. 87, s. 12; Code, s. 3467; Rev., s. 1340; C. S., s. 1344.)

Cross Reference.—See note to § 153-178.

§ 153-178. Bond of prisoner committed on capias in civil action.—Every bond given by any person committed in arrest and bail, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment. If any person who obtains the rules of any prison, as aforesaid, escapes out of the same before he has paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment, and no person committed to jail on such execution shall be allowed the rules of prison: Provided, the obligors have ten days previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea. (1759, c. 65, ss. 2, 3, P. R.; R. C., c. 87, s. 14; Code, s. 3469; Rev., s. 1341; C. S., s. 1345.)

Bond Has Force of Judgment.—This section gives to the bond the force of a judgment, and authorizes the party to have execution sued out thereon, upon mere motion, and the plaintiff cannot elect to treat it as a common deed. Brown v. Frazier, 5 N. C. 421 (1810).

When Action Not Maintainable.—An action cannot be maintained upon a bond given by a person arrested upon a capias ad satisfaciendum, to keep within the limits of the rules of the prison. Brown v. Frazier, 5 N. C. 421 (1810).

§ 153-179. Jailer to cleanse jail, furnish food and water.—The sheriff or keeper of any jail shall, every day, cleanse the room of the prison in which any prisoner is confined, and cause all filth to be removed therefrom; and shall also furnish the prisoner plenty of good and wholesome water, three times in every day; and shall furnish each prisoner fuel, not less than one pound of wholesome bread, one pound of good roasted or boiled flesh, and every necessary attendance. (1816, c. 911, s. 2, P. R.; R. C., c. 87, s. 9; Code, s. 3464; Rev., s. 1343; C. S., s. 1346.)

Editor's Note.—See 11 N. C. Law Rev. 172 for comment involving this section.

Action for Wrongful Death.—This section is not applicable in an action against a municipality for wrongful death allegedly caused by the chief of police and jailer. Gentry v. Hot Springs, 227 N. C. 665, 44 S. E. (2d) 85 (1947).

§ 153-180. Fees of jailers.—Jailers shall receive, for furnishing prisoner with fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, a sum not exceeding fifty cents per day, unless the board of commissioners of the county shall deem it expedient to increase the fees, which it may do provided such increase shall not exceed fifty per cent on the above sum. (R. C., c. 102, s. 38; 1878, c. 87; Code, s. 3746; Rev., s. 2799; 1919, c. 118; C. S., s. 3919.)

Local Modification.—Avery: 1947, c. 409; Caldwell: 1951, c. 412; Carteret: 1957, c. 631; Caswell: 1953, c. 512; Cumberland: 1953, c. 545; Davie: 1951, c. 627; Edgecombe: 1953, c. 166; Guilford: 1947, c. 78, s. 1; McDowell: 1949, c. 325; 1951, c. 830; Mitchell: 1953, c. 415, s. 4; 1955, c. 1105, s. 4; Pender: 1953, c. 422; Randolph: 1951, c. 133, s. 6; 1955, c. 556, s. 8; 1961, c. 458; Rowan: 1963, c. 703; Scotland: 1949, c. 80; Transylvania: 1957, c. 174, s. 12; Wake: 1951, c. 867; Wayne: 1955, c. 614; Yadkin: 1951, cc. 298, 1173; Yancey: 1957, c. 78.

§ 153-181. Prisoner to pay charges and prison fees.—Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other

prison fees, in preference to all other debts and demands. If there is no visible estate whereon to levy such fees and charges, the amount shall be paid by the county. (1795, c. 433, s. 7, P. R.; R. C., c. 87, s. 6; Code, s. 3461; Rev., s. 1346; C. S., s. 1347.)

§ 153-182. Prisoner may furnish necessaries.—Prisoners shall be allowed to purchase and procure such necessaries, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without paying any perquisite to the jailer for such indulgence. (1795, c. 433, s. 6, P. R.; R. C., c. 87, s. 8; Code, s. 3463; Rev., s. 1344; C. S., s. 1348.)

Prisoners May Procure Additional Comforts.—This section permits prisoners to procure such additional comforts as their circumstances allow. Wilkes v. Slaughter, 10 N. C. 211 (1824).

§ 153-183. United States prisoners to be kept.—When a prisoner is delivered to the keeper of any jail by the authority of the United States, such keeper shall receive the prisoner, and commit him accordingly; and every keeper of a jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid shall be subject to the same pains and penalties as for neglect or refusal to commit any prisoner delivered to him under the authority of the State. The allowance for the maintenance of any prisoner committed as aforesaid shall be equal to that made for prisoners committed under the authority of the State. (1790, c. 322, ss. 1, 2, P. R.; R. C., c. 87, s. 1; Code, s. 3456; Rev., s. 1342; C. S., s. 1349.)

Local Modification.—Guilford: 1947, c. 78, s. 2.

Authority of United States Commissioners.—By virtue of this section United States commissioners have authority to commit prisoners to county jails. United States v. Harden, 10 F. 802 (1881).

Jailer Should Have Written Authority.—A jailer ought never to receive a prisoner into his custody without some written authority to detain him, issued by a person having power to grant such authority, except under the order of a court in session. United States v. Harden, 10 F. 802 (1881).

Commitment Not Absolute.—The commitment of a prisoner to a county jail by a United States commissioner is not an absolute commitment, as the marshal can take the prisoner out of the custody of the jailer when it becomes necessary for him to complete the service of the capias by producing the body of the prisoner at the ensuing term of court. United States v. Harden, 10 F. 802 (1881).

The Mittimus.—The mittimus issued by the United States commissioner must be directed to the marshal commanding him to convey the prisoner into the custody of the jailer, and it must also direct and command the jailer to receive the prisoner and keep him in close custody until discharged, or taken from his custody by some proper process of law. United States v. Harden, 10 F. 802 (1881).

The marshal must deliver a copy of such mittimus to the jailer as his authority to hold the prisoner. United States v. Harden, 10 F. 802 (1881).

§ 153-184. Arrest of escaped persons from penal institutions.—Upon information received from the superintendent of any correctional or any penal institution, established by the laws of the State, that any person confined in such institution or assigned thereto by juvenile or other court under authority of law, has escaped therefrom and is still at large, it shall be the duty of sheriffs of the respective counties of the State, and of any peace officer in whose jurisdiction such person may be found, to take into his custody such escaped person, if to be found in his county, and to cause his return to the custody of the proper officer of the institution from which he has escaped. (1933, c. 105, s. 1.)

Cross Reference.—As to recapture of persons escaped from the State prison, see §§ 148-4, 148-40 and 148-41.

§ 153-185. Military guard when escape imminent; compensation.—When the sheriff of the county, or keeper of the jail, apprehends that there is danger of a prisoner escaping, through the insufficiency of the jail or other cause, it is his duty, without delay, to make information thereof to a judge of the superior court, the Attorney General, or a solicitor, if any of those officers is in the county, and if not,

then to three justices of the peace, and they are authorized, if they deem it advisable, to furnish the sheriff or keeper of the jail with an order in writing, addressed to the commanding officer of the militia of the county, setting forth the danger, and requiring him forthwith to furnish such guard as to him may appear to be suitable for the occasion. For which service the persons ordered on guard shall receive such compensation as militiamen in actual service for defense of the State; and on application for pay, the letter to the commanding officer, on which the guard was ordered, and the certificate of such officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, stating the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same. (1795, c. 433, s. 8, P. R.; R. C., c. 87, s. 5; Code, s. 3460; Rev., s. 1345; C. S., s. 1350.)

§ 153-186. What counties liable for guarding and removing prisoners.—The expense for guarding prisons shall be paid by the county where the prison is situated; and for conveying prisoners, as also the expense attending such prisoners while in jail, when the same may be chargeable on the county, shall be paid by the county from which the prisoner is removed. (1808, c. 757, s. 2, P. R.; R. C., c. 87, s. 7; Code, s. 3462; Rev., s. 1347; C. S., s. 1351.)

Expense of County from Which Prisoners Removed.—When upon proper application, the commanding officer of a county was required to furnish the jailer with a guard for the safekeeping of prisoners, the expenses of the guard so incurred were to be paid by the county from which the prisoners were removed. Board v. Board, 75 N. C. 240 (1876).

§ 153-187. Transfer of prisoners to succeeding sheriff.—The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen. (1777, c. 118, s. 12, P. R.; R. C., c. 87, s. 15; Code, s. 3470; Rev., s. 1348; C. S., s. 1352.)

§ 153-188. Where no jail, sheriff may imprison in jail of adjoining county.—The sheriffs, constables, and other ministerial officers of any county in which there is no jail have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this article, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county. (1835, c. 2, s. 3; R. C., c. 87, s. 4; Code, s. 3459; Rev., s. 1349; C. S., s. 1353.)

§ 153-189. Where no jail, courts may commit to jail of adjoining county.—Whenever there happens to be no jail, or when there is an unfit or insecure jail, in any county, the superior court judges, justices of the peace, and all judicial officers of such county may commit all persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs, constables, and other officers of such county in which there is no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. Any officer failing to obey such order shall be guilty of a misdemeanor. (1835, c. 2, s. 2; R. C., c. 87, s. 3; Code, s. 3458; Rev., s. 1350; C. S., s. 1354.)

§ 153-189.1. Transfer of prisoners when necessary for safety and security.—Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county, the resident judge of the superior court or any judge holding superior court in the district may order the prisoner transferred to a

fit and secure jail in some other county, or to a unit of the State Prison System designated by the Director of Prisons or his authorized representative, where the prisoner shall be held for such length of time as the judge may direct. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Director of Prisons, shall receive and release custody of the prisoner in accordance with the terms of the court order. The county from which a prisoner is transferred shall pay to the county receiving the prisoner in its jail, or to the State Prison Department if he is received in a prison unit, the actual costs of maintaining the prisoner in that jail or prison unit for the time designated by the court. (1957, c. 1265.)

§ 153-190. When jail destroyed, transfer of prisoners provided for.—When the jail of any county is destroyed by fire or other accident, any justice of the peace of such county may cause all prisoners then confined therein to be brought before him; and upon the production of the process under which any prisoner was confined shall order his commitment to the jail of any adjacent county; and the sheriff, constable, or other officer of the county deputed for that purpose, shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners upon the order aforesaid. Any officer failing to obey such order of commitment shall be guilty of a misdemeanor. (1835, c. 2, s. 1; R. C., c. 87, s. 2; Code, s. 3457; Rev., s. 1351; C. S., s. 1355.)

§ 153-190.1. Duty to receive and retain prisoners brought in by law enforcement officers.—It shall be the duty of the jailer of any county jail of this State where there are available facilities to receive, incarcerate and retain any prisoner brought to such county jail by any law enforcement officer of such county or of any municipality in such county or by any law enforcement officer of the State; provided, however, the foregoing provisions shall not be applicable with regard to prisoners arrested by law enforcement officers of a municipality which has its own jail or to prisoners not arrested in the county. Any jailer willfully refusing to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1957, c. 1439.)

§ 153-191. Counties and towns may hire out certain prisoners.—The board of commissioners of the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intendant of the several cities and towns of the State, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall be credited to them for the fine and bill of costs in all cases of conviction. It is unlawful to farm out any such convicted person who may be imprisoned for the nonpayment of a fine, or as punishment imposed for the offense of which he may have been convicted, unless the court before whom the trial is had

shall in its judgment so authorize. (1866-7, c. 30; 1872-3, c. 174, s. 10; 1874-5, c. 113; 1876-7, c. 196, s. 1; 1879, c. 218; Code, s. 3448; Rev., s. 1352; C. S., s. 1356.)

Cross Reference.—See §§ 23-24 and 153-194.

Editor's Note.—Before the enactment of this section, if one in jail in default of payment of fine and costs was not provided with some mode of discharge, he would remain therein indefinitely, or take the insolvent debtor's oath. It was felt that some other mode of discharge should be provided, and the legislature passed an act in 1866-67, which, after being several times amended, is now this section. See dissenting opinion of Clark, J., in State v. White, 125 N. C. 674, 34 S. E. 532 (1899). The amendment of 1876-7 was without the concluding sentence of this section, which leaves it at the discretion of the trial court as to whether or not a convict shall be farmed out. The opinion in State v. Shaft, 78 N. C. 464, (1878), pointed out the possibilities of mischief of a provision, unrestrained in its terms, which authorizes the employment of convict labor by individuals or corporations, and suggested that the legislature might see fit to amend the law. The legislature complied with this suggestion by passing the amendment of 1879, which added the last sentence of this section. See State v. Shaft, 78 N. C. 464 (1878); State v. Sneed, 94 N. C. 806 (1886).

Constitutionality.—The section is constitutional. State v. Plain, 63 N. C. 471 (1869); State v. Weathers, 98 N. C. 685, 4 S. E. 512 (1887); State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Construed with §§ 23-24 and 153-194.—This section must be construed with §§ 23-24 and 153-194. State v. Morgan, 141 N. C. 726, 53 S. E. 142 (1906).

When Prisoner Released.—A prisoner cannot be held beyond the time fixed by the court. State v. Williams, 97 N. C. 414, 2 S. E. 370 (1887).

A prisoner may be discharged from commitment for the fine and cost by taking the pauper's oath though he has been farmed out under the provisions of this section. State v. Williams, 97 N. C. 414, 2 S. E. 270 (1887).

Does Not Apply to Employment on Public Works.—The provisions of this section forbidding the hiring out of convicts, unless the court before which such prisoner was convicted shall so authorize in its judgment, only applies to farming out convict labor to individuals and corporations, and does not extend to cases of convicts employed on public works, and under the supervision and control of public agents. State v. Sneed, 94 N. C. 806 (1886).

Prisoner Hired to Wife.—A man imprisoned in the county jail upon a conviction for fornication and adultery, may be hired out to his wife, under this section, upon her giving bond with sureties for the price. State v. Shaft, 78 N. C. 464 (1878).

Court Not to Designate Kind or Place of Employment.—The section does not authorize the court to designate the employment, or where it shall be performed. That matter is left to the discretion of the county commissioners, under rules and regulations prescribed by them. State v. Norwood, 93 N. C. 578 (1885).

§ 153-192. Person hiring may prevent escape.—The party in whose service said convicts may be may use the necessary means to hold and keep them in custody and to prevent their escape. (1876-7, c. 196, s. 3; Code, s. 3454; Rev., s. 1353; C. S., s. 1357.)

Cross Reference.—As to allowing hired out prisoners to escape, see § 14-257.

§ 153-193. Sheriff to have control of prisoners hired out.—All convicts hired or farmed out by the county or other municipal authorities shall at all times be under the supervision and control, as to their government and discipline, of the sheriff, or his deputy, of the county in which they were convicted and imprisoned, and the sheriff, or his deputy, shall be deemed a State officer for the purpose of this section. (1876-7, c. 196, s. 2; Code, s. 3453; Rev., s. 1354; C. S., s. 1358.)

§ 153-194. Convicts who may be sentenced to or worked on roads and public works.—It is lawful for and the duty of the judge holding court to sentence to imprisonment at hard labor on the public roads, in accordance with §§ 148-28, 148-30 and 148-32 for such terms of thirty days or more as are now prescribed by law for their imprisonment in the county jail or in the State's prison, the following classes of convicts: First, all persons convicted of offenses the punishment whereof would otherwise be wholly, or in part, imprisonment in the common jail; second, all persons convicted of crimes the punishment whereof would otherwise, wholly or in part, be imprisonment in the State's prison.

There may also be worked on the public works, in like manner, all persons sentenced to imprisonment in jail for less than 30 days by any magistrate; and also, all insolvents imprisoned by any court in said counties for nonpayment of costs in criminal causes may be retained in imprisonment and worked on the public works until they repay the county to the extent of the half fees charged up against the county for each person taking the insolvent oath. The rate of compensation to be allowed each insolvent for work on the public works shall be fixed by the county commissioners at a just and fair compensation, regard being had to the amount of work of which each insolvent is capable. (1887, c. 355; 1889, c. 419; Rev., s. 1355; C. S., s. 1359.)

Cross References.—See §§ 23-24 and 153-191. As to prisoners sentenced for less than thirty days, see § 153-9, subsection 26.

Editor's Note.—The first paragraph of this section was derived from the act of 1887, and the second paragraph was added by the amendment of 1889.

Public Laws of 1931, c. 145, s. 30, codified as § 148-32, also provided for the surrender on July 1, 1931 of county prisoners assigned to work on the county roads to the State Highway Commission to be worked on the State highways. It was further provided that in the future, in lieu of being sentenced to work on the county roads, prisoners should be assigned to the State Highway Commission to work on the roads of the State. The 1931 law provided that all other laws were amended to conform to its provisions. A proviso permitted the retention and sentencing of prisoners to work on county farms, and Public Laws 1939, c. 243, amended this proviso to permit the working of county prisoners on "parks or other public grounds." For a statute substantially to the same effect as the 1931 law, see Public Laws 1933, c. 172, s. 8, codified as § 148-30.

The cases cited below should be read in the light of the changed conditions in working the public roads, now under the jurisdiction of the State Highway and Public Works Commission.

Construed with §§ 23-24 and 153-191.—This section must be construed with §§ 23-24 and 153-191. State v. Morgan, 141 N. C. 726, 53 S. E. 142 (1906).

Validity of Sentence to Work Public Roads.—A sentence to work the public roads is constitutional and valid. State v. Weathers, 98 N. C. 685, 4 S. E. 512 (1887); State v. Haynie, 118 N. C. 1265, 24 S. E. 536 (1896); State v. Smith, 126 N. C. 1057, 35 S. E. 615 (1900).

A sentence of a defendant convicted of a misdemeanor to thirty days' imprisonment and that he be assigned to the commissioners to be "worked on the public roads of the county" during said term is valid. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Judge's Duty.—When county has made provision for working convicts upon the public roads, it is the duty of the judge holding court in such county to sentence to imprisonment at hard labor on the public roads for such terms as are prescribed by law for imprisonment in the county jail. State v. Saunders, 146 N. C. 597, 59 S. E. 695 (1907).

Presumption as to Enforcement.—Where a prisoner was sentenced to work on the public roads it was presumed that the county authorities had made the proper provisions for its enforcement. State v. Hicks, 101 N. C. 747, 7 S. E. 707 (1888).

An Incident of Sentence Proper.—The order of the commissioners directing the employment of a convict upon the public roads, and committing him to the custody of a superintendent of such public works, is not an additional sentence or judgment pronounced by the commissioners, but an incident to the sentence properly imposed by the court in contemplation of which the prisoner committed the offense. State v. Yandle, 119 N. C. 874, 25 S. E. 796 (1896).

A sentence to work the public roads of another county is valid when authorized by statute. State v. Hamby, 126 N. C. 1066, 35 S. E. 614 (1900).

Half Fees Charged against County.—Where persons are imprisoned for nonpayment of cost, they are to be detained only until they repay the county to the extent of the "half fees charged up against it," thus showing that the legislature recognized the liability of the county in such cases only for half fees. State v. Saunders, 146 N. C. 597, 59 S. E. 695 (1907).

Liability for Allowing Prisoner to Escape.—Where a prisoner confined in the public jail was used by the county authorities to work on the public roads, the person in charge of him was guilty of an escape for negligently allowing such person to make his escape. State v. Sneed, 94 N. C. 806 (1886).

Classes of Prisoners Not Within Section.—This section does not include among those authorized to be worked upon the roads those "sentenced to the house of correction," nor does it include those who fail "to give bond for maintenance of a bastard," nor for "failure to pay costs," except "those imprisoned for nonpayment of costs in criminal causes." State v. Morgan, 141 N. C. 726, 53 S. E. 142 (1906).

Husband Convicted of Abandonment.—A husband convicted of abandonment under § 14-322, and other offenses of like kind, may be assigned to work on the roads during his term. State v. Faulkner, 185 N. C. 635, 116 S. E. 168 (1923).

Conviction of Affray and Assault.—In State v. Weathers, 98 N. C. 685, 4 S. E. 512

(1887), upon conviction for an affray and mutual assault, the court pronounced judgment that "the convicted defendants be put to work on the public roads by the county commissioners," and the judgment was affirmed. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905). To the same effect is State v. Pearson, 100 N. C. 414, 6 S. E. 387 (1888); State v. Haynie, 118 N. C. 1265, 24 S. E. 536 (1896).

Conviction of Assault and Battery with Deadly Weapon.—State v. Yandle, 119 N. C. 874, 25 S. E. 796 (1896), was a conviction for an assault and battery with a deadly weapon, and the Supreme Court held that one legally convicted of any crime or misdemeanor may be, under the authority of this section, sentenced to work upon the public roads. See Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898); State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Conviction of Bastardy.—In Myers v. Stafford, 114 N. C. 234, 19 S. E. 764 (1894), it was held that bastardy having become a "petty misdemeanor," a defendant convicted of that offense may, under the authority of § 60-42, be put to work on the public roads until the fine and costs are paid. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

§ 153-195. Deductions from sentence allowed for good behavior.—When a convict has been sentenced to work upon the public works of a county, and has faithfully performed the duties assigned to him during his term of sentence, he is entitled to a deduction from the time of his sentence of five days for each month, and he shall be discharged from the county works when he has served his sentence, less the number of days he may be entitled to have deducted. The authorities having him in charge shall be the sole judges as to the faithful performance of the duties assigned to him. Should he escape or attempt to escape he shall forfeit and lose any deduction he may have been entitled to prior to that time. This section shall apply also to women sentenced to a county farm or county home. (1913, c. 167; s. 1; C. S., s. 1360.)

§ 153-196. Convicts sentenced to public works to be under county control.—The convicts sentenced to hard labor upon the public works, under the second paragraph of § 153-194, shall be under the control of the county authorities, and the county authorities have power to enact all needful rules and regulations for the successful working of convicts upon the public works. The county commissioners may work such convicts in canaling the main drains and swamps or on other public work of the county. (1887, c. 355, s. 2; 1891, c. 164; Rev., s. 1356; C. S., s. 1361.)

Unauthorized Whipping.—In the absence of rules and regulations made and promulgated by the county commissioners permitting it, a guard has no legal right or authority to whip convicts in his care or custody. State v. Morris, 166 N. C. 441, 81 S. E. 462 (1914).

§ 153-197. Taxes may be levied for expenses of convicts.—The board of county commissioners of the several counties in the State taking advantage of this article shall levy a special tax annually as other taxes are levied for the purpose of paying the expenses of said convicts, building of stockades, etc., and the expenses shall be paid by the counties. (1887, c. 355, s. 6; Rev., s. 1359; C. S., s. 1364.)

§ 153-198. Use of county prisoners in maintaining roads not within State system.—The State Highway Commission may, on official request from a board of county commissioners authorize such board of county commissioners to use any county prisoners, upon such terms as may be agreed upon, to maintain and grade any neighborhood road within the county not at such time within the system of the State Highway Commission, but this authorization shall not authorize the levying of any tax for support of local roads; and like authority is extended to the boards of drainage commissioners for public drainage districts for the maintenance and upkeep of such districts. (1937, c. 297, s. 3½; 1957, c. 65, s. 11.)

Local Modification.—New Hanover: 1941, c. 75.

Article 16.

District Prison Farm.

§ 153-199. Two or more adjacent counties may establish; trustees.—Any two or more adjacent counties may, by action of said commissioners in said counties, as

hereinafter provided, establish a district prison farm, to be located at some suitable place in the counties composing the district, location and purchase to be controlled by a board of trustees appointed by the county commissioners of the respective counties owning and controlling said district prison farm, each county to have one trustee. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 142, s. 1.)

§ 153-200. Appointment of trustees; vacancies; expenses and compensation.—The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district prison farm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district prison farm for the district comprising ....., ..., ... counties; the members of said boards of trustees shall be appointed every two years, and until their successors are chosen and qualified; all vacancies shall be filled by the several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 142, s. 2.)

§ 153-201. Organization meeting; purchase of site; equipment; separation of races and sexes.—The board of trustees shall, as soon as possible, and not later than sixty days after appointment, meet and organize by electing a chairman and secretary. They shall proceed promptly with the purchase of a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities. They shall provide for the necessary stock, tools, and farm equipment, and shall cause to be erected suitable buildings for the housing, detention and keeping the prisoners assigned to said district farm, due regard being given to the separation of the sexes and races and such other plans for segregation as their judgment and existing conditions may suggest. (1931, c. 142, s. 3.)

§ 153-202. Proportion of payment among counties.—The several counties shall pay for the site and for the construction and equipment of the prison farm in proportion to the taxable property of the several counties, and shall own the same in the same proportion, but the operating expense shall be borne by the said counties in proportion to the population of the several counties. (1931, c. 142, s. 4.)

§ 153-203. Election of superintendent and employees; regulations for working prisoners.—The said board of trustees of said district prison farm shall elect a capable superintendent and such other employees as it may deem necessary for the efficient management of said farm and shall make rules and regulations for the working of all prisoners sentenced to said farm to the end that the said district prison farm shall be as near self-supporting as practicable. (1931, c. 142, s. 5.)

§ 153-204. Meetings of trustees.—The board of trustees of said district prison farm shall meet at said farm at least twice each year for the transaction of such business as may come before them. They shall meet at other times on the call of the chairman or on a call by a majority of the board of trustees. (1931, c. 142, s. 6.)

§ 153-205. Notification to boards of commissioners and courts of readiness of farm.—As soon as said prison farm is purchased and the necessary building erected thereon and the farm equipped with stock, tools, etc., the board of trustees of said district prison farm shall notify the boards of commissioners of the several counties, and the said boards of commissioners, upon receipt of said notice, shall promptly notify each and every court in the several counties, including superior courts, recorders' courts and all other courts which are now operating or may hereafter be established in said counties that the prison farm is ready. (1931, c. 142, s. 7.)

§ 153-206. Assignment of prisoners to work on farm.—From and after receipt of the information set out above, it shall be the duty of the judges, recorders and other presiding officers of the several courts in said counties, to assign all prisoners

sentenced by them to the county jails to the said district prison farm. (1931, c. 142, s. 8.)

§ 153-207. Bonds and notes for payment for farm; maximum levy.—The several counties of said district are hereby authorized to provide for the payment of their proportionate part of said farm and equipment by the sale of notes or bonds as provided in the County Finance Act and to provide for payment of said bonds and notes by the levy of such tax as may be necessary for said purpose: Provided, not more than a levy of ten cents on the one hundred dollars valuation shall be levied any one year in any county. (1931, c. 142, s. 9.)

§ 153-208. Yearly report of operations.—The said board of trustees shall cause to be made a detailed report of the operations of said district prison farm each year not later than January tenth each year and shall send a copy of said report to the several boards of county commissioners. (1931, c. 142, s. 10.)

Article 17.

Houses of Correction.

§ 153-209. Commissioners may establish houses of correction.—The board of commissioners may, when they deem it necessary, establish within their respective counties one or more convenient institutions to be known as houses of correction, or, in the discretion of the board of commissioners, as training schools, municipal farms, or juvenile farms, with workshops and other suitable buildings for the safe-keeping, correcting, governing, and employing of offenders legally committed thereto. They may also, to that end, procure machinery and material suitable for such employment in said institutions, or on the premises; and moreover attach thereto a farm or farms; and all lands purchased for the purposes aforesaid shall vest in the directors hereinafter provided for, and their successors in office. The said board also has power to make, from time to time, such rules and regulations as it may deem proper for the kind and mode of labor and the general management of the said institutions. (1866, c. 35, s. 1; Code, s. 786; Rev., s. 1360; 1919, c. 273, s. 1; C. S., s. 1365.)

Cited in State v. Garrell, 82 N. C. 581 (1880); State v. Williams, 97 N. C. 414, 2 S. E. 370 (1887).

§ 153-210. Who must or may be committed to such institutions.—It shall be the duty of the judges of the criminal courts and other committing magistrates of such county or counties to sentence or commit thereto all youthful offenders of the age of sixteen years and under, convicted of any crime or misdemeanor whereof the punishment by statute prescribes a fine or sentence of imprisonment or working the roads. Said judges and committing magistrates may also sentence thereto any female prisoners and such other offenders convicted of misdemeanors who by reason of physical infirmities or mental deficiencies ought not to be imprisoned in the county jail or worked on the public roads. Nothing herein shall be construed to prevent the working at light labor of any partially disabled or infirm convict, or female prisoner, on or about any of the public works, buildings, or grounds in any such county, at and upon the request of the board of county commissioners, with the approval of the court or committing magistrate. (1919, c. 273, s. 1; C. S., s. 1366.)

Cross Reference.—As to juvenile courts and child offenders, see § 110-21 et seq.

§ 153-211. Levy of taxes authorized; to be paid to manager.—The board of commissioners, in addition to the ordinary county taxes, shall also, at the time said taxes are laid, lay such tax as may be necessary to carry into effect this article, which shall be collected and paid to the manager at the same time as other county taxes are to be paid; for which, and such other funds as may come into his hands

as manager, he shall be accountable; and he shall disburse the same under the authority of the directors. (1866, c. 35, s. 5; Code, s. 790; Rev., s. 1361; C. S., s. 1367.)

§ 153-212. Bonds may be issued.—The board of commissioners may, if deemed advisable by them, issue county bonds to raise money to establish the institutions herein provided for. (1866, c. 35, s. 11; Code, s. 796; Rev., s. 1362; C. S., s. 1368.)

§ 153-213. Governor to be notified of establishment.—When any institution is established in pursuance of this article, it is the duty of the chairman of the board of commissioners of the county wherein the same is established to certify the fact to the Governor, who shall cause it to be noted in a book kept for that purpose. (1866, c. 35, s. 12; Code, s. 797; Rev., s. 1363; C. S., s. 1369.)

§ 153-214. Directors to be appointed; duties.—The board of commissioners shall annually appoint not less than five nor more than nine directors for each such institution hereunder established, whose duty it is to superintend and direct the manager hereinafter named in the discharge of his duties; to visit said houses at least once in every three months; to see that the laws, rules and regulations relating thereto are duly executed and enforced, and that the persons committed to his charge are properly cared for, and not abused or oppressed. The directors shall keep a journal of their proceedings, and publish annually an account of the receipts and expenditures. They shall further make a quarterly report to their respective county commissioners of the general condition of their charge, and of the receipts and expenditures of the institution. They shall also make such bylaws and regulations for the government thereof as shall be necessary, which shall be reported to, and approved by, the said commissioners. The directors shall be paid for the services rendered, by the county treasurer, each director first making it appear to the satisfaction of the board of county commissioners, by his oath, the character and extent of the services rendered for which he claims compensation; and such payment shall be made by the county treasurer out of any funds in his hands not otherwise appropriated. (1866, c. 35, s. 2; Code, s. 787; Rev., s. 1364; C. S., s. 1370.)

§ 153-215. Term of office of directors.—The directors shall continue in office until others are appointed; and if any vacancy happens among them, it shall be filled by the residue of the directors. (1866, c. 35, s. 10; Code, s. 795; Rev., s. 1365; C. S., s. 1371.)

§ 153-216. Manager to be appointed; bond; duties.—The board of commissioners shall appoint a manager for each house or establishment, who shall give a bond, with two or more solvent sureties, in such sum as may be required, payable to the State of North Carolina, conditioned for the faithful discharge of his duties. He shall hold his office during the pleasure of the board, and be at all times under the supervision of the directors; and in case of his misconduct, of which they shall be the sole judges, he may be forthwith removed by them and a successor appointed, who shall discharge the duties of the office until another manager is appointed by the board of commissioners. It is the duty of the manager to receive all persons sent to the house of correction, to keep them during the time of their sentence, and to employ and control them according to the rules and regulations established therefor. He shall have the direction and control over the subordinate officers, assistants and servants, who may be appointed by the directors. He shall make monthly reports to the directors of his management of the institution and his receipts and expenditures. (1866, c. 35, s. 3; Code, s. 788; Rev., s. 1366; C. S., s. 1372).

§ 153-217. Manager to assign employment to inmates.—The manager shall assign to each person sent to such institution the kind of work in which such person is to be employed. (1866, c. 35, s. 9; Code, s. 794; Rev., s. 1367; C. S., s. 1373.)

§ 153-218. Compensation of officers.—The said board of commissioners shall direct what compensation the manager and such subordinate officers, assistants and

servants, as shall be appointed, shall receive, and shall provide for the payment thereof. (1866, c. 35, s. 4; Code, s. 789; Rev., s. 1368; C. S., s. 1374.)

§ 153-219. Sheriff to convey persons committed.—When a person is sentenced to such institution he shall forthwith be committed by the court to the custody of the sheriff, to whom the clerk shall immediately furnish a certified copy of the sentence, in which it shall be stated (if the fact be so) that the offender is committed as a vagrant. The sheriff shall convey the offender to the institution, and deliver him to the manager with the certified copy aforesaid, and take the manager's receipt for the body; which receipt the sheriff shall return to the clerk of the board of commissioners, with his indorsement of the time when the offender was committed to him and delivered to the manager, and the clerk shall record the same in a book kept for that purpose, and file the original with the papers in the case. (1866, c. 35, s. 8; Code, s. 793; Rev., s. 1369; C. S., s. 1375.)

§ 153-220. Absconding offenders punished.—If any offender absconds, escapes, or departs from any such institution without license, the manager has power to pursue, retake and bring him back, and to require all necessary aid for that purpose; and when brought back, the manager may confine him to his work in such manner as he may judge necessary, or may put him in close confinement in the county jail or elsewhere, until he submits to the regulations of such institution; and for every escape each offender shall be held to labor in such institution for the term of one month in addition to the time for which he was first committed. (1866, c. 35, s. 6; Code, s. 791; Rev., s. 1370; 1919, c. 273, s. 2; C. S., s. 1376.)

§ 153-221. Release of vagrants.—If a person committed as a vagrant behaves well and reforms, he may, on the certificate of the manager, be released by the directors. But if otherwise committed, he may be released by the committing authority, upon the certificate of the manager and directors upon such conditions as they may deem proper. (1866, c. 35, s. 7; Code, s. 792; Rev., s. 1371; C. S., s. 1377.)

§ 153-222. Suits in name of county.—All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the county, to the use of the directors of the institution, without designating such directors by name. (1866, c. 35, s. 13; Code, s. 798; Rev., s. 1372; C. S., s. 1378.)

§ 153-223. Counties may establish joint houses of correction.—Any two or more counties, acting through their respective boards of commissioners, may jointly establish one or more convenient houses of correction, as is provided in the preceding sections, for the joint use of the counties so agreeing together; and the same may be established at such place or places, and be in all respects managed under such bylaws, rules and regulations as a majority of the general board of directors, to be appointed as hereinafter directed, shall determine. (1866-7, c. 130, s. 1; Code, s. 799; Rev., s. 1373; C. S., s. 1379.)

§ 153-224. Directors of joint houses of correction.—The board of commissioners of each of the respective counties agreeing as aforesaid to the establishment of one or more houses of correction for use jointly with any other county or counties shall annually appoint not less than three or more than five directors in behalf of their several counties, and the directors so appointed by each of such counties shall together constitute the general board of directors of any such joint establishment. (1866-7, c. 130, s. 2; Code, s. 800; Rev., s. 1374; 1919, c. 273, s. 3; C. S., s. 1380.)

§ 153-225. Directors to appoint manager; bond; term; duties.—Said general board of directors shall appoint a manager or superintendent for every such joint establishment, and such assistants and servants as they may deem necessary. The manager shall give bond with two or more able sureties, to be approved by said board, in such sum as may be required, payable to the State of North Carolina, and conditioned for the faithful performance of his duties. He shall hold his office

during the pleasure of the general board of directors, and be, at all times, under their supervision; and of his misconduct they shall be the sole judges, and they may at any time remove him. He shall perform all such duties as may be prescribed by such general board of directors, and all such as may be incident to the office of manager by virtue of this chapter. (1866-7, c. 130, s. 3; Code, s. 801; Rev., s. 1375; C. S., s. 1381.)

§ 153-226. Compensation of manager and other officers.—The compensation of the manager and such subordinate officers, assistants and servants as may be appointed by the general board shall be fixed by said general board. (1866-7, c. 130, s. 3; Code, s. 801; Rev., s. 1375; C. S., s. 1382.)

Article 18.

Consolidation, Annexation and Joint Administration of Counties.

§ 153-227. Contiguous counties may consolidate into one.—Any two or more counties which are contiguous, or which lie in a continuous boundary may, in the manner herein prescribed, consolidate so as to form a single county. Where any group of counties so situated desires to effect such consolidation, a uniform resolution to this effect, setting forth the name of the proposed new county, shall be adopted by the governing bodies thereof, which resolution shall call a special election to be held on a specified date which shall be the same in all of said counties but not less than sixty nor more than ninety days from the last date of the adoption of such resolution in any of said counties. Said resolution shall also specify what group of counties it is proposed to consolidate, the name of the new county thus to be formed, and the county seat thereof. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein, once a week for a period of six weeks prior to the date of said election. (1933, c. 193, s. 1.)

Editor's Note.—See 11 N. C. Law Rev. 213.

§ 153-228. Election laws applicable.—The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the General Assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed in the manner now prescribed by law governing elections for members of the General Assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed consolidation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Consolidation
☐ Against Consolidation

Place a cross (X) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the result of said election to the governing bodies of all of the counties in said group, and each governing body shall cause the complete results of said election to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed consolidation, then said consolidation shall be declared to be in effect, and

thereupon, the several counties shall stand abolished except as hereinafter provided, and the new county thus created shall for all purposes be constituted one of the counties of this State with all the rights, powers, and functions incident thereto under the general laws. If it appear that a majority in any one of said counties voted against the proposed consolidation, then said consolidation shall be declared to have failed for all purposes. (1933, c. 193, s. 2.)

§ **153-229. New county board of elections.**—In case such consolidation be effected, the county boards of elections of the counties thus consolidated, acting together as one board, shall for the time being serve as a temporary county board of elections for the new county thus created, until the expiration of the terms for which they were appointed by the State Board of Elections. Thereafter the State Board of Elections shall appoint for such new county a county board of elections consisting of three members, in the manner and for the term now prescribed by law. (1933, c. 193, s. 3.)

Cross Reference.—As to appointment and term of county board of elections, see § 163-11.

§ **153-230. Special election for new county officers.**—In case such consolidation be effected, then said temporary county board of elections shall immediately call and shall hold a special election in such new county, on a date not less than forty-five nor more than sixty days after the date on which said consolidation was voted into effect, for the purpose of electing for said new county all constitutional and other county and township officers, except justices of the peace as now provided by law for counties throughout the State, including a board of county commissioners consisting of five members. No elections shall be held to fill any office theretofore existing in one or more of the group of counties thus consolidated if such office did not exist in each of said counties, but all of such offices peculiar to only a part of the counties brought into said consolidation shall be deemed abolished in respect to the new county. All constitutional county and township offices, all offices created for counties and townships by general laws, and all other offices in the group of counties thus consolidated, provided they existed in each of said counties, are hereby created for the new county effected by such consolidation, with the same rights, powers, duties and functions pertaining to such offices under the existing law. In order that elections by townships may be conducted, the various township lines and names as they existed before consolidation shall continue in effect, and townships of the several counties shall be deemed townships of the new county until thereafter altered in the manner prescribed by law. (1933, c. 193, s. 4.)

§ **153-231. Term of new officers; salaries.**—All officers elected for the new county at said special election shall hold office until the next general election at which time their successors shall be elected for the regular term prescribed by law. The salaries of all officers elected for the new county at said special election shall be the same as those now fixed by law for such offices. In case the salaries of any officers in the counties thus consolidated were not uniform, then any officer elected for the new county at such special election shall be entitled to a salary equal to the highest salary paid for that particular office in any of said counties before such consolidation was effected. (1933, c. 193, s. 5.)

§ **153-232. Retention of old officers till qualification of new.**—Notwithstanding such consolidation is voted upon favorably, all the existing officers in each of said counties shall continue to function as theretofore and shall have full authority to carry on the regular business of their respective counties, receiving their regular compensation therefor, until the officers for said new county shall have been elected and are qualified, as provided in § 153-230; and pending said election and the organization of the government of the new county, the several counties thus consolidated shall, for the purpose of carrying on their regular business, continue to exist and to

function as separate county governments as fully as if said consolidation had never been voted upon. As soon as the officers for said new county are elected and qualified, then all public offices in the separate counties thus consolidated shall stand abolished and said separate counties shall stand dissolved and shall cease to exist for any and all purposes. (1933, c. 193, s. 6.)

§ 153-233. Powers and duties of new officers.—All officers elected for the new county shall become vested with all the rights, powers, duties, and functions which pertained to their respective officers in any one of the counties thus consolidated. It shall be the duty of all public officers theretofore serving in each of said counties forthwith to surrender and turn over to the corresponding officers of the new county all books, records, funds, and other property held by them in their respective offices. Said new county shall become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to each of said counties and shall have full power to collect and disburse any and all taxes, penalties, and other charges which had been assessed by or had become due to said counties prior to such consolidation. (1933, c. 193, s. 7.)

Cross Reference.—As to criminal liability of officer for failure to deliver records, etc., to successor, see § 14-231.

§ 153-234. Transfer of books, records, etc.—All records, papers, files, funds, and the like held by the clerks of courts in any of said counties shall forthwith be turned over to corresponding officials in the new county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. Wherever counties thus consolidated lie in different judicial districts, the new county thus established shall become a part of that judicial district in which the larger portion of its territory lies. (1933, c. 193, s. 8.)

§ 153-235. Liability for bonded indebtedness.—Any such new county thus established shall be liable for all of the bonded and other indebtedness of the separate counties so consolidated, and any and all rights which might have been enforced against any of said counties may be enforced against said new county as fully as though the proceeding were against the county originally liable. (1933, c. 193, s. 9.)

§ 153-236. Justices of the peace and constables.—All justices of the peace and constables holding office at the time of such consolidation shall continue to serve as such in and for the new county thus established until the expiration of the terms for which they were elected or appointed, at which time, justices of the peace and constables may be elected and appointed for said new county in the manner now provided by law. Such consolidation shall in no wise affect the validity of any proceeding pending in the court of any justice of the peace in said counties. (1933, c. 193, s. 10.)

§ 153-237. Representation in General Assembly.—In the event such consolidation be thus effected, the consolidated county thereafter shall be entitled to the same representation in the House of Representatives theretofore had by the several counties so consolidated until the next re-apportionment of the membership of the House of Representatives by the General Assembly. Nor shall such consolidation affect the existing lines of State senatorial or congressional districts or the representation therein. (1933, c. 193, s. 10½.)

§ 153-238. Merging of one contiguous county with another authorized.—Wherever two counties are contiguous, and it is their mutual desire that one of said counties shall be annexed to and merged in the other, such annexation may be effected in the manner herein prescribed. The governing body of each of said counties shall adopt a uniform resolution setting forth the willingness of one of said counties to become annexed to and merged in the other pursuant to the authority of §§ 153-238 to 153-246. Said resolution shall also call for a special election to be held on a

specified date which shall be the same in both counties but not less than sixty nor more than ninety days from the last date on which said resolution was adopted in either of said counties. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein once a week for a period of six weeks prior to the date of said election. (1933, c. 194, s. 1.)

Liability for County Indebtedness.—The proceeding for annexation is the same as in consolidation, but when it is complete, the county annexed ceases to exist and becomes a part of the other county. The liability of the annexing county for the indebtedness of the annexed county is to be determined in the beginning, when the plan of annexation is submitted. 11 N. C. Law Rev. 213.

§ **153-239. Election laws applicable.**—The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the General Assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed, in the manner now prescribed by law governing elections for members of the General Assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed annexation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Annexation
☐ Against Annexation

Place a cross (X) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the results of said election to the governing body of both counties, and thereupon, the governing body of each county shall cause the results of the said election in both counties to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed annexation, then said annexation shall be declared to be in effect. If it appear that a majority of those voting in either of said counties voted against the proposed annexation, then said annexation shall be declared to have failed for all purposes. (1933, c. 194, s. 2.)

§ **153-240. Dissolution of county merged.**—In the event such annexation shall be voted upon favorably in each of said counties, then the county which was voted to be annexed to the other shall thereupon stand dissolved and abolished, and its territory thereby shall be transferred to and for all purposes shall become a part of the annexing county, and townships of the annexed county shall be deemed townships of the annexing county until thereafter altered in the manner prescribed by law. (1933, c. 194, s. 3.)

§ **153-241. Abolition of offices in merged county; transfer of books, records, etc.**—In the event such annexation be thus effected, all public offices except those of justice of the peace and constable, in the county so annexed, shall stand abolished, and it shall be the duty of those who held such offices before annexation to turn over to the corresponding officers of the annexing county all books, records, funds, and other property theretofore held by them in their official capacity, and said corresponding officers of the annexing county shall be vested with all the rights of said offices thus abolished, and shall be entitled to the custody and control of all books, records, funds, and other property formerly held by the incumbents of such abolished offices. (1933, c. 194, s. 4.)

§ 153-242. Court records transferred; justices of the peace and constables hold over.—In the event such annexation be thus effected, all records, papers, files, funds, and the like held by clerks of courts in the annexed county shall forthwith be turned over to corresponding clerks in the annexing county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. All justices of the peace and constables holding office in the annexed county at the time of such annexation shall continue to serve as justices of the peace and constables of the annexing county in and for the new township, until the expiration of the terms for which they were elected or appointed, in as full a measure as if such annexation had not occurred, and the validity of proceedings pending before such justices of the peace at the time of annexation shall in no wise be affected thereby. Upon the expiration of their terms, justices of the peace and constables shall be elected or appointed in such annexed territory in the manner prescribed by law. Any other officers provided by the general law for a township shall be elected in the new territory at the next general election following such annexation. (1933, c. 194, s. 5.)

§ 153-243. Rights of annexing county.—In the event such annexation be thus effected, the annexing county shall forthwith:

(1) Become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to the annexed county, and shall have full power to collect and disburse any and all taxes, penalties and other charges which had been assessed by or had become due to the annexed county prior to such annexation. Said annexing county shall also be liable for all bonded and other indebtedness of the annexed county, and any and all rights which might have been enforced against said annexed county may be enforced against the annexing county as fully as though the proceeding had been against the county thus annexed;

(2) Said annexing county shall treat said annexed county as a township or division of said annexing county, and said annexing county shall forthwith be vested with title to all property of every kind and character, real, personal and mixed, belonging to said annexed county, and have full power to collect any and all taxes, penalties and other charges which have been assessed by or become due to the annexed county prior to the annexation, and shall disburse the same for the payment of obligations of said annexed county; and the bonded indebtedness of said annexed county shall be a charge only on the property of the township or division of said annexing county which was comprised in the annexed county, and taxes for the payment of same shall be levied only on property within said township or division. And the property in said township or division constituting the property in the annexed county shall not be liable for any of the bonded or other indebtedness of the county annexing it, existing prior to said annexation, and no taxes shall be levied on the property of said township for the payment of same. (1933, c. 194, s. 6.)

§ 153-244. Plan of government.—At the time of entering the resolutions as set out in § 153-238, the counties in said resolution shall specifically provide whether plan A or plan B, as set out in § 153-243, shall govern the two counties as to the bonded indebtedness. (1933, c. 194, s. 7.)

§ 153-245. Membership in General Assembly.—In the event such annexation be thus effected, the annexing county thereafter shall be entitled to the same representation in the House of Representatives theretofore had by the annexed and annexing counties until the next reapportionment of the membership of the House of Representatives by the General Assembly. Nor shall such annexation affect the

existing lines of State Senatorial or Congressional Districts or the representation therein. (1933, c. 194, s. 7½.)

§ 153-246. Joint administrative functions of contiguous counties.—Any two or more counties which are contiguous or which lie in a continuous boundary are authorized, whenever it is deemed for their best interests, to enter into written agreements for the joint performance of any and all similar administrative functions and activities of their local governments through consolidated agencies, or by means of institutions or buildings jointly constructed, owned and operated.

Such written agreement shall set forth what functions or activities of local government shall thus be jointly carried on, and shall specify definitely the manner in which the expenses thereof shall be apportioned and how any fees or revenue derived therefrom shall be apportioned. Upon such agreement being ratified by the governing bodies of the counties subscribing thereto, it shall be spread upon their respective minutes.

Whenever any such agreement has been entered into, then the consolidated agency or institution set up to function jointly for the counties which are parties thereto, shall be vested with all the powers, rights, duties and functions theretofore existing by law in the separate agencies so consolidated.

No such agreement shall be entered into for a period of more than two years from the date thereof, but such agreements may be renewed for a period not exceeding two years at any one time.

In the same manner and subject to the same provisions as herein set out, any municipality may enter into such an agreement with the county in which it is situated, or may join with other municipalities in the same county in making such an agreement with said county, to the end that the functions of local government may, as far as practicable, be consolidated.

It is the purpose of this section to bring about efficiency and economy in local government through a conoslidation of administrative agencies thereof, and to effectuate this purpose this section shall be liberally construed. (1933, c. 195.)

Local Modification.—Edgecombe and Nash and municipalities therein: 1961, c. 694.

Editor's Note.—For brief summary of section, see 11 N. C. Law Rev. 213.

Article 19.

Assistance to Historical Organizations.

§ 153-247. Purpose of article.—The purpose of this article is to authorize counties and municipalities to assist in and promote programs for the preservation of historic sites or buildings and the recording and preservation of the history of North Carolina. (1955, c. 371, s. 1.)

§ 153-248. Counties and municipalities authorized to make appropriations to historical organizations.—Upon the request of a local historical society, historical museum or other historical organization, based upon a resolution adopted by such society, museum or organization, the governing body of any county or municipality may, in its discretion, make appropriations from non ad valorem tax revenues to such society, museum or organization. (1955, c. 371, s. 2; 1957, c. 398.)

Editor's Note.—The 1957 amendment inserted "ad valorem" near the end of the section.

§ 153-249. Expenditure of appropriations; annual report of organization.—Any such society, museum or organization to which such an appropriation may be made may expend the same for the preservation of historic sites or buildings, the recording and publication of materials relating to the history of the area, the establishment or maintenance of historical museums, the payment of salaries of person-

nel employed thereby, the costs of recording and maintaining, the cost of acquiring, recording and maintaining materials and equipment, and such other purposes as may be approved by said governing body and said society, museum or organization. Such society, museum or organization shall make an annual report to said county or municipal governing body showing the manner in which appropriated funds have been expended during each fiscal year thereafter. (1955, c. 371, s. 3.)

§ 153-250. Assignment of room in public building, etc., for use of historical organization.—The governing body of any county or municipality or the custodians or governing bodies of schools or libraries are authorized and empowered to set aside and assign for the uses and activities of local historical societies, historical museums or other historical organization such rooms or space as may be available in any school, library or public building, under the jurisdiction of said governing body or board of custodians. (1955, c. 371, s. 4.)

Article 20.

Planning and Zoning Areas.

§ 153-251. Authority of county commissioners to create areas.—For the purpose of promoting health, safety, morals, and the general welfare of the several unincorporated communities of the counties of North Carolina, the board of commissioners of any county is hereby empowered to create planning and zoning areas within the county in accordance with the provisions of this article. (1957, c. 416, s. 1.)

§ 153-252. Petition by freeholders to establish area.—A majority of the resident freeholders of any unincorporated area may petition a board of county commissioners of the county in which the area is located to establish a planning and zoning area. The petition shall be written, shall contain a legal description of the proposed planning and zoning area, and shall contain a suggested name for the proposed area. The petition shall be signed by a majority of the resident freeholders of the area, and the area shall have an assessed valuation for taxes of at least two hundred thousand dollars ($200,000.00) and shall have seventy-five (75) or more residences therein. (1957, c. 416, s. 2.)

§ 153-253. Investigation and order for hearing; notice of hearing.—(a) Upon presentation of a petition requesting that a planning and zoning area be established, the chairman of the board of county commissioners shall as soon as practicable cause an investigation to be made to determine whether the petition and the proposed area substantially comply with the provisions of this article. If upon the investigation, which must be completed within ten (10) days, it appears that the petition and the proposed area are in substantial compliance with this article, the chairman shall immediately order a hearing upon the merits of the petition and the advisability of establishing the proposed planning and zoning area. The hearing must be held by the board of county commissioners at least thirty (30) days after the date of the order setting the hearing.

(b) Notice of the hearing shall contain the date, time, place and purpose thereof and shall be published once a week for four (4) successive weeks immediately preceding the hearing in a newspaper published in the county in which the proposed planning and zoning area is located. Notice of the hearing must also be posted at five (5) or more public places in the proposed planning and zoning area at least thirty (30) days immediately preceding the date of the hearing. (1957, c. 416, s. 3.)

§ 153-254. Expressing opinion at hearing; continuances; county commissioners to enter order; minimum requirements for areas; amendment of petition.—(a) At the hearing provided under § 153-253 any citizen residing within the proposed area shall have the right to express his opinion as to the desirability or advisability of establishing the whole of said area or any part thereof as a planning

and zoning area. The hearing may be continued from time to time without further advertising.

(b) At the close of the hearing the board of county commissioners shall enter an order:

(1) Creating the entire area as a planning and zoning area; or

(2) Creating a portion of the area as a planning and zoning area; or

(3) Refusing to create the whole or any part of the area as a planning and zoning area.

No area shall be created as a planning and zoning area unless such area shall have property with a tax valuation of at least two hundred thousand ($200,000.00) and seventy-five (75) or more residences and in which a majority of the resident freeholders sign the petition for the creation of a planning and zoning area.

(c) During the course of the hearings, the original petition for the creation of a planning and zoning area may be amended by the addition of signatures of additional resident freeholders who desire the establishment of such an area, but no signatures may be removed from the petition after the board of county commissioners has begun consideration of the petition. (1957, c. 416, s. 4.)

§ **153-255. Contents of order creating area; recordation of order and map.**—The order creating a planning and zoning area hereinbefore provided for shall contain a legal description of the planning and zoning area and shall designate the area as, "The Planning and Zoning Area of ..... Community". In the order, the board of county commissioners shall direct that a map of the planning and zoning area be made by some competent engineer or surveyor; and the board of county commissioners shall cause said order and map to be recorded in the office of the register of deeds of the county in which the planning and zoning area is situated. (1957, c. 416, s. 5.)

§ **153-256. Planning and zoning commissioners; appointment and term; recordation of appointments; expenses.**—Upon recordation of the map and order creating the planning and zoning area, the county commissioners shall appoint three resident freeholders of the area as planning and zoning commissioners, for a term of two (2) years from the date of their appointment. Successor planning and zoning commissioners shall be appointed by the board for a term of two (2) years; provided, all planning and zoning commissioners shall hold office during such term at the will of the county commissioners. The order appointing planning and zoning commissioners shall be recorded in the office of the register of deeds of the county in which the area is located. The planning and zoning commissioners shall serve without compensation and all necessary expenses incurred by the planning and zoning commission in the performance of its duties shall be paid by the county in which the planning and zoning area is located. (1957, c. 416, s. 6.)

§ **153-257. Organization meeting; duties of chairman and secretary.**—As soon as practicable after their appointment the planning and zoning commissioners shall meet and organize by electing one of the members chairman and one secretary. It shall be the duty of the chairman to preside at all meetings and hearings of said planning and zoning commission and to be its executive officer. It shall be the duty of the secretary to keep minutes of the meetings and hearings of said planning and zoning commission in a permanent record book and to perform such other duties as are usual for secretaries of similar organizations. (1957, c. 416, s. 7.)

§ **153-258. Power to formulate rules and regulations.**—The planning and zoning commission of every planning and zoning area created under this article is hereby granted the necessary police power to formulate rules and regulations applicable in such planning and zoning area prescribing the height and number of stories and the type and size of buildings in the area; the number of buildings or other structures which may be placed on one lot or acreage; the minimum width and depth of any lot on which buildings or other structures may be placed; the

minimum size of yards, courts, open spaces, parks or playgrounds in the area; the location of buildings and other structures used for trade, industry, residences, and all other purposes; the width and location of streets or roads; building lines as they relate to streets or roads and contiguous lots or other property and the establishing of new subdivisions in the area. (1957, c. 416, s. 8.)

§ 153-259. Public hearing on regulations; recording and indexing; nonconforming uses; lands and areas excepted.—Before regulations for planning and zoning or any amendments, changes, or modifications thereof shall be enacted by the planning and zoning commission, there shall be a public hearing in relation thereto conducted by such commission at which any citizen of the planning and zoning area desiring to be heard concerning said rules and regulations may be heard. The commission shall give the citizens of the area notice of such hearing by posting notices thereof at five (5) or more public places in the area at least ten (10) days before the hearing. Such public hearing may be adjourned by the planning and zoning commission from time to time without further advertising. At the conclusion of the hearings, such rules and regulations or any amendments, changes, or modifications thereof which are adopted shall be placed in the minute book of the commission, and a copy thereof, signed by the chairman and attested by the secretary of the commission, shall be filed in the office of the register of deeds of the county in which the area is located. The register of deeds shall record such rules and regulations, or any amendments, changes, or modifications thereof, and index the same in the name of the planning and zoning area to which they shall apply.

In the rules and regulations pertaining to any planning and zoning areas created under this article, provision shall be made for the continuance of nonconforming uses in existence at the time of the adoption of such rules and regulations; but an extension, restoration, or alteration of such existing nonconforming use shall be subject to regulation consistent with the purpose of this article and to the extent and subject to the limitations as provided by law.

None of the provisions of this article shall in any way be construed to grant directly or indirectly to any planning and zoning commission any power or authority to zone, regulate, control, or prohibit the use of any lands or use of construction of any buildings, structures, or improvements on any lands devoted to farming or agriculture. Neither shall said planning and zoning commission have power under this article to regulate any area within the limits of any incorporated cities or towns situated in such county, or within any unincorporated area contiguous thereto in which such city or town by authority duly conferred upon it shall have exercised any power of planning or zoning. (1957, c. 416, s. 9.)

§ 153-260. When regulations become effective.—When the order creating the planning and zoning area and the map thereof shall have been filed in the office of the register of deeds of the county in which such area shall be situated, such area shall thereupon be and become a planning and zoning area; and the rules and regulations and any amendments, changes, or alterations thereof, when recorded as in this article provided, shall have the full force and effect of law and may be enforced by the planning and zoning commission or by any interested citizen by appropriate civil action which shall include injunction. (1957, c. 416, s. 10.)

§ 153-261. Contiguous planning and zoning areas; consolidation.—When two or more planning and zoning areas are contiguous, the board of county commissioners is authorized and empowered but not directed to consolidate them; and in case of consolidation, the term of office of the planning and zoning commissioners shall expire, and the board of county commissioners shall appoint a new planning and zoning commission of three (3) members for a term of two (2) years; but any member serving as a planning and zoning commissioner of either of the pre-existing planning and zoning areas shall be eligible to serve as a planning and zoning commissioner of the consolidated area. The rules and regulations in force

in the areas before consolidation shall remain in full force and effect until new rules and regulations are formulated and become effective; and the order consolidating the planning and zoning areas shall be recorded in the office of the register of deeds of the county in which the planning and zoning area lies. (1957, c. 416, s. 11.)

§ 153-262. Adding or removing territory from area; area annexed or adjacent to municipality.—The board of county commissioners either upon petition or upon its own motion may remove any real estate from a planning and zoning area; or upon petition it may add any real estate to an area, provided such removed or added real estate shall border upon the outer boundaries of said planning and zoning area. Any order adding or removing territory from a planning and zoning area shall be duly recorded in the office of the register of deeds of the county in which such area lies, together with a plat or map of such area removed or added.

In the event the whole or any part of a planning and zoning area as provided for in this article shall become annexed to a municipality, or shall be situated in an unincorporated area adjacent to a municipality in which such municipality by authority duly conferred upon it shall have exercised authority of planning and zoning, then and in either of such events, such area shall cease to be a planning and zoning area or a part thereof. (1957, c. 416, s. 12.)

§ 153-263. Planning and zoning areas organized under other laws.—Where in any county there is situated a planning and zoning area organized under a public, public-local, or private act of the General Assembly of North Carolina, said area is hereby continued as a planning and zoning area; and said area shall be subject to all the provisions of this article as fully as it would be had it been created and organized under the provisions hereof; and all existing rules and regulations of said planning and zoning areas are hereby ratified; but they may be modified or abrogated in accordance with the provisions of this article. (1957, c. 416, s. 13.)

§ 153-264. Permit for erection or alteration of structure; fee; appeal to county commissioners upon refusal; recording and indexing orders altering regulations.—Any person, association, or corporation desiring to build or alter a structure of any kind in a planning and zoning area shall present to the planning and zoning commission of said area plans thereof and a map showing the location of said structure for approval in accordance with the rules and regulations of such area. Upon approval by said commission, a permit shall be issued by it for the erection or alteration of such structure. A fee for such permit in an amount to be fixed by the zoning commission not to exceed ten dollars ($10.00) shall be paid to the treasurer of the county in which such area is situated. In the event a permit is refused, the person, association, or corporation may appeal to the board of county commissioners by filing notice of such appeal with the secretary of the planning and zoning commission and the clerk to the board of county commissioners within five (5) days from the refusal of said commission to issue or grant a permit. The board of county commissioners shall hear the appeal as soon as it may conveniently be heard and shall have the authority to reverse the decision appealed from or to alter, amend, or rescind any rule or regulation under which the appeal was brought. Provided, in the event any order or resolution of the said board of county commissioners shall have the effect of altering, amending, or rescinding any rule or regulation of a planning and zoning area, then such order or resolution shall be incorporated in and become a part of the rules and regulations of the planning and zoning area and shall be recorded in the office of the register of deeds of the county in which such area lies and indexed in the name of the planning and zoning area to which the same shall apply. (1957, c. 416, s. 14.)

§ 153-265. Penalty for violation of rule or regulation.—Any person, association, or corporation violating any rule or regulation of a planning and zoning area established under this article shall be guilty of a misdemeanor punishable by a fine not exceeding fifty dollars ($50.00) or imprisonment not exceeding thirty (30)

days, and each day's violation thereof shall be considered a separate offense. (1957, c. 416, s. 15.)

§ 153-266. Counties within article.—This article shall apply to counties having two or more cities each having population in excess of thirty-five thousand (35,000) people, as shown by the last federal census. (1957, c. 416, s. 17.)

Article 20A.

Subdivisions.

§ 153-266.1. Regulations authorized for territory outside municipal jurisdiction; approval of regulations within municipal jurisdiction; withdrawal of approval.—The board of county commissioners of any county is hereby authorized to enact an ordinance regulating the platting and recording of any subdivision of land as defined by this article, lying within the county and outside the subdivision-regulaton jurisdiction of any municipality. Such ordinance may also regulate territory within the subdivision-regulation jurisdiction of any municipality whose governing body by resolution agrees to such regulation; provided, however, that any such municipal governing body may, upon one years' written notice, withdraw its approval of the county subdivision regulations, and those regulations shall have no further effect within the municipality's jurisdiction. (1959, c. 1007.)

§ 153-266.2. Public hearing on subdivision control ordinance or amendment; notice.—Before the county commissioners may adopt a subdivision control ordinance or any amendment thereto under the provisions of this article, the said board of county commissioners shall hold a public hearing on the proposed ordinance. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in the county, or if there be no newspaper published in the county, by posting such notice at four public places in the county, said notice to be published the first time, or posted, not less than fifteen days nor more than twenty-five days prior to the date fixed for said hearing. (1959, c. 1007.)

§ 153-266.3. Regulation only by ordinance; contents and requirements of ordinance generally; plats.—No county shall regulate the platting and recording of subdivisions in any manner other than through the adoption of an ordinance pursuant to the provisions of this article. Such ordinance may provide for the orderly development of the county; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of rights of way or easements for street and utility purposes; and for the distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and the general welfare. Such ordinance may include requirements for the final plat, plat to show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice. (1959, c. 1007.)

§ 153-266.4. Ordinance to contain procedure for plat approval; certain agencies to be given opportunity to make recommendations; approval prerequisite to plat recordation; statement by owner.—Any subdivision ordinance adopted pursuant to this article shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration. Such ordinance shall give the following agencies an opportunity to make recommendations prior to the approval of any individual subdivision plat:

(1) The district highway engineer as to proposed streets, highways, and drainage systems;

(2) The county health director as to proposed water and sewerage systems;

(3) The county school superintendent as to proposed school sites;
(4) Such other agencies and officials as the county commissioners may deem necessary or desirable.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

(1) The board of county commissioners,
(2) The board of county commissioners on recommendation of the county planning board, or
(3) The county planning board.

From and after the time that a subdivision ordinance is filed with the register of deeds of the county, no subdivision plat of land within the county's subdivision-regulation jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the appropriate board, as specified in the subdivision ordinance, and until such approval shall have been entered on the face of the plat in writing by the chairman of said board. The register of deeds shall not file a plat of a subdivision of land located within the territorial jurisdiction of the county commissioners as defined in G. S. 153-266.1 hereof which has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat where such recording would be in conflict with this section. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision-regulation jurisdiction of the board of county commissioners. (1959, c. 1007.)

§ 153-266.5. Approval of plat not to constitute acceptance of streets, etc.—The approval of a plat pursuant to regulations adopted under this article shall not be deemed to constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. (1959, c. 1007.)

§ 153-266.6. Sale of land by reference to unapproved plat a misdemeanor; injunctions.—If a board of county commissioners adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the platting jurisdiction granted to the county commissioners by G. S. 153-266.1, thereafter transfers or sells such land by reference to a plat showing a subdivision of land before such plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The county, through its county attorney or other official designated by the board of county commissioners, may enjoin such illegal transfer or sale by action for injunction. (1959, c. 1007.)

§ 153-266.7. Subdivision defined.—For the purpose of this article, the following definition shall apply:

Subdivision.—A "subdivision " shall include all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions, for the purpose, whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by this article:

(1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ordinance;
(2) The division of land into parcels greater than five acres where no street right of way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets;

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right of way dedication is involved and where the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ordinance. (1959, c. 1007.)

§ 153-266.8. Article deemed supplementary.—The powers granted to counties by this article shall be deemed supplementary to any powers heretofore or hereafter granted by local act for the same or a similar purpose, and in any case where the provisions of this article conflict with or are different from such provisions of any local act, the board of county commissioners may in its discretion proceed in accordance with the provisions of this article or, as an alternative method, in accordance with the provisions of such local act. (1959, c. 1007.)

§ 153-266.9. Counties excepted from article.—This article shall not apply to the following counties: Bertie, Brunswick, Caswell, Craven, Franklin, Greene, Hoke, Lenoir, Moore, Pender, Scotland and Washington. (1959, c. 1007; 1961, cc. 29, 260; c. 390, s. 1; cc. 554, 596, 977; 1963, cc. 715, 872.)

Editor's Note.—The first 1961 amendment deleted "Person" from the list of counties in this section, its purpose being to make the provisions of the article applicable to Person County.

The second and third 1961 amendments deleted "Surry" and "Warren" from the list.

The fourth and fifth 1961 amendments deleted "Martin" and "Iredell," respectively, from the list so as to make the article applicable to such counties.

The sixth 1961 amendment deleted "Alleghany," "Ashe," "Bladen," "Currituck," "Duplin," "Tyrrell" and "Wayne" from the list of counties.

The first 1963 amendment deleted "Harnett" from the list of counties. The second 1963 amendment deleted "Halifax" from the list of counties.

Article 20B.

Zoning and Regulation of Buildings.

§ 153-266.10. Authority of county commissioners.—For the purpose of promoting health, safety, morals, or the general welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict

(1) The height, number of stories, and size of buildings and other structures,

(2) The percentage of lot that may be occupied,

(3) The size of yards, courts, and other open spaces,

(4) The density of population, and

(5) The location and use of buildings, structures, and land for trade, industry, residence or other purposes, except farming.

No such regulations shall effect bona fide farms, but any use of such property for non-farm purposes shall be subject to such regulations. Such regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. (1959, c. 1006, s. 1.)

§ 153-266.11. Districts.—For any and all said purposes, the board of commissioners may divide the county, or portions of it as determined in accordance with the provisions of G. S. 153-266.13 below, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (1959, c. 1006, s. 1.)

§ 153-266.12. Comprehensive plan and design.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of each district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county. Such regulations shall further be made with reasonable consideration to expansion and development of municipalities within the county, so as to provide for the orderly growth and development of such municipalities. (1959, c. 1006, s. 1.)

§ 153-266.13. Territory which may be regulated; areas less than entire county.—The county zoning ordinance may regulate all territory in the county outside the zoning jurisdiction of any municipalities within the county. In addition, the county zoning ordinance may regulate territory within the zoning jurisdiction of any municipality whose governing body, by resolution, agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county zoning regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

Where the board of commissioners determines that it is not necessary to zone the entire county in order to serve the public interest, the board may, after a public hearing, designate one or more portions of the county as a zoning area or areas. Any such area or areas may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated. No zoning area may be designated which is less than six hundred forty (640) acres in area, or which contains less than ten separate tracts of land in separate ownership. (1959, c. 1006, s. 1.)

§ 153-266.14. Planning board; advisory commissions.—In order to avail itself of the powers conferred by this article, the board of commissioners shall appoint a county planning board or a joint planning board under the provisions of G. S. 153-9 (40) or of a special act of the General Assembly. If the board of commissioners creates one or more zoning areas within the county under the provisions of G. S. 153-266.13 hereof, it shall also appoint an advisory commission for each such zoning area, composed of residents of the area. Each advisory commission shall be charged with the duty of making recommendations to the planning board and the board of commissioners concerning zoning regulations for its area. (1959, c. 1006, s. 1.)

§ 153-266.15. Preparation of zoning plan by board; certification to county commissioners; hearings; action by county commissioners; amendments.—The county planning board or joint planning board shall have the duty of preparing a zoning plan, including both the full text of a zoning ordinance and a map or maps showing proposed district boundaries. The planning board may hold such public hearings as it deems necessary in the course of preparing this plan. The planning board shall certify this plan to the board of county commissioners.

On receipt of a zoning plan from the county planning board, the board of commissioners shall hold a public hearing thereon, after which it may adopt the zoning ordinance and map as recommended, adopt it with modifications, or reject it.

The zoning ordinance, including the map or maps, may from time to time be amended, supplemented, changed, modified, or repealed. No amendment shall become effective unless it first be submitted to the planning board for its recommendations; failure of the planning board to make recommendations for a period of thirty days after the amendment has been referred to it shall constitute a favorable recommendation. No amendment may be adopted until after a public hearing thereon. (1959, c. 1006, s. 1.)

§ **153-266.16. Requirements for public hearings.**—Whenever in this article a public hearing is required, all parties in interest and other citizens shall be given an opportunity to be heard. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in the county, or, if there be no newspaper published in the county, by posting such notice at four public places in the county, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing. (1959, c. 1006, s. 1.)

§ **153-266.17. Board of adjustment; appeals; special exceptions; hardship cases; review of decisions.**—If it exercises the powers granted by this article, the board of commissioners shall provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that the board of commissioners in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The board of commissioners may, in its discretion, appoint not more than two alternate members to serve on such board in the absence, for any cause, of any regular members. Such alternate member or members shall be appointed for the same term or terms as regular members, and shall be appointed in the same manner as regular members and at the regular times for appointment. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent.

Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the county. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken.

The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all such matters referred to it or upon which it is required to pass under any such ordinance.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the

power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this article, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to grant a variance from the provisions of such ordinance. Every decision of such board shall be subject to review by the superior court by proceedings in the nature of certiorari. (1959, c. 1006, s. 1.)

§ **153-266.18. Remedies for violations; violation a misdemeanor.**—In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this article or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings

(1) To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use,
(2) To restrain, correct, or abate such violation,
(3) To prevent the occupancy of said building, structure, or land, or
(4) To prevent any illegal act, conduct, business, or use in or about such premises.

A violation of this article or of any ordinance or other regulation made under authority conferred hereby shall also constitute a misdemeanor, punishable, upon conviction thereof, by a fine not exceeding fifty dollars ($50.00) or imprisonment not exceeding thirty days. (1959, c. 1006, s. 1; 1961, c. 414.)

Editor's Note.—The 1961 amendment added the last paragraph.

§ **153-266.19. Conflict with other laws or regulations.**—Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern. (1959, c. 1006, s. 1.)

§ **153-266.20. Other laws not repealed; article deemed supplementary.**—This article shall not have the effect of repealing any zoning act or county planning act, local or general, now in force; but it shall be construed to be in enlargement of the duties, powers, and authority contained in such statutes and all other laws authorizing the appointment and proper functioning of county planning boards or zoning commissions by any county in the State of North Carolina. (1959, c. 1006, s. 1.)

§ **153-266.21. Article applicable to buildings constructed by State and its subdivisions.**—All of the provisions of this article and any ordinance adopted pursuant hereto are hereby made applicable to the erection and construction of buildings by the State of North Carolina and its political subdivisions. (1959, c. 1006, s. 1.)

§ **153-266.22. Counties excepted from article.**—This article shall not apply to the following counties: Bertie, Brunswick, Craven, Cumberland, Franklin, Greene,

Harnett, Hoke, Johnston, Lenoir, Moore, Pender, Scotland and Washington. (1959, c. 1006, ss. 1, 1½; 1961, cc. 28, 61, 102; c. 390, s. 2; cc. 551, 553, 586, 598, 638, 978; 1963, cc. 275, 529, 1035.)

Editor's Note.—The first 1961 amendment deleted "Person" from the list of counties in this section, its purpose being to make the provisions of the article applicable to Person County. The second 1961 amendment deleted "Surry" from the list of counties. The third 1961 amendment inserted "Vance" in the list of counties.

The fourth 1961 amendment deleted "Warren" from the list of counties.

The fifth 1961 amendment deleted "Halifax" from the list of counties.

The sixth 1961 amendment deleted "Martin" from the list of counties thereby making this article applicable to Martin County.

The seventh 1961 amendment deleted "Onslow" from the list of counties in this section.

The eighth 1961 amendment deleted "Iredell" from the list of counties so as to make the whole article applicable to such county.

Both the ninth and tenth 1961 amendments deleted "Wayne" from the list of counties. And the tenth 1961 amendment also deleted "Alleghany," "Ashe," "Bladen," "Currituck," "Duplin," "Tyrrell" and "Watauga" from the list.

The first 1963 amendment deleted "New Hanover" from the list of counties. The second 1963 amendment deleted "Caswell" from the list and the third 1963 amendment deleted "Vance."

Article 21.

Western North Carolina Regional Planning Commission.

§ 153-267. Western North Carolina Regional Planning Commission created.—(a) Creation; Membership; Terms.—There is hereby created the Western North Carolina Regional Planning Commission. Said Commission shall be composed of a representative of each county and each municipality whose governing body by resolution designates such a representative and agrees to appropriate such funds as may be agreed upon for the support of the Commission, as hereinafter provided; provided however that any county electing to designate a representative on said Western North Carolina Regional Planning Commission having a population according to the 1950 federal census of fifty thousand or more shall have one additional representative on said Planning Commission. Members shall serve for two-year terms, beginning on May 1 of odd-numbered years; provided, that initial members may be appointed for shorter terms, to the end that the terms of their successors may begin on May 1 of the next odd-numbered year. Members shall be eligible for reappointment. The governing body appointing any member shall have authority to remove such member at any time for cause stated in writing and after hearing. Any vacancy in the membership of the Commission shall be filled by the appropriate governing body for the unexpired term.

(b) Compensation.—Members of the Western North Carolina Regional Planning Commission shall serve without compensation, other than reimbursement of necessary traveling and other expenses while engaged in the work of or for the Commission, which reimbursement shall be subject to limitations fixed by the Commission and to the availability of funds appropriated to the Commission. (1957, c. 1427, s. 1.)

§ 153-267.1. State planning agency and instrumentality; Executive Budget Act applicable; annual auditing; annual report to Governor.—The Commission created by this article is hereby declared to be a State planning agency and instrumentality of the State within the meaning of section 701 of the Housing Act of 1959, Public Law 86-372, and is acceptable to the State as capable of carrying out the planning functions contemplated by said section. The provisions of the Executive Budget Act, article 1 of chapter 143 of the General Statutes, shall apply to the administration of this article. There shall be annually made by the Auditor of the State of North Carolina a full audit and examination of the receipts and disbursements of the Commission, and the Commission shall report to the Governor annually at the end of each fiscal year a full and complete statement of receipts and disbursements and accomplishments during each such year. (1961, c. 743.)

§ 153-268. Organization of the Commission.—(a) First Meeting; Organization; Rules and Regulations.—Within sixty (60) days after June 12, 1957, the Commission shall meet in the city of Asheville on call of the representative designated by Western North Carolina Associated Communities. The Commission shall elect from among its members a chairman and such other officers as it may choose, for such terms as it may prescribe in its rules and regulations. The Commission shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman shall appoint an executive committee, which shall be authorized to exercise such powers and duties as the Commission may delegate to it, and he may appoint such other committees as the work of the Commission may require.

(b) Meetings.—The Commission shall meet regularly, at least once every three months, at places and dates to be determined by the Commission. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Commission. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. All meetings shall be open to the public.

(c) Staff.—Within the limits of appropriated funds, the Commission may

(1) Hire and fix the compensation of a planning director (who shall preferably be qualified by training and experience in city, regional or State planning) and such other employees and staff as it may deem necessary for its work;

(2) Contract with planners and other experts for such services as it may require;

(3) Contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies, and carry out the provisions of such contracts.

(d) Office.—The State Highway Commission is authorized to make available to the Commission, without charge, space in any of its divisions or district offices in the area served by the Western North Carolina Regional Planning Commission.

(e) Fiscal Affairs.—The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by private and civic sources.

The Commission shall by agreement of its members determine the contributions to be made to its support by each member municipality or county. The Commission shall distribute during the month of May each year to each member municipality or county a statement of the proposed scale of contributions. Each member municipality or county shall, prior to June 15, signify to the Commission in writing its willingness or unwillingness to make such contributions; in the event of unwillingness to make such contribution, the municipality or county shall forfeit its membership in the Commission during the fiscal year for which the contribution would be made.

The Commission shall annually prepare and adopt during the month of June a budget for the fiscal year beginning on July 1. Copies of such budget shall be distributed to member municipalities and counties. The budget may be amended from time to time during the year, by vote of a majority of all the members of the Commission.

The Commission shall prepare each year a report of its activities, including a financial statement, and this report shall be distributed to all member municipalities and counties during the month of April.

Each municipality and county in the area to which this article applies shall have authority to appropriate funds to the Commission out of surplus funds or funds derived from nontax sources and in addition may levy annually taxes for the

payment of such appropriation as a special purpose, in addition to any allowed by the Constitution.

Contributions as provided herein shall be made by each county or city according to its population as it relates to the total population of the area represented on the Western Carolina Regional Planning Commission as the population was enumerated in the 1950 federal census. (1957, c. 1427, s. 2.)

Editor's Note.—By virtue of G. S. 136-1.1, the words "State Highway Commission" were substituted for "State Highway and Public Works Commission" in subsection (d).

§ **153-269. Powers and duties.**—The Western North Carolina Regional Planning Commission shall:

(1) Prepare and from time to time revise, amend, extend or add to a plan or plans for the development of the region, which plan or plans collectively shall be known as the regional development plan. Such plan shall be based on studies of physical, social, economic and governmental conditions and trends and shall aim at the coordinated development of the region in order to promote the general welfare and prosperity of its people. In preparing the regional development plan, the Commission shall take account of and shall seek to harmonize the planning activities of federal, State, county, municipal, or other local or private agencies within the area. In preparing such plan, or any part thereof, and in preparing, from time to time, revisions, amendments, extensions or additions, the Commission may seek the cooperation and advice of appropriate departments, agencies and instrumentalities of federal, State and local governments, of other regional planning commissions, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations. The regional development plan shall embody the policy recommendations of the Commission in regard to the physical development of the region and shall contain:

a. A statement of the objectives, standards and principles sought to be expressed in the regional development plan;

b. Recommendations for the most desirable pattern of land use within the region in the light of the best available information concerning topography, climate, soil and underground conditions, watercourses and bodies of water, and other natural or environmental factors, as well as in the light of the best available information concerning the present and prospective economic bases of the region, trends of industrial, population, or other developments, the habits and standards of life of the people of the region, and the relation of land use within the region to land use in adjoining areas. Such recommendations shall, insofar as appropriate, indicate areas for residential uses and maximum recommended densities therein; areas for farming and forestry, mining and other extractive industries; areas for manufacturing and industrial uses, with classification of such areas in accordance with their compatibility with land use in adjoining areas; areas for the concentration of wholesale, retail, business, and other commercial uses; areas for recreational uses, and for open spaces, and areas for mixed uses;

c. The circulation pattern recommended for the region, including routes and terminals of transit, transportation and communication facilities, whether used for movement within the region or for movement from and to adjoining areas;

d. Recommendations concerning the need for and the proposed general location of public and private works and facilities, such as

utilities, flood control works, water reservoirs and pollution control facilities, military or defense installations, which works or facilities, by reason of their function, size, extent or for any other causes are of regional as distinguished from purely local concern, or which for any other cause are appropriate subjects for inclusion in the regional development plan;

e. Such other recommendations of the Commission concerning current and impending problems as may affect the region as a whole;

(2) Make or assist in studies and investigations, insofar as may be relevant to regional planning, of the resources of the region and of existing and emerging problems of agriculture, industry, commerce, transportation, population, housing, public service, local government and of allied matters affecting the development of the region, and in making such studies to seek the cooperation and collaboration of appropriate departments, agencies and instrumentalities of federal, State and local governments, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations;

(3) Prepare and from time to time revise inventory listings of the region's natural resources, and of major public and private works and facilities of all kinds which are deemed of importance to the development of the region as a whole;

(4) Cooperate with, and provide planning assistance, including but not limited to surveys, land use studies, urban review plans, technical services and other planning work, to county, municipal or other local governments, instrumentalities or planning agencies; coordinate its planning activities with the planning activities of the State, and of the counties, municipalities, or other local units within its region, and cooperate with and assist departments and other agencies or instrumentalities of federal, State and local government as well as other regional planning commissions in the execution of their planning functions with a view to harmonizing their planning activities with the regional development plan. The Commission shall also cooperate and confer with, and upon request supply information to, federal agencies, and to local or regional agencies created pursuant to a federal program or which receive federal support, and shall cooperate and confer, as far as possible, with planning agencies of other states or of regional groups of states adjoining its area. Whenever cooperation or assistance under this subdivision includes the rendering of technical services, such services may be rendered free or in accordance with an agreement for reimbursement;

(5) Advise and supply information, as far as available, to civic groups and private persons and organizations who may request such information or advice, and who study or otherwise concern themselves with the region's problems and development in the fields of agriculture, business and industry, labor, natural resources, urban growth, housing and public service activities such as public health and education, insofar as such problems and development may be relevant to regional planning;

(6) Provide information to officials of departments, agencies and instrumentalities of State and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the regional development plan and of the functions of regional and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region;

(7) Hold public or private hearings and sponsor public forums in any part of its area whenever it deems it necessary or useful in the execution of its other functions;

(8) Cooperate, in the exercise of its planning functions, with federal and State agencies in planning for civil defense;
(9) Exercise all other powers necessary and proper for the discharge of its duties. (1957, c. 1427, s. 3.)

§ 153-270. Cooperation by local governments and planning agencies.—To facilitate effective and harmonious planning of the region, all county and municipal legislative bodies in the region, and all county and municipal or other local planning agencies in the region, shall file with the Commission, for its information, all county and municipal plans, zoning ordinances, official maps, building codes, subdivision regulations, or amendments or revisions of any of them, as well as copies of their regular and special reports dealing in whole or in part with planning matters. County or municipal legislative bodies, or county, municipal, or other local planning agencies, may also submit proposals for such plans, ordinances, maps, codes, regulations, amendments, or revisions prior to their adoption, in order to afford an opportunity to the Commission or its staff to study such proposals and render its advice thereon. (1957, c. 1427, s. 4.)

§ 153-271. Counties to which article applies.—The provisions of this article shall apply only to the following counties and to municipalities therein: Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey. (1957, c. 1427, s. 6; 1959, c. 1083; 1961, c. 270.)

Editor's Note.—The 1959 amendment inserted McDowell and Rutherford in the list of counties. The 1961 amendment inserted Avery, Mitchell and Yancey in the list of counties.

Article 22.

Garbage Collection and Disposal.

§ 153-272. Control of private collectors.—The board of county commissioners of any county is hereby empowered to regulate the collection and disposal of garbage by private persons, firms, or corporations outside of the incorporated cities and towns of the county for the purpose of encouraging and attempting to insure an adequate and continuing service of garbage collection and disposal where the board deems it to be desirable. In the exercise of such power, the board may issue a license to any private person, firm, or corporation to collect and/or dispose of garbage; may prohibit the collection and/or disposal of garbage by unlicensed persons, firms, or corporations; may grant to licensed persons, firms, or corporations the exclusive right to collect and/or dispose of garbage for compensation within a specified area and prohibit unauthorized persons, firms, or corporations from collecting and/or disposing of garbage within said area; and may regulate the fees charged by licensed persons, firms, and corporations for the collection and/or disposal of garbage to the end that reasonable compensation may be provided for such services. The board may adopt regulations pursuant to the power herein granted, and the violation of any such regulation shall be a misdemeanor, subject to a fine not exceeding fifty dollars ($50.00), or imprisonment not exceeding thirty days; each week that any such violation continues to exist shall be a separate offense. (1961, c. 514, s. 1.)

Local Modification.—Johnston (entire article): 1961, c. 904; Vance (entire article): 1961, c. 514, s. 1a.

§ 153-273. County collection and disposal.—The board of county commissioners of any county is hereby empowered to establish and operate garbage collection and/or disposal facilities in areas outside of incorporated cities and towns where, in its opinion, the need for such facilities exists. The board may contract with any city or town to collect and/or dispose of garbage in any such area. In

the disposal of garbage, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, it shall charge fees for such collection service sufficient in its opinion to defray the expense of collection. (1961, c. 514, s. 1.)

Local Modification.—Dare: 1961, c. 912; Transylvania (power of eminent domain): 1963, c. 494.

§ 153-274. Powers of local boards of health unaffected.—Nothing in this article shall affect the powers of local boards of health to control the keeping, removal, collection, and disposal of garbage, insofar as the exercise of any such power is necessary to protect and advance the public health. (1961, c. 514, s. 1.)

§ 153-275. Powers granted herein supplementary.—The powers granted to counties by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any other law, either general, special, or local, for the same or a similar purpose, and in any case where the provisions of this article conflict with or are different from the provisions of such other law, the board of county commissioners may in its discretion proceed in accordance with the provisions of such other law, or, as an alternative method, in accordance with the provisions of this article. (1961, c. 514, s. 1.)

Article 23.

Regional Planning Commissions.

§ 153-276. Creation of regional planning commissions authorized; procedure; withdrawal of governmental unit.—Any two or more municipalities and/or counties may, by agreement of their respective governing bodies, create a regional planning commission to have and exercise the powers and duties herein granted. Such creation shall be through the adoption by each governing body concerned, acting individually, of a joint resolution. Said resolution shall provide the membership of the commission, the terms of the members, procedures for removing or replacing members, the compensation (if any) and extent of reimbursement of expenses of members, the method for determining the financial support to be given the commission by each governmental unit concerned, and the budgetary procedures to be followed. Said resolution may be modified, amended, or repealed at any time through unanimous action of the governmental units concerned. Any individual governmental unit may withdraw from the regional planning commission after giving two years' notice to the other units concerned. Any municipality or county may join a regional planning commission at any time with the concurrence of the other units concerned. (1961, c. 722, s. 3.)

§ 153-277. Organization of commission; rules and regulations; committees; meetings.—Upon its creation, the commission shall meet at a time and place agreed upon by the governing boards concerned. It shall elect from among its members a chairman and such other officers as it may choose, for such terms as it may prescribe in its rules and regulations. The commission shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint such committees as may be authorized by the commission's rules and regulations. The commission shall meet regularly at such times and places as may be specified in its rules and regulations, and special meetings may be called pursuant to such rules. All meetings shall be open to the public. (1961, c. 722, s. 3.)

§ 153-278. Planning director and other employees; contracts for services.—Within the limits of appropriated funds, the commission may:

(1) Hire and fix the compensation of a planning director (who shall preferably be qualified by training and experience in city, regional, or State planning) and such other employees and staff as it may deem necessary for its work;
(2) Contract with planners and other experts for such services as it may require;
(3) Contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies, and carry out the provisions of such contracts. (1961, c. 722, s. 3.)

§ 153-279. Fiscal affairs generally; reports; appropriations.—The commission may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by private and civic sources. All fiscal procedures shall be in accordance with the resolution adopted for its creation. The commission shall prepare each year a report of its activities, including a financial statement, and this report shall be distributed to all member municipalities and counties.

Each municipality and county having membership on the commission shall have authority to appropriate funds to the commission and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the Constitution. (1961, c. 722, s. 3.)

§ 153-280. Powers and duties.—Any regional planning commission formed pursuant to this article shall:

(1) Prepare and from time to time revise, amend, extend or add to a plan or plans for the development of the region, which plan or plans collectively shall be known as the regional development plan. Such plan shall be based on studies of physical, social, economic and governmental conditions and trends and shall aim at the coordinated development of the region in order to promote the general welfare and prosperity of its people. In preparing the regional development plan, the commission shall take account of and shall seek to harmonize the planning activities of federal, State, county, municipal, or other local or private agencies within the area. In preparing such plan, or any part thereof, and in preparing, from time to time, revisions, amendments, extensions or additions, the commission may seek the cooperation and advice of appropriate departments, agencies and instrumentalities of federal, State and local governments, of other regional planning commissions, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations. The regional development plan shall embody the policy recommendations of the commission in regard to the physical and economic development of the region and shall contain:
    a. A statement of the objectives, standards, and principles sought to be expressed in the regional development plan;
    b. Recommendations for the most desirable pattern of land use within the region in the light of the best available information concerning topography, climate, soil and underground conditions, watercourses and bodies of water, and other natural or environmental factors, as well as in the light of the best available information concerning the present and prospective economic bases of the region, trends of industrial, population, or other developments, the habits and standards of life of the people of the region, and the relation of land use within the region to land use in adjoining areas. Such recommendations shall, insofar as appropriate,

indicate areas for residential uses and maximum recommended densities therein; areas for farming and forestry, mining and other extractive industries; areas for manufacturing and industrial uses, with classification of such areas in accordance with their compatibility with land use in adjoining areas; areas for the concentration of wholesale, retail, business, and other commercial uses; areas for recreational uses, and for open spaces, and areas for mixed uses;

c. The circulation pattern recommended for the region, including routes and terminals of transit, transportation and communication facilities, whether used for movement within the region or for movement from and to adjoining areas;

d. Recommendations concerning the need for and the proposed general location of public and private works and facilities, such as utilities, flood control works, water reservoirs and pollution control facilities, military or defense installations, which works or facilities, by reason of their function, size, extent or for any other causes are of regional as distinguished from purely local concern, or which for any other cause are appropriate subjects for inclusion in the regional development plan;

e. An economic development program for the region, including but not limited to individual projects to further the prosperity of various areas within the region;

f. Such other recommendations of the commission concerning current and impending problems as may affect the region as a whole;

(2) Make or assist in studies and investigations, insofar as may be relevant to regional planning, of the resources of the region and of existing and emerging problems of agriculture, industry, commerce, transportation, population, housing, public service, local government and of allied matters affecting the development of the region, and in making such studies to seek the cooperation and collaboration of appropriate departments, agencies and instrumentalities of federal, State and local governments, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations;

(3) Prepare and from time to time revise inventory listings of the region's natural resources, and of major public and private works and facilities of all kinds which are deemed of importance to the development of the region as a whole;

(4) Cooperate with, and provide planning assistance, including but not limited to surveys, land use studies, urban renewal plans, technical services and other planning work, to county, municipal or other local governments, instrumentalities or planning agencies; coordinate its planning activities with the planning activities of the State, and of the counties, municipalities, or other local units within its region, and cooperate with and assist departments and other agencies or instrumentalities of federal, State and local government as well as other regional planning commissions in the execution of their planning functions with a view to harmonizing their planning activities with the regional development plan. Copies of all studies and plans developed by the commission shall be furnished to the Governor, for distribution to appropriate State agencies. The commission shall also cooperate and confer with, and upon request supply information to, federal agencies, and to local or regional agencies created pursuant to a federal program or which receive federal support, and shall cooperate and confer, as far as possible, with planning agencies of other states or of regional groups of states adjoining its area. Whenever

cooperation or assistance under this subdivision includes the rendering of technical services, such services may be rendered free or in accordance with an agreement for reimbursement;

(5) Advise and supply information, as far as available, to civic groups and private persons and organizations who may request such information or advice, and who study or otherwise concern themselves with the region's problems and development in the fields of agriculture, business and industry, labor, natural resources, urban growth, housing and public service activities such as public health and education, insofar as such problems and development may be relevant to regional planning;

(6) Encourage the formation of economic development commissions by the various governmental units in the region and of private business development corporations, to the extent that such agencies are deemed necessary to carrying out its economic development program;

(7) Grant approval, as may be required by any federal legislation, of any governmental or private development projects which are in accordance with its economic development program, so as to qualify such projects for financial assistance from the federal government;

(8) Provide information to officials of departments, agencies and instrumentalities of State and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the regional development plan and the functions of regional and local planning, and in order to stimulate public interest and participation in the orderly, integrated development of the region;

(9) Hold public or private hearings and sponsor public forums in any part of its area whenever it deems them necessary or useful in the execution of its other functions;

(10) Create one or more Citizens Advisory Committees to assist it in the performance of its functions;

(11) Cooperate, in the exercise of its planning functions, with federal and State agencies in planning for civil defense;

(12) Exercise all other powers necessary and proper for the discharge of its duties. (1961, c. 722, s. 3.)

§ 153-281. Cooperation by local governments and planning agencies.—To facilitate effective and harmonious planning of the region, all county and municipal legislative bodies in the region, and all county and municipal or other local planning agencies in the region, shall file with the commission, for its information, all county and municipal plans, zoning ordinances, official maps, building codes, subdivision regulations, or amendments or revisions of any of them, as well as copies of their regular and special reports dealing in whole or in part with planning matters. County or municipal legislative bodies, or county, municipal, or other local planning agencies, may also submit proposals for such plans, or ordinances, maps, codes, regulations, amendments, or revisions prior to their adoption, in order to afford an opportunity to the commission or its staff to study such proposals and render its advice thereon. (1961, c. 722, s. 3.)

§ 153-282. Regional planning and economic development commissions authorized.—Any municipalities and/or counties desiring to exercise the powers granted by this article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional planning commission under this article and in addition the powers and duties granted to an economic development commission under article 2 of chapter 158. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this article and for appropriations and expenditures made pursuant to article 2 of chapter 158. The financial limitations set forth in each such article shall govern expenditures made pursuant to such article. (1961, c. 722, s. 3.)

§ 153-283. Powers granted supplementary.—The powers granted to municipalities and counties by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this article conflict with or are different from the provisions of any other act, the governing body of the unit or units concerned may, in its discretion, proceed in accordance with the provisions of this article, or, as an alternative method, in accordance with the provisions of such other act. (1961, c. 722, s. 3.)

Editor's Note.—Session Laws, 1961, c. 722, s. 5, provided that all laws and clauses of laws in conflict herewith, except as indicated in G. S. 158-15 and this section are repealed to the extent of such conflict.

Article 24.

Water and Sewerage Facilities.

§ 153-284. Acquisition and operation authorized; contracts and agreements.—The board of commissioners of any county is hereby authorized to:

(1) Acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system and any sanitary sewerage system or parts thereof, either within or without the boundaries of the county, and to acquire in the name of the county by gift, purchase or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of chapter 40, and improved or unimproved lands or rights in land, and to acquire such personal property or water rights as it may deem necessary in connection with the foregoing, and to hold and dispose of all real and personal property under its control; and

(2) To make and enter into all contracts and agreements necessary or incidental to the execution of the powers herein provided, including the contracting or otherwise providing for the leasing, repairing, maintaining and operating of any such system or systems or parts thereof. (1961, c. 1001, s. 1.)

Cross Reference.—As to water and sewer authorities generally, see §§ 162A-1 to 162A-19.

§ 153-285. Authority to furnish services; nonliability for failure to furnish.—The board of commissioners of any county is hereby further authorized to provide water and sewerage services to any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, political subdivisions, governmental agencies, and private or public corporations organized and existing under the laws of this State or any other state or county, either within or without the boundaries of the county, but in no case shall the county be liable for damages for failure to furnish any such services. (1961, c. 1001, s. 1.)

§ 153-286. Rates and charges.—The board of commissioners of any county may fix, and may revise from time to time, rents, rates, fees and charges for the use of and for the services furnished or to be furnished by any such system or systems. Such rents, rates, fees and charges may vary, if determined by the governing body of the county to be reasonable, for the same class of service in one area of the county from those imposed in another area of the county. The rents, rates, fees and charges imposed for services provided outside the boundaries of the county may vary from those imposed for services provided within the boundaries of the county and may vary for the same class of service provided in one area outside the county from those imposed for services provided in another area outside the county. (1961, c. 1001, s. 1.)

§ 153-287. Joint action by counties and municipalities authorized; procedure.—Any county or municipality and any other county or counties or munici-

pality or municipalities (which municipality or municipalities need not be within such county or counties) are hereby authorized, jointly to acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system and any sanitary sewerage system or parts thereof, either within or without the boundaries of any such counties or municipalities, and to acquire by gift, purchase or the exercise of the right of eminent domain in accordance with the provisions of this article or of other provisions of the General Statutes of North Carolina as are applicable to the exercise of such powers, any improved or unimproved lands or rights in land, and to acquire such personal property or water rights as may be deemed necessary in connection with the foregoing, and to hold and dispose of all real and personal property.

Any such counties or municipalities may enter into such contracts or agreements with each other or with any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, political subdivisions, governmental agencies, and private or public corporations organized and existing under the laws of this State or any other state or county, either within or without the boundaries of any such counties or municipalities, which the governing bodies of any such counties or municipalities shall deem necessary or incidental to the execution jointly of the powers herein provided and which may contain, as to contracts between any such counties or municipalities, provisions as to the apportionment of the cost of any such system or systems and the distribution of the revenues thereof.

Joint action with respect to any of the foregoing shall be taken pursuant to resolutions adopted by the governing bodies of each such county or municipality. Joint action taken and the contract or contracts herein authorized may provide for and may be of such duration as the participating counties and municipalities may determine to be reasonable. (1961, c. 1001, s. 1.)

§ **153-288. Joint agencies for exercising powers provided in § 153-287.**—Any such counties or municipalities are hereby authorized to establish, by mutual agreement, a joint agency (which may be termed a board, commission, council or such other name as may be agreed upon which shall be subject to the control of the governing bodies of such counties or municipalities) to be charged with the responsibility, in whole or in part, of exercising the powers provided in the foregoing section. The joint agency may continue in operation for such period of time as the participating counties and municipalities may agree upon. Funds may be appropriated by the governing bodies of such counties or municipalities to any such joint agency to be used to carry out its responsibilities, and any such appropriations shall be on the basis of an annual budget recommended by such joint agency and submitted to such governing bodies for approval. The acounting for all funds of such a joint agency and the disbursement of all funds thereof shall be in accordance with the terms of the agreement establishing such joint agency. (1961, c. 1001, s. 1.)

§ **153-289. Special taxes and appropriations authorized.**—Expenditures by counties to provide water and sewerage services under the authority granted by this article are hereby declared to be a special purpose and a necessary expense, and all counties of the State shall have authority and are hereby given special approval to levy special taxes and to appropriate money for all such services. (1961, c. 1001, s. 1.)

§ **153-290. Powers granted deemed supplementary.**—The powers granted to counties and municipalities by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this article conflict with or are different from the provisions of any other act, the board of commissioners of the county or the municipal governing board may in its discretion proceed in

accordance with the provisions of this article or, as an alternative method, in accordance with the provisions of such act. (1961, c. 1001, s. 1.)

§ 153-291. Prerequisites to acquisition of water, water rights, etc.—The word "authority" as contained in G. S. 162A-7 shall be deemed to include counties and municipalities acting collectively or jointly under this article and joint agencies as referred to in this article. No diversion of water by those acting collectively or jointly under this article from one stream or river to another shall be permitted nor shall proceedings in the nature of eminent domain be instituted by those acting collectively or jointly under this article to acquire water, water rights, or lands having water rights attached thereto unless such diversion or acquisition is first authorized by a certificate from the Board therein referred to. The provisions of G. S. 162A-7 (b)-(f), inclusive, shall be applicable thereto. (1961, c. 1001, s. 1.)

§ 153-292. Law with respect to riparian rights not changed.—Nothing contained in this article shall change or modify existing common or statute law with respect to the relative rights of riparian owners or others concerning the use of or disposal of water in the streams of this State. (1961, c. 1001, s. 1.)

§ 153-293. Diversion of water from certain river basins prohibited.—Diversion of water from any major river basin, the main stem of which is not located entirely within North Carolina downstream from the point of such diversion, is prohibited, except where such diversion is now permitted by law. (1961, c. 1001, s. 1.)

§ 153-294. Venue for actions by riparian owners.—Any riparian owner alleging injury as a result of any act taken by any county, municipality or joint agency pursuant to this article may maintain an action for relief against such act or acts either in the county where the lands of such riparian owner lie or in any county taking such action or in which any such municipality or joint agency is located or operates. (1961, c. 1001, s. 1.)

Article 24A.

Special Assessments for Water and Sewerage Facilities.

§ 153-294.1. Authority to make special assessments.—The board of commissioners of any county, in constructing, reconstructing, and extending water and sewerage systems, or either of them in whole or in part as authorized in article 24 of this chapter, may specially assess all, or part, of the costs thereof against the property served, or subject to being served, by the construction, reconstruction, or extension, and which will benefit therefrom: Provided, that no property lying within the corporate limits of any municipality shall be subject to assessment unless the governing body of the municipality has by resolution given its approval to the project, all or part of the costs of which is being assessed. (1963, c. 985, s. 1.)

§ 153-294.2. Basis for making assessments.—Assessments may be made on the basis of:

(1) The frontage abutting on the lines of the systems or extensions, at an equal rate per foot of frontage, or
(2) The acreage of land served, or subject to being served, by the system or extension, at an equal rate per acre of land, or
(3) The valuation of land served, or subject to being served, by the system or extension, the valuation to be based upon the value of the land without improvements as shown on the tax assessment records of the county, at an equal rate per dollar of valuation, or
(4) The number of lots served, or subject to being served, where the extension of the system (or systems) is to residential or commercial subdivisions, at an equal rate per lot, or
(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either acreage or value of land, the board of commissioners may provide for the laying out of benefit zones according to the distance of benefited property from the project, or projects, being undertaken, and establish differing rates of assessment to apply uniformly throughout each benefit zone. (1963, c. 985, s. 1.)

§ 153-294.3. Corner lot exemptions.—The board of commissioners shall have authority to establish schedules of exemptions from assessments for water and sewer extensions for corner lots when water and sewer lines are installed along both sides of such lots. The schedules of exemptions shall be based on land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category of land use. Provided, no schedule of exemption may provide for exemption of more than seventy-five per cent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater. (1963, c. 985, s. 1.)

§ 153-294.4. Lands exempt from assessment.—No lands within a county, except as herein provided, shall be exempt from special assessments except lands belonging to the United States which are exempt under the provisions of federal statutes, and lands within the flood plain of any stream as designated by the board of commissioners. No land shall be designated as a flood plain for the purposes of this section unless there is evidence to indicate that it is flooded on an average of at least once every twenty (20) years. (1963, c. 985, s. 1.)

§ 153-294.5. Preliminary resolution to be adopted; contents.—Whenever the board of commissioners of any county determines to undertake any project, or projects, for the construction, reconstruction or extension of water and sewerage systems and assess all, or part, of the cost thereof, the board shall first adopt a preliminary resolution setting forth its intention and describing the nature of the project, or projects, and the proposed terms and conditions by which it is to be undertaken. Specifically, the preliminary resolution shall contain the following:

(1) A statement of intent to undertake the project(s);
(2) A general description of the nature and location of the proposed project(s);
(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either acreage or value of land;
(4) A statement as to the percentage of the cost of the work which is to be specially assessed;
(5) If any assessments are proposed to be held in abeyance, a statement as to which assessments shall be so held and the period they will be held in abeyance;
(6) A statement as to the proposed terms of payment of the assessment; and
(7) An order setting a time and place at which a public hearing on all matters covered by the preliminary resolution will be held before the board, said public hearing to be not earlier than three (3) weeks, nor later than ten (10) weeks, from the date of the adoption of the preliminary resolution. (1963, c. 985, s. 1.)

§ 153-294.6. Publication of preliminary resolution.—The board of commissioners shall cause a copy of the preliminary resolution to be published in a newspaper having general circulation in the county at least ten (10) days prior to the date set for the public hearing on the proposed project or projects. In addition, the board of commissioners shall cause a copy of the preliminary resolution, containing the order for the public hearing, to be mailed to the owners of all property subject to assessment if the project, or projects, should be undertaken. The mailing of copies of the preliminary resolution shall be to the owners of that property as shown on the tax records of the county, and shall take place at least ten (10) days prior to the date set for the public hearing on the preliminary resolution. The

person designated to mail these resolutions shall file a certificate with the board of commissioners that such resolutions were mailed, the certificates to include the date of mailing. Such certificates shall be conclusive in the absence of fraud. (1963, c. 985, s. 1.)

§ 153-294.7. Hearing on preliminary resolution; resolution directing undertaking of project.—At the time and place set for the public hearing, the board of commissioners shall hear all interested persons who appear with respect to any matter covered by the preliminary resolution. After the public hearing, if the board of commissioners so determines, the board may adopt a resolution directing that the project, or projects, covered by the preliminary resolution, or part of them, be undertaken. This resolution shall describe the project, or projects, to be undertaken in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments shall be levied, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either acreage or value of land;

(2) The percentage of the cost to be specially assessed;

(3) The terms of payment, including the conditions under which assessments are to be held in abeyance, if any.

Provided, the percentage of cost to be assessed as set forth in the resolution directing the undertaking of the project, or projects, may not be different from the percentage proposed in the preliminary resolution. If the board of commissioners decides that a different percentage of the cost should be assessed, following the hearing, the board of commissioners shall adopt and advertise a new preliminary resolution as herein provided. (1963, c. 985, s. 1.)

§ 153-294.8. Determination of costs.—Upon completion of the project, or projects, the board of commissioners shall ascertain the total cost. In addition to the cost of construction, there may be included therein the cost of all necessary legal services, the amount of interest paid during construction, costs of rights of way, and the costs of publication of notices and resolutions. The determination of the board of commissioners as to the total cost of any project shall be conclusive. (1963, c. 985, s. 1.)

§ 153-294.9. Preliminary assessment roll to be prepared; publication.—Upon determination of the total cost of any assessment project, the board of commissioners shall cause to be prepared a preliminary assessment roll, on which shall be entered a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, and the name or names of the owners of each parcel of land as far as the same can be ascertained; provided, that a map of the project on which is shown each parcel assessed and the basis for its assessment, together with the amount assessed against each such parcel and the name or names of the owner or owners, as far as the same can be ascertained, shall be a sufficient assessment roll.

After the preliminary assessment roll has been completed, it shall be filed in the office of the clerk to the board of commissioners where it shall be available for inspection. A notice of the completion of the assessment roll, setting forth in general terms a description of the project, noting the availability of the assessment roll in the office of the clerk for inspection, and stating the time and place for a hearing before the board of commissioners on the preliminary assessment roll, shall be published in a newspaper having general circulation in the county at least ten (10) days prior to the date set for the hearing on the preliminary assessment roll. In addition, the board of commissioners shall cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property listed on the preliminary assessment roll at least ten (10) days prior to the date of the hearing. In addition to the notice of the hearing, the notice mailed to the owners shall note the availability of the preliminary assessment roll for inspection in the

office of the clerk to the board and shall state the amount of the assessment against the property of the owner or owners, as shown on the preliminary assessment roll. The person designated to mail these notices shall file a certificate with the board of commissioners that such notices were mailed, the certificate to include the date of mailing. Such certificates shall be conclusive in the absence of fraud. (1963, c. 985, s. 1.)

§ 153-294.10. Hearing on preliminary assessment roll; revision; confirmation; lien.—At the time set for the public hearing, or at some other time to which the public hearing may be adjourned, the board of commissioners shall hear objections to the preliminary assessment roll from all persons interested who appear. Then, or thereafter, the board of commissioners shall either annul, or modify, or confirm, in whole or in part, the assessments, either by confirming the preliminary assessments against any or all of the lots or parcels described in the preliminary assessment roll, or by canceling, increasing, or reducing the same as is determined to be proper in accordance with the basis for the assessment. If any property is omitted from the preliminary assessment roll, the board of commissioners may place it on the roll and levy the proper assessment. Whenever the board of commissioners shall confirm assessments for any project, the clerk to the board shall enter on the minutes of the board and on the assessment roll the date, hour, and minute of confirmation, and from the time of confirmation the assessments shall be a lien on the property assessed of the same nature and to the same extent as county and city taxes and shall be superior to all other liens and encumbrances. After the assessment roll is confirmed, a copy of the same shall be delivered to the county tax collector for collection in the same manner as taxes, except as herein provided. (1963, c. 985, s. 1.)

§ 153-294.11. Publication of notice of confirmation of assessment roll.—After the expiration of twenty (20) days from the confirmation of the assessment roll, the county tax collector shall cause to be published once in a newspaper having general circulation in the county a notice of confirmation of the assessment roll, and that assessments may be paid at any time before the expiration of thirty (30) days from the date of the publication of the notice without interest, but if not paid within this time, all installments thereof shall bear interest at the rate of six per centum (6%) per annum from the date of the confirmation of assessment roll. (1963, c. 985, s. 1.)

§ 153-294.12. Appeal to superior court.—If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within ten (10) days after the confirmation of the assessment roll, file with the board of commissioners and the court a written notice that he takes an appeal to the superior court of the county, in which case he shall within twenty (20) days after the confirmation of the assessment roll serve on the chairman of the board of commissioners or the clerk to the board of commissioners a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. (1963, c. 985, s. 1.)

§ 153-294.13. Reassessment.—The board of commissioners shall have the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of any special assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the cost of the project, all additional interest paid, or to be paid, as a result of the delay in confirming the assessment. The proceeding shall, as far as practicable, be in all respects as in the case of original assessments, and the reassessment shall have the same force as if it had originally been properly made. (1963, c. 985, s. 1.)

§ 153-294.14. Payment of assessments in cash or by installments.—The owner or owners of any property assessed shall have the option, within thirty (30) days

following the publication of the notice of the confirmation of the assessment roll, of paying the assessment in cash or of paying in not less than two and not more than ten annual installments, as may have been determined by the board of commissioners in the resolution directing the undertaking of the project giving rise to the assessment. With respect to payment by installment, the board of commissioners may provide (i) that the first installment with interest shall become due and payable on the date when property taxes are due and payable and one subsequent installment and interest shall be due and payable on the same date in each successive year until the assessment is paid in full, or (ii) that the first installment with interest shall become due and payable sixty (60) days after the date of the confirmation of the assessment roll, and one subsequent installment and interest shall be due and payable on the same day of the month in each successive year until the assessment is paid in full. (1963, c. 985, s. 1.)

§ 153-294.15. Enforcement of payment of assessments.—No statute of limitations shall bar the right of the county to enforce any remedy provided by law for the collection of unpaid assessments, save from and after ten (10) years from default in the payment thereof, or if payable in installments, ten (10) years from the default in the payment of any installments. Such assessments shall bear interest at the rate of six per centum (6%) per annum only.

Upon the failure of any property owner to pay any installment when due and payable, all of the installments remaining unpaid shall immediately become due and payable, and property and rights of way may be sold by the county under the same rules and regulations (except that the sale of liens shall not be required), rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. Provided, after the default in the payment of any installment of an assessment, the board of commissioners may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expense incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose. (1963, c. 985, s. 1.)

§ 153-294.16. Assessments in case of tenant for life or years; apportionment of assessments.—The following provisions of the General Statutes concerning municipal special assessments, as they now exist and as they may be amended, with modifications as specified, shall apply to assessments levied by counties for the construction, reconstruction and extension of water and sewerage systems:

G. S. 160-95 to 160-97, which relate to assessments in case of tenants for life or years;

G. S. 160-98, which relates to liens in favor of cotenants or joint tenants paying assessments;

G. S. 160-191, which relates to apportionment of assessments where property has been or is subject to be subdivided (except that for "governing board," read "board of commissioners.") (1963, c. 985, s. 1.)

§ 153-294.17. Authority to hold assessments in abeyance.—The board of commissioners of any county may, by resolution, provide that assessments levied as authorized in this article be held in abeyance without the payment of interest for any benefited property assessed. In providing for the holding of assessments in abeyance, the board of commissioners shall classify the property specially assessed according to general land use, location with respect to water or sewerage systems, or other relevant factors, and shall provide that the period of abeyance be the same for all assessed property in any classification. Provided, said resolution may not provide for the holding in abeyance of any assessment for more than ten (10) years, or beyond the date on which improvements on any assessed property is actually connected to the water or sewerage construction, reconstruction, or extension for which the assessment was levied, whichever is less. Any assessment held in abeyance

shall, upon the termination of the period of abeyance, be paid in accordance with the terms set out in the confirming resolution.

All statutes of limitations are hereby suspended during the time that any assessment is held in abeyance without the payment of interest, as provided in this section. Such time shall not be a part of the time limited for the commencement of action for the enforcement of the payment of any such assessment, and such action may be brought at any time within ten (10) years from the date of termination of the period of abeyance. (1963, c. 985, s. 1.)

§ **153-294.18. Authority to require connections.**—The board of commissioners of any county may require owners of improved property located so as to be served by any water or sewerage system to connect with said systems and fix charges for such connections. (1963, c. 985, s. 1.)

§ **153-294.19. Counties excepted from article.**—This article shall not apply to the following counties: Ashe, Avery, Bertie, Bladen, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Catawba, Chatham, Cherokee, Chowan, Clay, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Harnett, Haywood, Henderson, Hertford, Hoke, Jackson, Jones, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Mitchell, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Polk, Rowan, Scotland, Stokes, Swain, Warren, Watauga, Wayne, Wilson, and Yancey. (1963, c. 985, s. 1½.)

Article 25.

Metropolitan Sewerage Districts.

§ **153-295. Short title.**—This article shall be known and may be cited as the "North Carolina Metropolitan Sewerage Districts Act." (1961, c. 795, s. 1.)

§ **153-296. Definitions; description of boundaries.**—(a) Definitions.—As used in this article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The term "board of commissioners" shall mean the board of commissioners of the county in which a metropolitan sewerage district shall be created under the provisions of this article.

(2) The word "cost" as applied to a sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and engineering and legal services, financing charges, interest prior to and during construction and, if deemed advisable by the district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for interest, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by the district or by any political subdivision prior to the issuance of bonds under the provisions of this article in connection with any such undertaking or any of the foregoing items of cost.

(3) The word "district" shall mean a metropolitan sewerage district created under the provisions of this article.

(4) The term "district board" shall mean a sewerage district board established under the provisions of this article as the governing body of a district or, if such sewerage district board shall be abolished, any board, body or

commission succeeding to the principal functions thereof or upon which the powers given by this article to the sewerage district board shall be given by law.

(5) The term "general obligation bonds" shall mean bonds of a district for the payment of which and the interest thereon all the taxable property within such district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(6) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, of a political subdivision in which the general legislative powers thereof are vested, including, but without limitation, as to any political subdivision other than the county, the board of commissioners for the county when the general legislative powers of such political subdivision are exercised by such board.

(7) The word "person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or county.

(8) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(9) The term "revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a sewerage system or systems.

(10) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water or household and industrial wastes as may be present.

(11) The term "sewage disposal system" shall mean any plant, system, facility or property, either within or without the limits of the district, used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the district board for the operation thereof.

(12) The term "sewerage system" shall embrace both sewers and sewage disposal systems and any part or parts thereof, either within or without the limits of the district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures necessary or useful in connection with the ownership, operation or maintenance thereof.

(13) The word "sewers" shall mean any mains, pipes and laterals, including pumping stations, either within or without the limits of the district, for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system.

(b) Description of Boundaries.—Whenever this article requires that the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be

(1) By reference to a map,

(2) By metes and bounds,

(3) By general description referring to natural boundaries, boundaries of

political subdivisions, or boundaries of particular tracts or parcels of land, or

(4) Any combination of the foregoing. (1961, c. 795, s. 2.)

§ 153-297. Procedure for creation; resolutions and petitions for creation; notice to and action by State Stream Sanitation Committee; notice and public hearing; resolutions creating districts; actions to set aside proceedings.—Any two or more political subdivisions in a county, or any political subdivision or subdivisions and any unincorporated area or areas located within the same county, which political subdivisions or areas need not be contiguous, may petition the board of commissioners for the creation of a metropolitan sewerage district under the provisions of this article by filing with the board of commissioners:

(1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan sewerage district under the provisions of this article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in said resolution, and

(2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan sewerage district under the provisions of this article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in such petition for such district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan sewerage district, the board of commissioners, through its chairman, shall notify the State Stream Sanitation Committee of the receipt of such resolutions and petitions, and shall request that a representative of the State Stream Sanitation Committee hold a joint public hearing with the board of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the State Stream Sanitation Committee and the chairman of the board of commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the proposed district at least once a week for four successive weeks, the first publication to be at least thirty days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan sewerage district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board of commissioners with the concurrence of the representative of the State Stream Sanitation Committee.

If, after such hearing, the State Stream Sanitation Committee and the board of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the preservation and promotion of the public health and welfare in the area or areas described in such resolutions and petitions require that a metropolitan sewerage district should be created and established, the State Stream Sanitation Committee shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan sewerage district under the name and style of "..... Metropolitan Sewerage District of ..... County;" provided that the State Stream Sanitation Committee may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon the State Stream Sanitation Committee determining that such deviations are advisable in the interest of the public health, provided no such district shall include any

political subdivision which has not petitioned for inclusion as provided for in this article.

The State Stream Sanitation Committee shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board of commissioners and to the governing body of each political subdivision included in the district. The board of commissioners shall cause a copy of such resolution of the State Stream Sanitation Committee to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

The foregoing resolution was passed by the State Stream Sanitation Committee 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 the metropolitan sewerage district therein described must be commenced within thirty days after the first publication of said resolution.

.....
Clerk, Board of Commissioners
for ..... County.

Any action or proceeding in any court to set aside a resolution creating a metropolitan sewerage district or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within thirty days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan sewerage district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan sewerage district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 3.)

§ 153-298. District board; composition, appointment, term, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.—(a) Immediately after the creation of the district, the board of commissioners shall appoint three members of the district board and the governing body of each political subdivision included in the district shall appoint one member, except that if any city or town has a population, according to the latest decennial census, in excess of the total population of the remaining cities and towns within the district, or where there are no other cities or towns involved, if the census population is in excess of the total population of the remainder of the district, the governing body shall appoint three members. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board of commissioners shall be the governing body, the three appointees designated by the board of commissioners shall be selected from within the district and shall be deemed to represent all such political subdivisions. The members of the district board first appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the State Stream Sanitation Committee creating the district, as the board of commissioners shall determine; provided that of the three members appointed by any governing body, not more than one such member shall be appointed for a three-year term. Successive members shall each be appointed for a term of three years, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member of the district board may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body making the initial appointment or appointments. All members shall serve until their successors have been duly appointed and qualified, and any member of the district board may be removed for cause by the governing body appointing him.

Each member of the district board before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the clerk of the board of commissioners.

The district board shall elect one of its members as chairman and another as vice chairman and shall appoint a secretary and a treasurer who may but need not be members of the district board. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least twenty-four hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member including the chairman shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed ten dollars ($10.00) for each meeting attended, and may be reimbursed the amount of actual expenses incurred by them in the performance of their duties.

(b) Any metropolitan sewerage district wholly within the corporate limits of two or more municipalities shall be governed by a district board consisting of members appointed by the governing body of each political subdivision (municipal corporation) included wholly or partially in the district and an additional at-large member appointed by the other members of the district board as provided in this subsection. The governing body of each constituent municipality shall initially appoint two members from its qualified electors, one for a term expiring the first day of July after the first succeeding regular election in which municipal officers shall be elected by the municipality from which he is appointed, and the other for a term expiring the first day of July after the second succeeding regular election of municipal officers in the municipality. Thereafter, subsequent to each ensuing regular election of municipal officers the governing body of each municipal corporation composing any part of the metropolitan sewerage district shall appoint one member to the district board for a term of four (4) years beginning on the first day of July. The one additional at-large member of the district board shall be a qualified elector of a constituent municipality of the district and appointed initially and quadrennially thereafter by majority vote of the other district board membership for a term of four (4) years which shall expire on the first day of August in every fourth calendar year thereafter.

Any vacancy in district board membership shall be filled by appointment of the original appointing authority for the remainder of the unexpired term.

The provisions of subsection (a) in particular and of this article generally not inconsistent with this subsection shall also apply. (1961, c. 795, s. 4; 1963, c. 471.)

Editor's Note.—The 1963 amendment redesignated the former section as subsection (a) and added subsection (b).

§ 153-299. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections.—If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district

board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board of commissioners and the board of commissioners, through its chairman, shall thereupon request that a representative of the State Stream Sanitation Committee hold a joint public hearing with the board of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The chairman of the State Stream Sanitation Committee and the chairman of the board of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the district and in any such political subdivision or unincorporated area at least once a week for four successive weeks, the first publication to be at least thirty days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board of commissioners with the concurrence of the representative of the State Stream Sanitation Committee.

If, after such hearing, the State Stream Sanitation Committee and the board of commissioners shall determine that the preservation and promotion of the public health and welfare require that such political subdivision or unincorporated area be included in the district, the State Stream Sanitation Committee shall adopt a resolution to that effect, defining the boundaries of the district including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district, subject to the approval, as to the inclusion of such political subdivision, of a majority of the qualified voters of such political subdivision, or as to the inclusion of such unincorporated area, of a majority of the qualified voters of such unincorporated area, voting at an election thereon to be called and held in such political subdivision or unincorporated area. When an election is required to be held within both a political subdivision and an unincorporated area, a separate election shall be called and held for the unincorporated area and a separate election shall be called and held for the political subdivision. Such separate elections, although independent one from the other, shall be called and held within each political subdivision and within the unincorporated area simultaneously on the same date.

If, at or prior to such public hearing, there shall be filed with the district board a petition signed by not less than ten per centum (10%) of the freeholders residing in the district requesting an election to be held therein on the question of including any such political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board of commissioners and the board of commissioners shall order and provide for the submission of such question to the qualified voters within the district. Any such election may be held on the same day as the election in the political subdivision or unincorporated area proposed to be included in the district. Elections and the registration therefor within the district and an unincorporated area may be held pursuant to a single notice. Notice of registration and election within a political subdivision shall be given by separate notice.

The date or dates of any such election or elections, the election officers, the polling places and the election precincts shall be determined by the board of commissioners which shall also provide any necessary registration and polling books, and the expenses of holding any such election shall be paid from the funds of the district; provided, however, that elections held within a city or town shall be conducted as required by law for special municipal elections, except as such may be modified by the provisions of this article, and the expense of such municipal elections shall be paid for by such city or town.

Notice of any such election shall be given by publication once a week for three

successive weeks, the first publication to be at least thirty days before any such election, in a newspaper circulating in the political subdivision or unincorporated area to be included in the district, and, if an election is to be held in the district, in a newspaper circulating in the district. The notice shall state (i) the boundaries of such political subdivision or unincorporated area, (ii) the boundaries of the district after the inclusion of such political subdivision or unincorporated area, and (iii) in the case of a political subdivision proposed to be included in the district, that if a majority of the qualified voters voting at such election in such political subdivision and, if an election is held in the district, a majority of the qualified voters voting at such election in the district, shall vote in favor of the inclusion of such political subdivision, then such political subdivision so included in the district shall be subject to all debts of the district, and, in the case of an unincorporated area proposed to be included in the district, that if a majority of the qualified voters voting at such election in such unincorporated area and, if an election is held in the district, a majority of the qualified voters voting at such election in the district, shall vote in favor of the inclusion of such unincorporated area, then such unincorporated area so included in the district shall be subject to all debts of the district.

A new registration of the qualified voters in the political subdivision or unincorporated area to be included in the district shall be ordered by the board of commissioners and, if an election is to be held in the district and such election is the first election held in the district after its creation, a new registration of the qualified voters of the district shall be ordered; provided, however, that within a city or town which is voting on the question of inclusion in the district, a new registration may be ordered at the discretion of the governing body thereof and such registration shall be conducted in accordance with the law applicable to the registration of voters in municipal elections. If an election has previously been held in the district, a supplemental registration of all qualified voters not theretofore registered may, at the discretion of the board of commissioners, be ordered and held in accordance with the provisions for registration as herein set forth. Notice of any such registration shall be given by the board of commissioners by publication once at least thirty days before the close of the registration books and such notice of registration may be considered one of the three notices required of the election. The time and manner of any such registration shall, as near as may be, conform with that of the registration of voters provided in G. S. 163-31. The notice of any such registration shall state the days on which the books will be open for the registration of voters and the place or places at which they will be open on Saturdays. The books for any such registration shall close on the second Saturday before the election. The Saturday before election day shall be challenge day and, except as otherwise provided in this section, any such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in any such election, which ballot may contain the words "For inclusion in the ..... Metropolitan Sewerage District of ..... County of ....." and the words "Against inclusion in the ..... Metropolitan Sewerage District of ..... County of .....", with squares opposite said affirmative and negative forms of the question of inclusion submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed.

If a majority of the qualified voters voting at such election in a political subdivision proposed to be included in the district and, if an election is held in the district, a majority of the qualified voters voting at such election in the district, shall vote in favor of the inclusion of such political subdivision, then the district shall be deemed to be enlarged to include such political subdivision from and after the date of the declaration of the result of the election by the district board, and such political subdivision shall be subject to all debts of the district. If a majority

of the qualified voters voting at such election in an unincorporated area proposed to be included in the district and, if an election is held in the district, a majority of the qualified voters voting at such election in the district shall vote in favor of the inclusion of such unincorporated area, then the district shall be deemed to be enlarged to include such unincorporated area from and after the date of the declaration of the result of the election by the district board, and such unincorporated area shall be subject to all debts of the district.

The returns of any such election held in an unincorporated area shall be canvassed by the board of commissioners and certified to the district board. The returns of any such election held within a municipality shall be canvassed by the municipal governing body and certified to the district board. Upon receipt of the certified election returns, the district board shall declare the results thereof.

A statement of the result of any such election shall be prepared and signed by a majority of the members of the district board, which statement shall show the date of any such election, the number of qualified voters within the political subdivision or unincorporated area who voted for and against the inclusion thereof and, if an election has been held within the district, the number of qualified voters within the district who voted for and against such inclusion. If a majority of the qualified voters voting at the election in the political subdivision or unincorporated area to be included and, if an election has been held in the district, a majority of the qualified voters voting at the election in the district shall vote in favor of such inclusion, the statement of result shall so declare the result of the election and state that such political subdivision or unincorporated area is from the date of such declaration a part of the district and subject to all debts thereof. Such statement shall be published once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement. (1961, c. 795, s. 5.)

§ **153-300. Powers generally; fiscal year.**—Each district shall be deemed to be a public body and body politic and corporate exercising public and essential governmental functions to provide for the preservation and promotion of the public health and welfare, and each district is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business not in conflict with this or other law;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places in the district as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any sewerage system or part thereof within or without the district; provided, however, that no such sewerage system or part thereof shall be located in any city, town or incorporated village outside the district except with the consent of the governing body thereof, and each such governing body is hereby authorized to grant such consent;

(6) To issue general obligation bonds and revenue bonds of the district as hereinafter provided to pay the cost of a sewerage system or systems;

(7) To issue general obligation refunding bonds and revenue refunding bonds of the district as hereinafter provided;

(8) To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of or for the services and facilities furnished by any sewerage system;

(9) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district, to pay the cost of maintaining, repairing and operating any sewerage system or

systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions;

(10) To acquire in the name of the district, either within or without the corporate limits of the district, by gift, purchase or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of chapter 40 of the General Statutes of North Carolina, any improved or unimproved lands or rights in land, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system, and to hold and dispose of all real and personal property under its control;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder;

(12) To employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, attorneys, employees and agents as may, in the judgment of the district board be deemed necessary, and to fix their compensation; provided, however, that the provisions of G. S. 159-20 shall be complied with to the extent that the same shall be applicable;

(13) To receive and accept from the United States of America or the State of North Carolina or any agency or instrumentality thereof loans, grants, advances or contributions for or in aid of the planning, acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system or systems, to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants, advances or contributions may be made; and

(14) To do all acts and things necessary or convenient to carry out the powers granted by this article.

Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the thirtieth day of June of the following year. (1961, c. 795, s. 6.)

§ **153-301. Authority to issue bonds generally.**—Each district is hereby authorized and empowered to issue its general obligation bonds or revenue bonds, at one time or from time to time, for the purpose of providing funds for paying all or any part of the cost of a sewerage system or systems. (1961, c. 795, s. 7.)

§ **153-302. Contents of order authorizing issuance of general obligation bonds.**—The issuance of general obligation bonds of a district may be authorized by an order of the district board which shall state:

(1) In brief and general terms, the purpose for which the bonds are to be issued.

(2) The maximum aggregate principal amount of the bonds.

(3) That a tax sufficient to pay the principal of and the interest on the bonds when due shall be annually levied and collected on all taxable property within the district.

(4) That the order shall take effect when and if it is approved by a majority of the qualified voters of the district voting at an election thereon. (1961, c. 795, s. 8.)

§ **153-303. Securing payment of general obligation bonds.**—Any general obligation bonds of a district may be additionally secured by a pledge of the revenues

of the sewerage system or any portion thereof. In the discretion of the district board the order authorizing any such general obligation bonds may state that there may be pledged to the payment of the bonds and the interest thereon revenues of the sewerage system available therefor if and to the extent that the district board shall thereafter determine by resolution prior to the issuance of bonds, and that a tax sufficient to pay the principal of and the interest on the bonds shall be annually levied and collected on all taxable property within the district but in the event that any revenues of the sewerage system shall be pledged to the payment of the bonds such tax may be reduced by the amount of such revenues available for the payment of such principal and interest. (1961, c. 795, s. 9.)

§ 153-304. General obligation bonds may be issued within five years of order; repeal of order.—After an order authorizing general obligation bonds takes effect, bonds may be issued in conformity with its provisions at any time within five (5) years after the order takes effect, unless the order shall within such period have been repealed by the district board, which repeal is permitted (without the privilege of referendum upon the question of repeal) unless notes shall have been issued in anticipation of the receipt of the proceeds of the bonds and shall be outstanding. (1961, c. 795, s. 10.)

§ 153-305. Publication of order authorizing general obligation bonds; actions questioning validity of order.—An order authorizing general obligation bonds shall be published in a newspaper circulating in the district once in each of two successive weeks after its passage. A notice substantially in the following form shall be published with the order:

The foregoing order was passed by the sewerage district board of the ..... Metropolitan Sewerage District of ..... County on the ..... day of ....., 19....., and was first published on the ..... day of ....., 19.....

Any action or proceeding questioning the validity of said order must be commenced within thirty (30) days after the first publication of said order.

.....
Secretary

Any action or proceeding in any court to set aside an order authorizing general obligation bonds, or to obtain any other relief upon the ground that such order is invalid, must be commenced within thirty (30) days after the first publication of the order and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 11.)

§ 153-306. Election on issuance of general obligation bonds; actions questioning validity.—Upon the adoption of an order authorizing general obligation bonds, the district board shall request the board of commissioners to call an election within the district on the issuance of such bonds.

The date of any such election, the election officers, the polling place or places and the election precinct or precincts shall be determined by the board of commissioners which shall also provide any necessary registration and polling books, and the expenses of holding any such registration and election shall be paid from funds of the district.

Notice of any such election shall be given by publication once a week for three successive weeks, the first publication to be at least thirty (30) days before any such election, in a newspaper circulating in the district. Such notice shall state briefly the purpose for which the bonds are to be issued, the maximum amount of the bonds, that a tax will be levied for the payment thereof and the date of the election and the location of the polling place or places. If such election is the first elec-

tion to be held in the district, a new registration of the qualified voters of the district shall be ordered. If an election has previously been held in the district, a new registration or a supplemental registration of all qualified voters not theretofore registered may, at the discretion of the board of commissioners, be ordered and held in accordance with the provisions for registration as herein set forth. Notice of any such registration shall be given by the board of commissioners by publication once at least thirty (30) days before the close of the registration books and such notice of registration may be considered one of the three notices required of the election. The time and manner of any such registration shall, as near as may be, conform with that of the registration of voters provided in G. S. 163-31. The notice of any such registration shall state the days on which the books will be open for the registration of voters and the place or places at which they will be open on Saturdays. The books for any such registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and, except as otherwise provided in this article, any such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter, which ballot may contain the words "For approval of the bond order adopted by the sewerage district board of the ..... Metropolitan Sewerage District of ..... County on the .... day of ....., 19...., authorizing the issuance of not exceeding $..... general obligation bonds of said Metropolitan Sewerage District for the purpose of (briefly stating the purpose) and the levy of a tax for the payment thereof", and the words "Against approval of the bond order adopted by the sewerage district board of the ..... Metropolitan Sewerage District of ..... County on the ..... day of ....., 19...., authorizing the issuance of not exceeding $..... general obligation bonds of said Metropolitan Sewerage District for the purpose of (briefly stating the purpose) and the levy of a tax for the payment thereof", with squares opposite said affirmative and negative forms of the question, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed.

The returns of any such election shall be canvassed by the board of commissioners and certified to the district board which shall declare the result thereof.

The district board shall prepare a statement showing the number of votes cast for and against the order and declaring the result of the election, which statement shall be signed by a majority of the members of the district board, recorded in the minutes of the district board and published once in a newspaper circulating in the district.

A notice substantially in the following form shall be published with the statement of the result of the election:

No right of action or defense founded upon the invalidity of the above-mentioned election shall be asserted, nor shall the validity of such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty (30) days after the publication of this statement.

.....
Secretary

Any action or proceeding in any court to set aside an election on the issuance of bonds of a district or to obtain any other relief upon the ground that such election or any proceeding or action taken with respect to the holding of such election are invalid, must be commenced within thirty (30) days after the publication of the statement of the result of the election. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

If at such election a majority of the qualified voters who vote thereon shall vote in favor of the issuance of such bonds, such bonds may be sold and issued in the manner hereinafter provided. If the issuance of such bonds shall not be approved,

the district board may, at any time thereafter, cause another election to be held for the same objects and purposes or for any other objects and purposes. (1961, c. 795, s. 12.)

§ 153-307. Borrowing upon bond anticipation notes; issuance, renewal and retiral of notes.—At any time after a general obligation bond order has taken effect, a district may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue, and negotiable bond anticipation notes shall be issued for all moneys so borrowed. Such notes shall be payable not later than five (5) years after the time of taking effect of the order authorizing the bonds in anticipation of which such notes are issued. The district board may, in its discretion, retire any such notes by means of current revenues or other funds, in lieu of retiring them by means of bonds. Before the actual retirement of any such notes by any means other than the issuance of bonds, the district board shall amend such order so as to reduce the authorized amount of the bond issue by the amount of the notes to be so retired. Such an amendatory order shall take effect upon its passage and need not be published. Any bond anticipation notes may be renewed from time to time and money may be borrowed upon bond anticipation notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature not later than five (5) years after the time of taking effect of said order. The issuance of such notes shall be authorized by resolution of the district board which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid thereon. The district board may delegate to any officer thereof the power to fix said face amount and rate of interest within the limitations prescribed by said resolution. Any such notes shall be executed in the manner herein provided for the execution of bonds. (1961, c. 795, s. 13.)

§ 153-308. Full faith and credit pledged for payment of bonds and notes; ad valorem tax authorized.—The full faith and credit of the district shall be deemed to be pledged for the punctual payment of the principal of and the interest on every general obligation bond and note issued under the provisions of this article. There shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay the interest on and the principal of all such general obligation bonds as such interest and principal become due; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. There may also be levied and collected in any year a tax ad valorem upon all the taxable property in the district (which tax shall not be subject to any limitation as to rate or amount contained in any other law) for the purpose of paying all or any part of the cost of maintaining, repairing and operating a sewerage system or systems. (1961, c. 795, s. 14.)

§ 153-309. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.—After each assessment for taxes following the creation of the district, the board of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of the interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars ($100.00) necessary to raise said amount and certify such rate to the board of commissioners. The board of commissioners in its next annual levy shall include the number of cents per one hundred dollars ($100.00) certified by the district board in the levy against all taxable property within the district, which tax shall be col-

lected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G. S. 159-28. (1961, c. 795, s. 15.)

§ 153-310. Covenants securing revenue bonds; rights of holders.—Any resolution or resolutions authorizing the issuance of revenue bonds under this article to finance all or any part of the cost of any sewerage system or systems, or any trust agreement or agreements securing any such revenue bonds, may contain covenants as to:

(1) The rents, rates, fees and other charges for the use of or for the services and facilities furnished by the sewerage system or systems;
(2) The use and disposition of the revenues of the sewerage system or systems;
(3) The creation and maintenance of reserves or sinking funds and the regulation, use and disposition thereof;
(4) The purpose or purposes to which the proceeds of the sale of said bonds may be applied, and the use and disposition of such proceeds;
(5) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which revenue bonds issued under this article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;
(6) The issuance of other or additional bonds or instruments payable from or charged against all or part of the revenue of a sewerage system;
(7) Any insurance to be carried on a sewerage system or any part thereof and the use and disposition of any insurance moneys;
(8) Books of account and the inspection and audit thereof;
(9) Limitations or restrictions as to the leasing or other disposition of any sewerage system while any of the revenue bonds or interest thereon remain outstanding and unpaid; and
(10) The continuous operation and maintenance of a sewerage system.

Revenue bonds issued under this article and payable solely from revenues of a sewerage system or systems shall not be payable from or charged upon any funds of the district other than such revenues, nor shall the district be subject to any pecuniary liability thereon. No holder or holders of any such revenue bonds shall ever have the right to compel any exercise of the taxing power to pay any such revenue bonds or the interest thereon, or to enforce payment thereof against any property of the district other than the revenues so pledged. (1961, c. 795, s. 16.)

§ 153-311. Form and execution of bonds; terms and conditions; use of proceeds; interim receipts or temporary bonds; replacement of lost, etc., bonds; consent for issuance.—All bonds issued under the provisions of this article shall be dated, shall mature at such time or times not exceeding forty (40) years from their date or dates and shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, all as may be determined by the district board, and may be made redeemable before maturity, at the option of the district board, at such price or prices and under such terms and conditions as may be fixed by the district board prior to the issuance of the bonds. The district board shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any

bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such person as at the actual time of the execution of such bond shall be duly authorized to sign such bond although at the date of such bond such person may not have been such officer. Notwithstanding any other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds shall be issued in coupon form, and provisions may be made by the district board for the registration of any bonds as to principal alone.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the district board may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing any revenue bonds.

Prior to the preparation of definitive bonds, the district board 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, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by the Local Government Commission under the provisions of this article. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this article to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The district board may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds and bond anticipation notes may be issued under the provisions of this article without obtaining the consent of any commission, board, bureau or agency of the State or of any political subdivision, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article. (1961, c. 795, s. 17.)

§ 153-312. Bonds and notes subject to provisions of Local Government Act; approval and sale.—All general obligation bonds and bond anticipation notes issued under the provisions of this article shall be subject to the provisions of the Local Government Act.

All revenue bonds issued under the provisions of this article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by the Local Government Commission, except that the Local Government Commission may sell any such revenue bonds at private sale and without advertisement if the Local Government Commission shall determine that such private sale is in the public interest, and except that, with the consent of the district board, the Local Government Commission may sell any such revenue bonds at less than par and accrued interest, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds or notes in accordance with standard tables of bond values, excluding, however, from such computation, the amount of any premium to be paid on redemption of any such bonds or notes prior to maturity. (1961, c. 795, s. 18.)

§ 153-313. Rates and charges for services.—The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of and for the services furnished or to be furnished by any sewerage system. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the sewerage system, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the sewerage system the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service. (1961, c. 795, s. 19.)

§ 153-314. Pledges of revenues; lien.—All pledges of revenues under the provisions of this article shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the district board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further action, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district, irrespective of whether such parties have notice thereof. (1961, c. 795, s. 20.)

§ 153-315. Bondholder's remedies.—Any holder of general obligation or revenue bonds issued under the provisions of this article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or by such trust agreement, 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 resolution or trust agreement, and may enforce and compel the performance of all duties required by this article or by such resolution or trust agreement to be performed by the district board or by any officer thereof, including the fixing, charging and collection of rents, rates, fees and charges for the use of or for the services and facilities furnished by a sewerage system. (1961, c. 795, s. 21.)

§ 153-316. Refunding bonds.—A district is hereby authorized to issue from time to time general obligation refunding bonds or revenue refunding bonds for the purpose of refunding any general obligation bonds or revenue bonds or bonds representing bonded indebtedness assumed by the district under the provisions of this article or any or all of such bonds then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the district board, for the additional purpose of paying all or any part of the cost of a sewerage system. The provisions of this article relating to general obligation bonds shall control as to any general obligation bonds issued under the provisions of this section, insofar as such provisions may be applicable, except that an order authorizing general obligation bonds under the provisions of this section for the sole purpose of refunding any general obligation bonds of the district or any bonds representing bonded indebtedness assumed by the district shall become effective upon its passage and need not be submitted to the voters, and the provisions of this article relating to revenue bonds shall control as to any revenue bonds issued under the provisions of this section insofar as the same may be applicable. (1961, c. 795, s. 22.)

§ 153-317. Authority of governing bodies of political subdivisions.—The governing body of any political subdivision is hereby authorized and empowered:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, sell, grant or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any existing sewerage system or systems or such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any sewerage system by the district, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine:

a. For the collection, treatment or disposal of sewage;

b. For the collecting by such political subdivision or by the district of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its inhabitants by any sewerage system, and for the enforcement of collection of such rents, rates, fees and charges; and

c. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated by such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges;

(3) To fix, and revise from time to time, rents, rates, fees and other charges for the services furnished or to be furnished by a sewerage system under any contract between the district and such political subdivision, and to pledge all or any part of the proceeds of such rents, rates, fees and charges to the payment of any obligation of such political subdivision to the district under such contract;

(4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment; and

(5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this article.

Any such election upon a contract or agreement, may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision. (1961, c. 795, s. 23.)

§ 153-318. Rights of way and easements in streets and highways.—A right of way or easement in, along, or across any State highway system road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right of way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the State Highway Commission, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1961, c. 795, s. 24.)

§ 153-319. Submission of preliminary plans to planning groups; cooperation with planning agencies.—Prior to the time final plans are made for the location

and construction of any sewerage system, the district board shall present preliminary plans for such improvement to the county, municipal or regional planning board for their consideration, if such facility is to be located within the planning jurisdiction of any such county, municipal or regional planning group. The district board shall make every effort to cooperate with the planning agency, if any, in the location and construction of a proposed facility authorized under this article. Any district board created under the authority of this article is hereby directed, wherever possible, to coordinate its plans for the construction of sewerage system improvements with the overall plans for the development of the planning area, if such district is located wholly or in part within a county, municipal or regional planning area; provided, however, that the approval of any such county, municipal or regional planning board as to any such plan of the district shall not be required. (1961, c. 795, s. 25.)

§ 153-320. Water system acting as billing and collecting agent for district; furnishing meter readings.—The owner or operator, including any political subdivision, of a water system supplying water to the owners, lessees or tenants of real property which is or will be served by any sewerage system owned or operated by a district is authorized to act as the billing and collecting agent of the district for any rents, rates, fees or charges imposed by the district for the services and facilities provided by such sewerage system, and such district is authorized to arrange with such owner or operator to act as the billing and collecting agent of the district for such purpose. Any such owner or operator shall, if requested by a district, furnish to the district copies of such regular periodic meter reading and water consumption records and other pertinent data as the district may require to do its own billing and collecting. The district shall pay to such owner or operator the reasonable additional expenses incurred by such owner or operator in rendering such services to the district. (1961, c. 795, s. 26.)

§ 153-321. District may assume sewerage system indebtedness of political subdivision; approval of voters; actions founded upon invalidity of election; tax to pay assumed indebtedness.—A district may assume all outstanding indebtedness of any political subdivision in the district lawfully incurred for paying all or any part of the cost of a sewerage system, subject to approval thereof by a majority of the qualified voters of the district voting at an election thereon. Any such election shall be called and held in accordance with the provisions of G. S. 153-306, insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, recorded and published as provided in said G. S. 153-306. No right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of result. In the event that any such indebtedness of a political subdivision is assumed by the district, there shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay such assumed indebtedness and the interest thereon as the same become due and payable; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. Such tax shall be determined, levied and collected in the manner provided by G. S. 153-309 and subject to the provisions of said section.

Nothing herein shall prevent any political subdivision from levying taxes to provide for the payment of its debt service requirements as to indebtedness incurred for paying all or any part of the cost of a sewerage system if such debt service requirements shall not have been otherwise provided for. (1961, c. 795, s. 27.)

§ 153-322. Advances by political subdivisions for preliminary expenses of districts.—Any political subdivision is hereby authorized to make advances, from any moneys that may be available for such purpose, in connection with the

creation of such district and to provide for the preliminary expenses of such district. Any such advances may be repaid to such political subdivision from the proceeds of bonds issued by such district or from other available funds of the district. (1961, c. 795, s. 28.)

§ **153-323. Article regarded as supplemental.**—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds except as herein provided. (1961, c. 795, s. 29.)

§ **153-324. Inconsistent laws declared inapplicable.**—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable, unless otherwise specified, to the provisions of this article. (1961, c. 795, s. 30.)

Chapter 154.

County Surveyor.

Sec.
154-1. County commissioners may appoint.
154-2. Qualifications.
154-3. Counties excepted from article.

§ **154-1. County commissioners may appoint.**—A county surveyor may be appointed in each county by the county commissioners. The county surveyor shall serve at the pleasure of the county commissioners and his duties shall be as directed by the county commissioners not inconsistent with provisions of the General Statutes of North Carolina. (Const., art. 7, s. 1; Rev., s. 4296; C. S., s. 1383; 1959, c. 1237, s. 1.)

Editor's Note.—The 1959 amendment rewrote this chapter which formerly contained four sections. This section formerly related to the election and term of office of surveyor.

Deputies.—For early decision as to deputies, see Avery v. Walker, 8 N. C. 140 (1820).

§ **154-2. Qualifications.**—The county surveyor shall have qualifications for his employment consistent with appropriate provisions of chapter 89, General Statutes of North Carolina, as amended. (1959, c. 1237, s. 1.)

§ **154-3. Counties excepted from article.**—This article shall not apply to Alexander, Ashe, Avery, Burke, Carteret, Cherokee, Clay, Cumberland, Davie, Greene, Harnett, Hyde, Jackson, Johnston, Lee, Lincoln, Macon, Madison, Mitchell, Northampton, Onslow, Pender, Person, Polk, Sampson, Stanly, Swain, Tyrrell, Washington, Watauga and Wilkes counties. (1959, c. 1237, ss. 1A, 1.1; 1961, c. 426.)

Editor's Note.—The 1961 amendment inserted "Onslow" in the list of counties.

Chapter 155.

County Treasurer.

§ 155-1. Election of county treasurer.—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, a treasurer. (Const., art. 7, s. 1; Rev., s. 1394; C. S., s. 1387.)

Local Modification.—Buncombe: 1937, c. 103; Caswell: Pub. Loc. 1941, c. 157; Chowan: 1941, c. 350; Cumberland: 1947, c. 702; Mitchell: 1931, c. 53; 1941, c. 168.

Cross Reference.—As to duty of county commissioners to fill vacancy in office of county treasurer, see § 153-9, subsection 12.

Editor's Note.—The legislature in 1875, under authority conferred by § 14 of Article VII, of the Constitution of 1868, amended § 1, of said Article VII, by providing that the boards of justices of the peace of the several counties might abolish the office of the county treasurer at will. The Code of 1883, § 768, conferred a like power upon the said boards of justices. When the justices chose to abolish the office, the duties and liabilities attaching thereunto devolved upon the sheriff, who became ex officio county treasurer. This was carried forward as § 1395 of the Revisal of 1905. However, the legislature, by Public Laws 1919, ch. 141, repealed the provision empowering the justices to abolish the office.

In certain counties the board of county commissioners is authorized to abolish the office of county treasurer and appoint one or more banks and trust companies in lieu thereof. See § 155-3. As to sheriff acting as treasurer, see § 155-6.

Ministerial Officer.—The county treasurer is a ministerial officer. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Elected for Statutory Term.—The term of office of the county treasurer is two years. State v. McKee, 65 N. C. 257 (1871).

The term of a treasurer appointed to fill a vacancy is only that of the unoccupied term of his predecessor. State v. McKee, 65 N. C. 257 (1871).

When Election a Nullity.—The election of a person to the office of county treasurer, which has been abolished, or when there is no vacancy, is a nullity. Rhodes v. Hampton, 101 N. C. 629, 8 S. E. 219 (1888).

§ 155-2. Bond; penalty; when renewed.—The county treasurer, before entering upon the duties of his office, shall give bond with three or more sufficient sureties, to be approved by the board of commissioners, payable to the State, conditioned that he will faithfully execute the duties of his office, and pay according to law, and on the warrant of the chairman of the board of commissioners, all moneys which shall come into his hands as treasurer, and render a just and true account thereof to the board when required by law or by the board of Commissioners. The penalty of his bond shall be a sum not exceeding the amount of the county and local taxes assessed during the previous year, and the board of commissioners at any time, by an order, may require him to renew, increase or strengthen his bond. A failure to do so within ten days after the service of such an order shall vacate his office, and the board shall appoint a successor. (1868-9, c. 157, s. 4; Code, s. 766; 1895, c. 270, s. 2; 1899, c. 54, s. 52; 1899, c. 132; 1899, c. 207, s. 4; 1901, c. 536; 1903, c. 12, s. 2; Rev., s. 297; C. S., s. 1388.)

Local Modification.—Craven, Forsyth: C. S. 1388.

Cross References.—As to limitation of actions upon bond, see § 1-50. As to ap-

proval of bond by county commissioners, see § 153-9, subsection 11. As to right of action on official bond, see § 109-34.

Time to File Bond.—It was the duty of a county treasurer elected in August, 1878, to appear before the board of county commissioners on the first Monday in the month next succeeding his election and file his official bond; and on his failure to do so, it was competent for the board of commissioners to declare the office vacant and fill it. Kilburn v. Latham, 81 N. C. 312 (1879).

Settlement of Retiring Treasurer Does Not Discharge Bond.—A settlement had between a county and its out-going treasurer, does not operate as a discharge of liability upon his bond; nor is it conclusive evidence of a proper accounting, but is open to proof that a mistake was made. Commissioners v. MacRae, 89 N. C. 95 (1883).

Actual Payment of Funds Alone Discharges Bond.—The actual payment of the funds remaining in a treasurer's hands will alone relieve the bond from liability, and it is his duty to know to what fund the money in hand belonged. Commissioners v. MacRae, 89 N. C. 95 (1883).

Demand Unnecessary.—Where the county treasurer collects and retains county moneys or fails to pay over to his successor, no demand is necessary before suit is brought. Commissioners v. Magnin, 86 N. C. 286 (1882).

Proper Parties Relator.—The commissioners of a county are proper parties relator to sue upon the official bond of a county treasurer to recover county school funds. Commissioners v. Magnin, 86 N. C. 286 (1882), approving Commissioners v. Magnin, 78 N. C. 181 (1878). See § 155-17.

Limitation of Actions upon Bonds.—An action upon the official bonds of a county treasurer may be brought within six years after a breach thereof. The statute does not begin to run from the date, but only from the breach of the bond. Commissioners v. MacRae, 89 N. C. 95 (1883).

Protection of School Fund.—The bond of a county treasurer, conditioned "that whereas he has been appointed treasurer and become disburser of the school money, now therefore, if he shall well and truly disburse the money coming into his hands, under the requirements of law," etc., covers an illegal defalcation from the school fund. Commissioners v. Magnin, 86 N.C. 286 (1882).

Where Bond Required as Treasurer of Board of Education.—See Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890), citing State v. Bateman, 102 N. C. 52, 8 S. E. 882 (1889).

§ 155-3. Local: Commissioners may abolish office and appoint bank.—In the counties of Ashe, Bladen, Carteret, Chatham, Cherokee, Chowan, Craven, Edgecombe, Granville, Hyde, Madison, Martin, Mitchell, Montgomery, Moore, Onslow, Perquimans, Polk, Rowan, Stanly, Transylvania, Tyrrell and Union, the board of county commissioners is hereby authorized and empowered, in its discretion, to abolish the office of county treasurer in the county; but the board shall, before abolishing the office of treasurer, pass a resolution to that effect at least sixty days before any primary or convention is held for the purpose of nominating county treasurer. When the office is so abolished, the board is authorized, in lieu of a county treasurer, to appoint one or more solvent banks or trust companies located in its county as financial agent for the county, which bank or trust company shall perform the duties now performed by the treasurer or the sheriff as ex officio treasurer of the county. Such bank or trust company shall not charge nor receive any compensation for its services, other than such advantages and benefit as may accrue from the deposit of the county funds in the regular course of banking, or such sum as may be agreed upon as compensation between said board of county commissioners of Transylvania County and Chatham County and such bank or banks as may be designated by said board of county commissioners. This alternative shall apply only to Chatham and Transylvania counties: Provided, in said county of Chatham the county commissioners of said county shall fix the compensation to be allowed said bank designated as said financial agent of said county which compensation shall not exceed the sum of five hundred dollars per annum and said bank is to furnish, without cost to the county, a good and sufficient bond as such financial agent.

The bank or trust company, appointed and acting as the financial agent of its county, shall be appointed for a term of two years, and shall be required to execute the same bonds for the safekeeping and proper accounting of such funds as may come into its possession and belonging to such county and for the faithful discharge of its duties, as are now required by law of county treasurers. (1913, c. 142; Ex. Sess. 1913, c. 35; 1915, cc. 67, 268, 458, 481; 1919, c. 48; C. S., s. 1389; 1925, c. 46; 1933, c. 63; 1955, c. 107.)

Editor's Note.—The 1925 amendment inserted "Transylvania" in the list of counties and added provisions relating to the county. The 1933 amendment inserted provisions

as to Chatham County. The 1955 amendment inserted Ashe in the first sentence.

Constitutionality.—A mandamus proceeding was brought to compel an ex-treasurer, whose office had been abolished, under the provision of this section, to pay over county funds in his possession to his successor, the bank designated by the commissioners. It was objected that the section was unconstitutional as an unwarranted delegation of legislative power. The court held, however, that the section was constitutional and valid. Tyrrell County v. Halloway, 182 N. C. 64, 108 S. E. 337 (1921). A wide discretionary power of local self-government may be vested in municipal subdivisions of the State, without infringement upon the familiar rule that the substance of legislative power cannot be delegated. Thompson v. Floyd, 47 N. C. 313 (1855); Manly v. Raleigh, 57 N. C. 370 (1859); 1 N. C. Law Rev. 53.

Mandamus against Treasurer Seeking to Hold Over.—Where, under the power of this section, the county commissioners have abolished the office of county treasurer, and have vested the duties of the office in certain banks and trust companies which have qualified thereunder, mandamus will lie to compel the treasurer, seeking to hold over and denying the validity of the statute, to turn over to the proper party the moneys that he has received and attempts to hold by virtue of his former office. Tyrrell County v. Halloway, 182 N. C. 64, 108 S. E. 337 (1921).

Officers of Bank as Sureties.—Where the officers of a bank acting without personal gain sign as sureties on an obligation of the bank executed to the commissioners of a county in the manner and form required by the section to secure a deposit for county and road purposes, the transaction is valid when unaffected by fraud, and binding upon the receiver afterwards appointed by the court for the bank, subsequently becoming insolvent. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Same—Directors Need Not Authorize.—Where the officers of a bank acting in good faith and without personal profit execute a bond of indemnity for the deposit of county funds, it is not required for the validity of the bond that the directors authorize the same by a resolution duly passed in order to protect the rights of the sureties, officers of the bank. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Same—Consideration Moving to Bank.—The consideration moving to a bank when its officers without individual benefit become sureties on its indemnity bond given for a county deposit, under the requirements of the statute, is the deposit so obtained. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Sureties Entitled to Collateral.—The sureties on an indemnity bond, given by a bank to secure a deposit of county funds required by the section, are entitled to the collateral given them by the bank for their protection in becoming sureties, and such collateral is available to them in preference to a receiver of the bank, thereafter appointed by the court, claiming the proceeds for distribution among the general creditors of the bank, when the transaction has been made by the sureties in good faith and without personal advantage to them. Page Trust Co. v. Rose, 192 N. C. 673, 135 S. E. 795 (1926).

Bank Entitled to all County Funds.—Under Public Local Laws 1917, ch. 46, § 1, for Robeson County, the bank selected by the commissioners, upon the abolishment of the office of county treasurer, was held entitled to receive all county moneys, including those derived from assessments of a drainage district. Commissioners v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Changing Terms of Appointment as Impairing Obligation of Contracts.—Where a bank has been appointed under this section to perform the duties of treasurer of Edgecombe County, and receive as compensation the profits of the moneys deposited by the county arising in the course of the bank's business as such, the arrangement is not a contract contemplated by the provision of the Constitution prohibiting the impairment of the obligations of a contract, but the obligations arise by statutory provisions relating to public matters within legislative control. The county may at a later date, under authority of § 153-135 require the bank to give bonds for the protection of the public funds, or to pay interest on the daily average balance. Farmers Banking, etc., Co. v. County, 196 N. C. 48, 144 S. E. 519 (1928). See note under § 155-7.

§ 155-4. Office includes person acting as treasurer.—The office of county treasurer shall always be construed to refer to, and include, the person authorized by law to perform the duties of that office in any county, if there is no county treasurer therein. (Code, s. 770; Rev., s. 1396; C. S., s. 1390.)

§ 155-5. Ex officio treasurer of county board of education.—The county treasurer is ex officio treasurer of the county board of education. (Code, s. 770; Rev., s. 1396; C. S., s. 1391.)

Cross Reference.—As to powers, duties, and responsibilities of the county treasurer in disbursing school funds, see § 115-91 et seq.

Sheriff as Treasurer of Board of Education.—Where one was ex officio treasurer of a county by virtue of his election to the office of sheriff, he became, in the same way, treasurer of the county board of education. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890).

§ 155-6. Sheriff acting as treasurer; bond liable.—In counties where the office of county treasurer is abolished, and where the sheriff is authorized to perform the duties of county treasurer, the bond he gives as sheriff shall be construed to include his liabilities and duties as such county treasurer, and may be increased to such amount by the board of commissioners as may be deemed necessary to cover the trust funds coming to his hands. (1879, c. 202; Code, s. 769; Rev., s. 1397; C. S., s. 1392.)

Cross Reference.—As to duty of county commissioners to take and approve bond, see § 153-9, subsection 11, and § 162-9.

§ 155-7. Duties of county treasurer.—It is the duty of the treasurer to receive all moneys belonging to the county, and all other moneys by law directed to be paid to him; to keep them separate and apart from his own affairs, and to apply them and render account of them as required by law. (Code, ss. 96, 773; 1889, c. 242; Rev., s. 1398; C. S., s. 1393; 1953, c. 973, s. 3.)

Cross References.—As to duties with respect to school funds, see § 115-91 et seq. As to limitation on actions on official bond of public officers, see § 1-50. As to right of action on official bonds, see § 109-34.

Editor's Note.—Session Laws 1953, c. 973, s. 3, effective July 1, 1953, repealed subsections 2 through 5, leaving only the preliminary paragraph and the provisions of former subsection 1 to form the present section.

Treasurer Receives and Disburses County Funds.—It is the duty of the county treasurer to receive all moneys belonging to the county. Lewis v. Commissioners, 192 N. C. 456, 135 S. E. 347 (1926).

The county treasurer disburses all public funds. Clifton v. Wynne, 80 N. C. 146 (1879).

Warrant on Specific Fund.—It is the duty of the county treasurer to pay a warrant drawn on a specific fund by the county commissioners. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Proceeds from Highway Bonds.—Where a county has issued bonds for the purpose of lending their proceeds to the State Highway Commission, to be used for the construction of certain highways within the county, and the county commissioners have such proceeds on hand, mandamus by the county treasurer will not lie for control of the funds as a part of the general county funds coming within her control, under the provisions of the statute. Lewis v. Commissioners, 192 N. C. 456, 135 S. E. 347 (1926).

Liability for Interest.—A local bank acting under a valid appointment to perform the duties of a county treasurer, as the fiscal agent of the county, was not required by former subsection 5 of this section to pay interest on the deposits of county funds thus received by it, and the surety on its bond was not liable for the failure of the special depository to charge itself interest on the deposits except when the bank had loaned the funds out to third parties. Green County v. First Nat. Bank, 194 N. C. 436, 140 S. E. 38 (1927). See note under § 155-3.

§ 155-8. Compensation of county treasurer.—The county treasurer shall receive as compensation in full for all services required of him such a sum, not exceeding one-half of one per cent on moneys received and not exceeding two and a half per cent on moneys disbursed by him, as the board of commissioners of the county may allow. As treasurer of the county school fund he shall receive such sum as the board of education may allow him not exceeding two per cent on disbursements; and the said commissions shall be paid only upon the order of the county board of education, signed by the chairman and secretary, and the county board of education is hereby forbidden to sign any such order until the treasurer shall have made all reports and kept all such accounts required by law in the form and manner prescribed: Provided, that said treasurer shall be allowed no commission or compensation for receipts and disbursements of any loan or loans made to the county by the State Board of Education out of the State Literary Fund, the Special Building Fund, nor from funds derived from county or district bond issues for the building of schoolhouses: Provided, that in counties where the treasurer's total compensation cannot exceed two hundred and fifty dollars per annum the treasurer may be allowed, in the discretion of the board of county commissioners and of the board of education, as to the school fund, a sum not exceeding two and one-half per cent on his receipts and not exceeding two and one-half per cent on his disbursements of all funds handled by him; but the compensation allowed by virtue of the provisions of this last proviso shall not be operative to give a total

compensation in excess of two hundred and fifty dollars per annum to such treasurers. (Code, s. 770; 1899, c. 233; Rev., s. 2778; 1909, c. 577; 1913, c. 144; 1919, c. 254, s. 9; C. S., s. 3910; 1924, c. 121, s. 6.)

Cross Reference.—As to compensation for disbursing funds of a drainage district, see § 156-113.

Editor's Note.—The 1924 amendment inserted in the first proviso "the Special Building Fund, nor from funds derived from county or district bond issues."

Statutes Construed Together.—The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors, and their compensation therefor, being a pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Compensation.—Every county treasurer is entitled to compensation for his labor and responsibility, and in no case less than two and half per cent per annum on the amount collected, where it cannot exceed two hundred and fifty dollars. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890).

Commission for Drainage Assessments.—This section cannot be construed to allow additional compensation to the county treasurer for receiving and disbursing money of a drainage district under § 36, ch. 442, Laws of 1909, the acts being unrelated but if otherwise, the county treasurer must bring himself within the provisions of this section by showing the amount claimed was allowed to him in the discretion of the county commissioners, within the limit fixed by the statute, and that the regular procedure was followed as to the drawing of the warrants by the drainage commission upon funds on hand derived from collections for the benefit of the drainage district. Board v. Credle, 182 N. C. 442, 109 S. E. 88 (1921).

May Enforce Claim by Mandamus.—In the event that the county commissioners refuse to consider the treasurer's claim for his fees, the proper remedy is a mandamus proceeding. Koonce v. Commissioners, 106 N. C. 192, 10 S. E. 1038 (1890).

§ **155-9**: Repealed by Session Laws 1953, c. 973, s. 3.

§ **155-10. Treasurer not to speculate in county claims; penalty.**—No county treasurer purchasing a claim against the county at less than its face value is entitled to charge the county a greater sum than what he actually paid for the same; and the board of commissioners may examine him as well as any other person on oath concerning the matter. Any county treasurer who is concerned or interested in any such speculation shall forfeit his office. (1868-9, c. 157, s. 8; Code, s. 772; Rev., s. 1399; C. S., s. 1394.)

§ **155-11. Treasurer administers property held in trust for county.**—All real and personal property held by deed, will or otherwise by any person or officer in trust for any county, or for any charitable use to be administered in and for the benefit of such county or the citizens thereof, shall be transferred to and vest in the county treasurer, to be administered and applied by him under the direction of the board of commissioners, upon the same uses, purposes and trusts as declared by the grantor, testator or other person in the original deed, devise or other instrument of donation. (1869-70, c. 85; Code, s. 778; Rev., s. 1400; C. S., s. 1395.)

§ **155-12. Treasurer to take charge of county trust funds; additional bonds.**—It is the duty of the county treasurer to take charge of all such trust funds and property; but he shall not do so without giving a bond payable to the State, in a penalty double the estimated value of said property or funds, with three or more sureties, each of whom is worth at least the amount of the penalty of the bond over and above all his liabilities and property exempt from execution, which bond shall be taken by the board of commissioners, and recorded and otherwise treated and dealt with as the official bond of the treasurer. (1869-70, c. 85, s. 2; Code, s. 779; Rev., s. 1401; C. S., s. 1396.)

§ **155-13. Commissioners to keep record of trust funds.**—The board of commissioners shall keep a proper record of all such trust property or charitable funds, and when necessary shall institute proceedings to recover for the treasurer all such as may be unjustly withheld. (1869-70, c. 85, s. 3; Code, s. 780; Rev., s. 1402; C. S., s. 1397.)

§ **155-14. Treasurer to exhibit separate statement as to trust funds.**—The county treasurer, whenever he is required to exhibit to the board of commissioners

the financial condition of the county, shall exhibit also distinctly and separately the amount and condition of all such trust funds and property, how invested, secured, used, and other particulars concerning the same. (1869-70, c. 85, s. 4; Code, s. 781; Rev., s. 1403; C. S., s. 1398.)

§ 155-15: Repealed by Session Laws 1953, c. 973, s. 3.

§ 155-16. Treasurer to deliver books, etc., to successor.—When the right of any county treasurer to his office expires, the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall, upon his oath, or, in case of his death, upon the oath of his personal representative, be delivered to his successor. (1868-9, c. 157; Code, s. 767; Rev., s. 1405; C. S., s. 1400.)

Cross Reference.—As to criminal liability for failure to deliver books, etc., to successor, see § 14-231.

A county treasurer going out of office is bound in contemplation of law to know what moneys he has on hand, and to what specified funds they belong, and to pay over all of the funds he has. Commissioners v. MacRae, 89 N. C. 95 (1883).

§ 155-17. Action on treasurer's bond to be by commissioners.—The board of commissioners shall bring an action on the treasurer's bond whenever they have knowledge or a reasonable belief of any breach of the bond. (1868-9, c. 157; Code, s. 771; Rev., s. 1406; C. S., s. 1401.)

Cross References.—As to limitation of action on bond, see § 1-50. As to action on bond generally, see § 109-34.

§ 155-18. Officers failing to account to treasurer sued by commissioners.—In case of the failure or refusal of a sheriff, clerk, or other officer to account and pay over, when called on as directed in this article, the treasurer shall report the facts to the board of commissioners, who may forthwith bring suit on the official bond of such delinquent officer, and the said board is also allowed to bring suit on the official bond of the clerk of the superior court of any adjoining county. (1868-9, c. 157, s. 10; Code, s. 775; Rev., s. 1407; C. S., s. 1402.)

Cross References.—As to liability of sheriff upon his official bond, see § 162-8; of clerk, see § 2-4; of constable, see § 151-3; of register of deeds, see § 161-4. As to limitations of actions on bonds, see § 1-50. As to duty of county commissioners to approve bonds, see § 153-9, subsection 11.

Commissioners May, but Need Not, Necessarily, Bring Suit.—The section does not make it the imperative duty of the board of commissioners to "bring suit on the official bond of the sheriff or other officer," but merely provides that they "may forthwith" do so. It is then left to their sound discretion whether they will or not. There might be substantial reasons why they would not, and, they might be content to leave it to the county treasurer to bring suit, especially as he is the proper officer to do so. Hewlett v. Nutt, 79 N. C. 263 (1878); Bray v. Barnard, 109 N. C. 44, 13 S. E. 729 (1891).

Liable as Insurer.—It is settled in this State that the bond of a public officer is liable for money that comes into his hands as an insurer, and not merely for the exercise of good faith. Commissioners v. Clarke, 73 N. C. 255 (1875); Havens v. Lathene, 75 N. C. 505 (1876); State v. Smith, 95 N. C. 396 (1886); State v. Bateman, 102 N. C. 52, 8 S. E. 882, 11 Am. St. Rep. 708 (1889); Presson v. Boone, 108 N. C. 78, 12 S. E. 897 (1891). Bonds of administrators, executors, guardians, etc., only guarantee good faith. Atkinson v. Whitehead, 66 N. C. 296 (1872); Moore v. Eure, 101 N. C. 11, 7 S. E. 471, 9 Am. St. Rep. 17 (1888); Smith v. Patton, 131 N. C. 396, 42 S. E. 849 (1902).

Taxpayer May Prosecute Suit.—A taxpayer has the right to prosecute a suit against the register of deeds of the county to enforce payment of taxes collected and wrongfully withheld by him when the county commissioners have refused to institute action to recover them; and when such right of action exists, usually appertaining to the exercise of the equitable jurisdiction of the courts, this jurisdiction is not necessarily withdrawn because the legislature has provided a legal remedy, unless the statute itself shall so direct. Waddill v. Masten, 172 N. C. 582, 90 S. E. 694 (1916).

Same—Parties.—While a taxpayer, in his suit independent of the statute, should make the proper county officials parties to his action against a register of deeds for unlawfully withholding fees collected by him, so they may be heard on the question presented, and that the funds, if recovered, should be in proper custody or control, this matter affects the remedy, and may be cured by amendment. Waddill v. Masten, 172 N. C. 582, 90 S. E. 694 (1916).

Bonds Subject to Subsequent Legislation.—See State v. Bradshaw, 32 N. C. 229 (1849); Prairie v. Worth, 78 N. C. 169 (1878); Daniel v. Grizzard, 117 N. C. 105, 23 S. E. 93 (1895).

Cited in Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

Chapter 156.

Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Article 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding.—The proceeding under this subchapter shall be the same as prescribed in the chapter Eminent Domain, article 2, Condemnation Proceedings. (Code, s. 1324; Rev., s. 4028; C. S., s. 5260.)

Local Modification.—Alexander, Little River Drainage District: Pub. Loc. 1927, c. 484; Iredell: Pub. Loc. 1937, c. 591; Pasquotank: Pub. Loc. 1923, c. 181; Pub. Loc. 1927, c. 264; Pub. Loc. 1929, c. 471; Robeson; Pub. Loc. 1927, c. 197; Rowan: Pub. Loc. 1937, cc. 591, 592; Tyrrell: Pub. Loc. 1927, c. 336; City of Washington: Pr. 1921, c. 149.

Cross Reference.—As to condemnation proceedings, see § 40-11 et seq.

Constitutionality.—The laws, enacted under this and the following sections of this chapter, are constitutional. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910); Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433 (1911). They come within the power of the State for police regulations. Winslow v. Winslow, 95 N. C. 24 (1886). See Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926 (1905).

Various Statutes Harmonized.—While the various statutes for the drainage of swamp lands in Eastern North Carolina have not the same provisions in all respects, they have been collected and are to be found in this chapter and should be construed to harmonize, and constitute, with such variations, a system of drainage laws for the State. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908); Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

Statutes Provide Flexible Procedure.—The statutes authorizing the creation, maintenance and improvements of drainage districts provide flexible procedure which may be modified and molded by decrees from time to time to promote the beneficial objects sought by the creation of the district, subject to the restrictions that there should be no material change nor any change that would impose additional costs upon landowners except to the extent of benefits to them. In re Lyon Swamp Drainage, etc., Dist., 228 N. C. 248, 45 S. E. (2d) 130 (1947).

Commissioners May Issue Bonds and Make Assessments Applicable Only to Section Benefited.—Where proposed improvements and repairs will primarily benefit lands embraced in one section of a

drainage district and would be of no substantial benefit to landowners in another section thereof, the drainage commissioners have power under statutory authority to issue bonds and make assessments applicable only to the section benefited. In re Lyon Swamp Drainage, etc., Dist., 228 N. C. 248, 45 S. E. (2d) 130 (1947).

The correct procedure to secure additional authority for proper maintenance and improvements in a drainage district is by motion or petition in the original cause. In re Lyon Swamp Drainage, etc., Dist., 228 N. C. 248, 45 S. E. (2d) 130 (1947).

Right to Condemn.—The right of the State to condemn land for drains rests on the same foundation as its right in cases of public roads, mills, railroads, schoolhouses, etc. Norfleet v. Cromwell, 70 N. C. 634 (1874).

The right to drain through the banks of a natural watercourse is exactly similar in character to the right to construct dykes or levees to keep their excessive waters from overflowing the adjacent lands, a right which has been recognized in the legislation of all countries from the most ancient times. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in Chappell v. Winslow, 258 N. C. 617, 129 S. E. (2d) 101 (1963).

§ 156-2. Petition filed; commissioners appointed.—Any person owning pocosin, swamp, or flat lands, or owning lowlands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or ditch, or erecting a dam through or upon the lands of other persons, may by petition apply to the superior court of the county in which the lands sought to be drained or embanked or some part of such lands lie, setting forth the particular circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose lands he desires to drain, or on what lands he would erect his dam, and who are the proprietors of such lands; whereupon a summons shall be served on each of the proprietors, and, on the hearing of the petition the court shall appoint three persons as commissioners, who shall be duly sworn to do justice between the parties. (1795, c. 436, P. R.; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 1; Code, s. 1297; Rev., s. 3983; C. S., s. 5261.)

The clerk of the superior court has jurisdiction of a proceeding to obtain a right of drainage over the land of an adjoining landowner, and to assess damages, etc. Durden v. Simmons, 84 N. C. 555 (1881).

Formerly the law required the appointment of disinterested freeholders as commissioners in a proceeding to obtain a right of drainage over the lands of an adjoining landowner. Durden v. Simmons, 84 N. C. 555 (1881).

This chapter, and the amendments thereto, are the charts which should guide the commissioners, and their decisions, findings and report should conform thereto. Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926 (1905).

Appeal.—An order in a drainage proceeding directing matters proper for the determination of the commissioners to be referred to a jury is appealable. Porter v. Armstrong, 134 N. C. 447, 46 S. E. 997 (1904).

Artificial Outlets.—This chapter applies only to artificial outlets made over the land of another to reach a natural watercourse. Mizell v. McGowan, 129 N. C. 93, 39 S. E. 729 (1901).

Readjustment.—When the rights and duties of adjoining landowners as to drainage in a certain canal have been determined under this chapter, and judgment entered, proceedings subsequently brought for the purpose of readjustment, owing to change of ownership and partition, etc., are in effect a motion in the cause, in which the judgment, unlike a final judgment, is not conclusive; and the cause can be brought forward from time to time, upon notice to the parties, and further decrees made to conform to the exigencies and changes which may arise. Staton v. Staton, 148 N. C. 490, 62 S. E. 596 (1908); Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

Jury Question.—See Collins v. Haughton, 26 N. C. 420 (1844).

Joint Petition.—Two or more separate proprietors cannot sustain a joint petition for a ditch to drain their lands, without alleging that a common ditch would drain the lands of all the petitioners. Shaw v. Burfoot, 53 N. C. 344 (1861).

Diversion of Water.—Water cannot be diverted from its natural course so as to damage another, but it may be increased and accelerated. Hocutt v. Wilmington, etc., R. Co., 124 N. C. 214, 32 S. E. 681 (1899); Mizell v. McGowan, 125 N. C. 439, 34 S. E. 538 (1899); Lassiter v. Norfolk, etc., R. Co., 126 N. C. 509, 36 S. E. 49 (1900); Mizell v. McGowan, 129 N. C. 93, 39 S. E. 729 (1901); Bardiff v. Norfolk Southern R. Co., 168 N. C. 268, 84 S. E. 290 (1915).

The owners of swamps, whose waters naturally flow into natural watercourses, can make such canals as are necessary to drain them of the water naturally flowing therein, although in doing so the flow of water in the natural watercourse is increased and accelerated so that the water is

discharged on the land of an abutting owner. Mizell v. McGowan, 120 N. C. 134, 26 S. E. 783 (1897).

Same—Liability for Damages.—Where a person diverts water from a stream by cutting a channel from it, and at a point lower down the stream turns it back into the old channel, and by its own momentum it is carried on to the lands of an adjoining owner, he is liable for damages. Briscoe v. Young, 131 N. C. 386, 42 S. E. 893 (1902).

One is liable for damages caused to the lands of another by his diverting the natural flow of surface water thereto. Roberts v. Baldwin, 151 N. C. 407, 66 S. E. 346 (1909).

Surface waters should be drained so as to be carried off in the due course of nature. The upper proprietor is liable in damages to the land of the lower proprietor caused by water diverted by his ditches and not carried to a natural waterway. Briscoe v. Parker, 145 N. C. 14, 58 S. E. 443 (1907).

Same—Landowner's Remedy.—When the lands of the lower proprietor are damaged by the improper drainage of the upper proprietor, he may elect to bring an action for damages or proceed under this and the following sections. Briscoe v. Parker, 145 N. C. 14, 58 S. E. 443 (1907).

Former Judgment—Setting Aside.—If a former judgment in a similar proceeding has not been pleaded in an action for drainage of lands, as an estoppel or res adjudicata, before final judgment, the party relying thereon must move the court within one year to set the judgment aside for excusable mistake or inadvertence. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

Landowner Must Be Made Party.—An order by county commissioners (now superior court) appointing appraisers to assess the value of the benefits and damages which would accrue to the owner of land on account of a certain canal sought to be cut through his land, upon the petition of other parties, filed under the provisions of this chapter, is void, unless said landowner be made a party to the petition. Gamble v. McCrady, 75 N. C. 509 (1876).

Liability to Maintain Artificial Waterway Constructed for Temporary Purposes.—When an upper proprietor of lands constructs and maintains for his own use and advantage an artificial waterway or structure affecting the flow of water, without invading the rights of the lower proprietor, for a temporary purpose or a specific purpose which he may at any time abandon, the upper proprietor comes under no obligation to maintain the structure, though the incidental effect has been to confer a benefit on the lower tenant. Lake Drummond Canal, etc., Co. v. Burnham, 147 N. C. 41, 60 S. E. 650 (1908).

Where separate owners have derived their lands subject to a drainage system placed upon the entire tract by the original owner, each one using the system must bear the costs of maintenance and repair required by the portion of the system on his own premises. Lamb v. Lamb, 177 N. C. 150, 98 S. E. 307 (1919).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-3. Duty of commissioners.—The commissioners, or a majority of them, on a day of which each proprietor of land aforesaid is to be notified at least five days, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, and shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal, ditch, or embankment; and they shall assess, for each of the defendants, such damage as in their judgment will fully indemnify him for the use of his land in the mode proposed; but in assessing such damages, benefits shall be deducted. (1795, c. 436, P. R.; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 2; Code, s. 1298; Rev., s. 3984; C. S., s. 5262.)

Section Not Repealed.—Section 156-16, concerning the drainage of lowlands, does not expressly repeal this section, but leaves in operation such of the provisions as are not repugnant to such section. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in Porter v. Armstrong, 134 N. C. 447, 46 S. E. 997 (1904); In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-4. Report and confirmation; easement acquired; exceptions.—The commissioners shall report in writing, under their hands, the whole matter to the court, which shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and cost of the proceedings the court shall order and decree that the petitioner may cut the canal or ditch, or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee simple of the easement aforesaid: Provided, that, without the consent of the proprietor, such canal, ditch, or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall such dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet. (1795, c. 436, s. 2, P. R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 3; Code, s. 1299; Rev., s. 3985; C. S., s. 5263.)

Report of Commissioners Conclusive.—The report of commissioners appointed to condemn lands and assess damages for the purpose of drainage is, like the verdict of a jury, conclusive of the facts therein ascertained, until set aside. Norfolk Southern R. Co. v. Ely, 101 N. C. 8, 7 S. E. 476 (1888).

Commissioners' Report Set Aside.—Where judge set aside report of commissioners because it did not comply with the statute, and further found as a fact in his order that two of the commissioners had been guilty of gross indiscretion, the Supreme Court would not reverse his order, whether the report conformed to the statute or not. Porter v. Armstrong, 139 N. C. 179, 51 S. E. 926 (1905).

Jury to Settle Issues of Fact.—Upon an application to condemn lands for the purpose of drainage, the issue of fact raised by the pleadings should be framed and settled by a jury; they cannot be raised or considered upon exceptions to the report of the commissioners appointed to assess damages. Norfolk Southern R. Co. v. Ely, 101 N. C. 8, 7 S. E. 476 (1888).

Title in Lands Condemned.—When, upon the petition of one or more parties, under this section, leave was granted by the county court to cut a canal across the land of another for the purposes of drainage, the petitioners and their assignees, upon the report of the jury provided for in the statute being confirmed, acquire not merely an easement, but title in fee to the land condemned. Norfleet v. Cromwell, 70 N. C. 634 (1874).

Appeal from Judgment of Clerk.—On appeal from the judgment of the clerk upon the report of commissioners appointed to lay off ditch for drainage of lowlands the judge could set aside the report either for cause or in his discretion, if in his opinion the ends of justice could be subserved by that course. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Quoted in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-5. Width of right of way for repairs.—The commissioners, when they may deem it necessary, shall designate the width of the land to be left on each side of the canal, ditch, or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal, ditch, or dam, except as aforesaid: Provided, that in no case shall a greater width of land on both sides, inclusive of a dam, be taken than five times the base of such dam. (R. C., c. 40, s. 6; Code, s. 1302; Rev., s. 3985a; C. S., s. 5264.)

When Unnecessary Amount of Land Condemned.—Where, upon an appeal from the report of the commissioners, the jury found that the amount of land condemned by them for the purpose of the protection and reparation of the ditches was unnecessary, it was proper for the court to remand the cause, with directions to constitute another commission. Winslow v. Winslow, 95 N. C. 24 (1886).

§ 156-6. Right of owner to fence; entry for repairs.—Any proprietor, through or on whose land such canal or ditch may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal, ditch, or dam, his heirs and assigns, shall at all times have free access to the same for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors. (1795, c. 436, s. 2, P. R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 4; Code, s. 1300; Rev., s. 3986; C. S., s. 5265.)

§ 156-7. Earth for construction of dam; removal of dam.—The earth necessary for the erection of a dam may be taken from either side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition and such proceedings therein as are provided in this chapter, as far as the same may apply to his case: Provided always, that the usefulness of the dam will not be thereby impaired or endangered. (R. C., c. 40, s. 5; Code, s. 1301; Rev., s. 3987; C. S., s. 5266.)

§ 156-8. Earth from canal removed or leveled.—The earth excavated from the canal or ditch shall be removed away or leveled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow. (R. C., c. 40, s. 7; Code, s. 1303; Rev., s. 3988; C. S., s. 5267.)

§ 156-9. No drain opened within thirty feet.—The proprietor of any swamp or flat lands through which a canal or ditch passes shall not have a right to open or cut any drain within thirty feet thereof but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal or ditch in the manner hereinafter provided. (R. C., c. 40, s. 8; Code, s. 1304; Rev., s. 3989; C. S., s. 5268.)

§ 156-10. Right to drain into canal.—Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Provided, further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening of such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county at termtime, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury. (R. C., c. 40, s. 9; Code, s. 1305; 1887, c. 222; Rev., s. 3990; C. S., s. 5269.)

Adjudication of Rights of Parties.—In a proceeding by drainage corporation to levy assessments against the lands of respondents for the proportionate part of the expense for making necessary improvements upon allegations that such lands drained into the corporations' canals and would be greatly benefited by the improvements, it appeared that respondents' predecessor in title cut a large canal through his lands draining into the lands of the corporation. It was held that it would be presumed that respondents' predecessor in title acquired the right to cut into the canal of plaintiff pursuant to the provisions of this section and the petition should be considered as a motion in that cause for the proper adjudication of the rights of the parties. Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Stated in Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

Cited in Brooks v. Tucker, 61 N. C. 309 (1867); In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-11. Expense of repairs apportioned.—Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal or ditch, they shall assess and apportion the labor which the petitioner and defendants shall severally contribute towards repairing the canal or ditch into or

through which the petitioner drains the water from his lands, and report the same to court; which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns. (R. C., c. 40, s. 10; Code, s. 1306; Rev., s. 3991; C. S., s. 5270.)

When Report Fatally Defective.—A report of commissioners under this section, which fails to assess and apportion that part of the labor which is to be contributed by the defendants, is fatally defective. Brooks v. Tucker, 61 N. C. 309 (1867).

Applied in Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ **156-12. Notice of making repairs.**—Whenever the canals or ditches for the reparation of which more than one person shall be bound under the provisions of § 156-11 shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor till the same be repaired or the work cease by consent. (R. C., c. 40, s. 11; Code, s. 1307; Rev., s. 3992; C. S., s. 5271.)

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ **156-13. Judgment against owner in default; lien.**—In case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a notice to be issued for such default, in which shall be stated on oath made before the clerk the value of such labor, and unless good cause to the contrary be shown on the return of the notice, the court shall render judgment for the same with interest and costs; which judgment shall be a lien upon the lands from the date of the performance of the work. (R. C., c. 40, s. 12; Code, s. 1308; 1899, c. 396; Rev., s. 3993; C. S., s. 5272.)

Notice to Landowner.—Before any specific amount may be adjudged against a landowner as a lien on his land he is entitled to be heard, after notice, as to whether the assessment made by the commissioners was unjust or oppressive. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

§ **156-14. Subsequent owners bound.**—All persons to whom may descend, or who may otherwise own or occupy lands drained by any canal or ditch, for the privilege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment as the original party himself would be if he occupied the land. (R. C., c. 40, s. 13; Code, s. 1309; Rev., s. 3994; C. S., s. 5273.)

Applied in Norfleet v. Cromwell, 70 N. C. 634 (1874); Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

Quoted in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ **156-15. Amount of contribution for repair ascertained.**—Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a justice of the peace, who shall give all parties at least three days' notice, and shall summon two disinterested freeholders who, together with the justice, shall meet on the premises and assess the damages sustained by the applicant, whereupon the justice shall enter judgment in favor of the applicant for damages or for work done on such ditch or lands. The costs of this proceeding shall be in the discretion of the justice. (R. C., c. 40, s. 14; Code, s. 1310; 1889, c. 101; Rev., s. 3995; C. S., s. 5274.)

Constitutionality.—This section is constitutional and valid. Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433 (1911).

Proceeding under this section is in effect a motion in the cause which can be brought forward from time to time, upon notice to all the parties to be affected, for orders in the cause, to promote the objects of the proceeding, the whole matter remaining in the control of the court. Staton v. Staton, 148 N. C. 490, 62 S. E. 596 (1908); Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

Action Dismissed for Noncompliance with Statute—Not Bar to Second Action.—When damages have been sought in an action before a justice of the peace, relating to drainage districts, etc., and the action was dismissed because there had been no contract or agreement between the parties and the requirements of the statute had not been met, the plaintiff is not thereby barred from proceeding under the act to have the damages assessed and from bringing another action therefor as the former judgment does not bar the second one. Forehand v. Taylor, 155 N. C. 353, 71 S. E. 433 (1911).

Enlarging or Deepening Canal.—The method by which the user of a canal by prescriptive right may enlarge or deepen it with an apportionment of the costs, is provided by this section. Armstrong v. Spruill, 182 N. C. 1, 108 S. E. 300 (1921).

Same—Liability for Damages.—Where the users of a canal by prescriptive right enlarge the same, and thereby place water upon the lower proprietor to his damage, they are liable therefor, and, upon conflicting evidence, the issue should be submitted to the jury. Armstrong v. Spruill, 182 N. C. 1, 108 S. E. 300 (1921).

Applied in Porter v. Durham, 98 N. C. 320, 3 S. E. 832 (1887).

Cited in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

§ 156-16. Petition by servient owner against dominant owner.—Any person owning lands lying upon any creek, swamp, or other stream not navigable, which are subject to inundation and which cannot be conveniently drained or embanked on account of the volume of water flowing over the same from lands lying above, and by draining the same the lands above will be benefited and better drained, such person may by petition apply to the superior court of the county in which the lands sought to be drained or embanked, or some part of such lands, lie, setting forth the particular circumstances of the case, the valuation of the lands to be drained or embanked, and what other lands above would be benefited, and who are the proprietors of such lands; whereupon a summons shall be served upon each of the proprietors, who are not petitioners, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard and the court shall appoint three person as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1889, c. 253; Rev., s. 4016; C. S., s. 5275.)

Local Modification.—Lenoir: 1891, c. 73; Rev., s. 4016.

This section does not repeal § 156-3, but leaves in operation such of the provisions as are not repugnant to it. Worthington v. Coward, 114 N. C. 289, 19 S. E. 154 (1894).

Analogy to Drainage Law.—The procedure under this and the following sections is analogous to the general drainage law, and its provisions are applicable, and the proceedings are regarded as kept alive for further orders without being retained on the docket, and in this case the original assessment did not constitute a bar to the motion to vacate, and the assessment was properly set aside on the facts found. Spence v. Granger, 204 N. C. 247, 167 S. E. 805 (1933).

Judgment—Setting Aside.—In an action brought for the drainage of lands under this and the following sections, the judgment upon motion thereafter will not be set aside merely upon the ground that a similar proceeding had been prosecuted to judgment between several of the parties. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

§ 156-17. Commissioners to examine lands and make report.—The commissioners, or a majority of them, on a day of which each proprietor is to be notified at least five days, shall meet on the premises and view the land to be drained and the lands affected thereby, and shall determine and report whether the lands of the petitioner or petitioners ought to be drained exclusively by him or them, and if they are of the opinion that the same ought not to be drained exclusively at the expense of the petitioner or petitioners, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth and height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the

effectual drainage of the petitioner's land, and the protection and benefit of the defendant's lands; and they shall apportion the labor to be done or assess the amount to be paid by each of the owners of the lands affected by such canal, ditch, or embankment, towards the construction and keeping the same in repair, and report the same to the court, which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors, administrators, heirs and assigns. (1889, c. 253, s. 2; Rev., s. 4017; C. S., s. 5276.)

Local Modification.—Beaufort, Lenoir: 1891, c. 73, s. 2; Rev., s. 4017; Pub. Loc. 1911, c. 545.

Cost of Work Not Required in Report.—The cost of the work to be done in the drainage of lands is not required under this section, and cannot, for its uncertainty of amount, be set out in the report of the commissioners appointed. It is a compliance with the statutes when the portion of the work to be done by the landowners is set out. Adams v. Joyner, 147 N. C. 77, 60 S. E. 725 (1908).

§ 156-18. Cost of repairs enforced by judgment.—Whenever any such ditch, canal, or embankment shall need repairs or cleaning out, and any of the parties interested therein refuse to perform the labor apportioned to them, or refuse to contribute the amount assessed against them, the same shall be enforced in the manner hereinbefore provided for the joint repair of canals and ditches. (1889, c. 253, s. 3; Rev., s. 4018; C. S., s. 5277.)

Editor's Note.—See § 156-13 and note thereto.

§ 156-19. Obstructing canal or ditch dug under agreement.—Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1899, c. 255; Rev., s. 3375; C. S., s. 5278.)

This section applies only where all the parties contributed under a valid agreement to the lawful digging of a ditch or canal. Porter v. Armstrong, 129 N. C. 101, 39 S. E. 799 (1901).

§ 156-20. Right of dominant owner to repair.—In the absence of any agreement for maintaining the efficiency of such ditch or canal, or should the servient owner neglect or refuse to clean out or aid in cleaning out the same through his lands, it shall be lawful for the dominant or higher owner, after giving three days' notice to the servient owner, to enter along such canal and not more than twelve feet therefrom and clean out or remove obstructions or accumulated debris therefrom at his own personal expense or without cost to the servient owner. (1899, c. 255, s. 2; Rev., s. 4025; C. S., s. 5279.)

Editor's Note.—See note to § 156-19.

Where a person enlarges a canal on the lands of another, under a void proceeding, he is a trespasser, and cannot claim credit for money spent thereon. Porter v. Armstrong, 129 N. C. 101, 39 S. E. 799 (1901).

Cited in Elder v. Barnes, 219 N. C. 411, 14 S. E. (2d) 249 (1941).

§ 156-21. Canal maintained for seven years presumed a necessity; drainage assessments declared liens.—After a canal has been dug along any natural depression or waterway and maintained for seven years, it shall be prima facie evidence of its necessity, and upon application to the clerk of the superior court of any landowner who is interested in maintaining the same, it shall be the duty of the clerk of the superior court to appoint and cause to be summoned three disinterested and discreet freeholders, who, after being duly sworn, shall go upon the lands drained or intended to be drained by such canal, and after carefully examining the same and hearing such testimony as may be introduced touching the question of cost of canal, the amount paid, and the advantages and disadvantages to be shared

by each of the parties to the action, shall make their report in writing to the clerk of the superior court stating the facts and apportioning the cost of maintaining such canal among the parties to the action, and the cost of the action shall be divided in the same ratio; and their report when approved shall be properly registered by the clerk and the said report or reports shall, when filed in the office of the clerk of the superior court, be a lien upon each tract of land embraced in said report or reports to the extent of the proportionate part of the costs stipulated in said report or reports as a charge against same, and shall have the effect and force of a judgment thereon, and such judgments shall be subject to execution and collection as in cases of other judgments. (1899, c. 255, s. 3; Rev., s. 4026; 1917, c. 248, s. 1; C. S., s. 5280; 1931, c. 227, s. 1.)

Editor's Note.—The 1931 amendment added the latter part of this section relating to drainage assessments as liens.

Interpretation of Section.—The provisions of this section are necessary for the cultivation and improvements of lowlands required to be drained, and should be construed to carry into effect its beneficent purposes, when practicable. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

This section should be construed in connection with the other sections of the chapter relating to the drainage of lowlands. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

"Ditch"—"Canal."—In the chapter relating to the drainage of lowlands the terms "ditch" and "canal" are used indiscriminately to designate an artificial drain. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

An artificial drain in some places from 3 to 5 feet wide and from 2 to 5 feet deep, made for the purpose of cultivating and improving lowlands by draining them is a canal within the meaning of this section. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

Contribution to Original Construction.—It is not necessary that the owner of lands lying along a drainage canal, within the meaning of this section shall have contributed to its original construction to make him liable to assessments for its maintenance under the provisions of the statute. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

Railroads.—While a railroad company may not be the absolute owner of lands in fee, they have the proprietorship and control of those constituting its rights of way; and when these lands are benefited by a canal which comes within the meaning of this section, the provision of the statute relative to the maintenance of the canal apply. Forest v. Atlantic Coast Line R. Co., 159 N. C. 547, 75 S. E. 796 (1912).

Applied in Craft & Co. v. Roper Lumber Co., 181 N. C. 29, 106 S. E. 138 (1921).

§ 156-22. Supplemental assessments to make up deficiency; vacancy appointments of assessment jurors.—The freeholders, commissioners or jurors, appointed in any application or proceeding filed or instituted under § 156-21 or any other section of article 1 of this chapter, are authorized and empowered during the establishment of and providing for the construction, maintenance and payment therefor, of such ditch, canal or drain, to make other and further assessments for the costs of establishment, construction and expense, when it shall be determined by the clerk of the court that the provisions in the former report for the payment thereof are insufficient, and that such supplementary reports shall be made on the same basis of an equitable and just proportion, as made in the former report, which report or reports shall be filed with the clerk of the superior court and have the same force and effect as the former or original report.

In case of death, resignation, removal or for any other cause there becomes a vacancy as to the freeholders, commissioners or jurors, appointed to carry out the provisions of the sections contained in this chapter, the clerk of the superior court is authorized to fill such vacancy by the appointment of some disinterested freeholder in the county, and the said person so appointed to fill such vacancy shall qualify before the clerk of the superior court before entering upon his duties. (1931, c. 227, s. 2.)

Local Modification.—Duplin: 1931, c. 227, s. 2.

Interested Parties Entitled to Notice.—Where drainage assessments are levied against lands under this and related sections, either original assessments or additional assessments to cover unforeseen expenses in the construction of the drainage ditch, the parties whose lands are assessed are entitled to notice and an opportunity to be heard. Spence v. Granger, 207 N. C. 19, 175 S. E. 824 (1934).

§ 156-23. Easement of drainage surrendered.—If any persons, or those claiming through or under them, who have cut any ditch or canal into which any other person has been permitted to drain land under any proceeding authorized in this subchapter, shall desire to surrender their easement or right in such ditch or canal and be discharged from any judgment rendered and existing under such proceedings, such persons may on motion have such proceeding reinstated for hearing and file a petition therein setting forth such fact or any other grounds for relief thereunder, and upon proof satisfactory to the court that such petitioners have cut another ditch or canal which drains their lands formerly drained by the first ditch or canal, and have abandoned the use of it for any purpose of drainage, the court shall adjudge the easement or right of the petitioners surrendered and determined, and from that time the petitioners and their land shall forever be discharged and released from the judgment heretofore rendered in such former proceedings: Provided, however, that all parties then having an easement or right in such ditch or canal shall be served with notice of such petition twenty days before the hearing thereof. (1887, c. 222, s. 3; Rev., s. 4027; C. S., s. 5281.)

§ 156-24. Obstructing drain cut by consent.—If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1891, c. 434; Rev., s. 3376; C. S., s. 5282.)

§ 156-25. Protection of canals, ditches, and natural drains.—If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days. (1901, c. 478; Rev., s. 3382; C. S., s. 5283.)

Local Modification.—Tyrrell: 1907, c. 438.

Part 2. Petition under Agreement for Construction.

§ 156-26. Procedure upon agreement.—(a) Agreement; Names Filed.—Whenever a majority of the landowners or the persons owning three-fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the landowners, with the number of acres owned by each of them to be affected by the proposed drain-

way, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

(b) Notice.—Upon the filing of such names, it shall be the duty of the clerk to forthwith issue a notice which shall be served by the sheriff to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than ten and not more than twenty days from the service of such notice, or, in lieu of the personal service hereinabove required, it shall be sufficient for the clerk to publish in a newspaper published in the county once a week for four weeks a notice to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than thirty days and not more than forty days from the first publication of notice, at which time and place the landowners shall state their objections to the proposed improvement, and in addition thereto make an estimate of the amount of damage that might be done to the land owned by each of them on account of the proposed drainway.

(c) Hearing; Viewers.—Upon the hearing it shall be the duty of the clerk of the superior court to forthwith appoint three disinterested persons, none of whom shall own land to be affected by such drainway, if requested by the person, firm, or corporation proposing to do the improvement, whose duty it shall be to familiarize themselves with the proposed improvement, view the premises of the landowners, estimating damages, and make an estimate themselves of the amount of damages that might accrue to the lands of each landowner filing objections on account of the proposed improvement, and report the same to the clerk of the superior court within fifteen days from the date of their appointment.

(d) Report; Bond.—Immediately upon the filing of the reports the clerk of the superior court shall forthwith notify the person, firm, or corporation proposing to dig the drainway or canal of the estimated damages contained in the reports, and the person, firm, or corporation shall execute and deliver a bond in a surety company authorized to do business in the State of North Carolina in twice the sum total of the estimated amount of damages, which bond shall be payable to the clerk of the superior court and conditioned upon the payment to the landowners of the amount of damages that may be assessed in the manner hereinafter provided.

(e) Construction Authorized.—Upon the execution and delivery to the clerk of the said bond, the person, firm, or corporation so proposing to cut or dig such main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the drainway through any lands in its proposed course, whether the owners of the land may have consented thereto or not, and the person, firm, or corporation so proposing to cut or dig the drainway shall have the proper and necessary right of way for that purpose and for all things incident thereto through any lands or timbers situated in such swamp or lowlands. (1917, c. 273, s. 1; C. S., s. 5284.)

Editor's Note.—The provisions of this and the following sections under this article supplant those of the act of 1915, ch. 141, which was held unconstitutional and void in Lang v. Carolina Land, etc., Co., 169 N. C. 662, 86 S. E. 599 (1915), as a taking of private property without providing for just compensation to the private owners of lands, whose consent has not been given.

Withdrawal of Petitioners.—Upon the return day set by the clerk of the court for the hearing of the landowners in a proposed drainage district, it may be shown by those opposed to the petition that some of those who signed it desired to withdraw, and that eliminating their names the petitioners would not represent a majority of the landowners in the district, or such owning three-fourths of the lands, as the statute requires. Armstrong v. Beaman, 181 N. C. 11, 105 S. E. 879 (1921).

§ 156-27. Recovery for benefits; payment of damages.—After the drainway herein provided for shall be completed the person, firm, or corporation cutting or digging the same shall be entitled to recover of the landowners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made, an amount equal to the benefits to accrue to such lands by reason of the drainway, and shall be required by the clerk of the superior court to pay to any landowner the amount of damages in excess of benefits

which may be done to the land to be determined in the manner hereinafter provided: Provided, that the recovery from any owner of the land shall be limited to the benefits to accrue to that land owned by such person, and situated in such swamp or lowlands or adjacent thereto; and provided further, that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon such land, the lien to be in force regardless of who may own the land at the time the amount to be recovered as compensation for digging or cutting the drainway shall be determined. (1917, c. 273, s. 2; C. S., s. 5285.)

§ 156-28. Notice to landowners; assessments made by viewers.—After the completion of the main drainway, upon the application of the person, firm, or corporation, or their heirs or assigns, digging or cutting the same, the clerk of the superior court of the county in which any land through which the drainway may pass is situated shall issue a notice to be served by the sheriff upon any person who may have failed to agree with the person, firm, or corporation digging or cutting such drainway, upon a compensation to be paid by the landowner for the digging or cutting of such drainway, notifying the landowner that on a certain day, which shall be named in the notice and not less than twenty days from the date of the issuing of the notice, the clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by the drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the clerk of the superior court what amount shall be paid therefor by the various landowners who may have failed to arrange for and agree upon the compensation for the drainage as aforesaid, and the amount of damages in cases where the damages have exceeded the benefits, which shall be paid to the landowners by the person, firm, or corporation cutting or digging such canal or drainway. In making the appointment of the viewers the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified. (1917, c. 273, s. 3; C. S., s. 5286.)

§ 156-29. Report filed; appeal and jury trial.—A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the viewers, and from the report any landowner affected thereby and the person, firm, or corporation digging or cutting such drainway shall have the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within twenty days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial be demanded, the clerk shall transfer the proceedings to the civil-issue docket and it shall be heard as other civil actions. If no jury trial be demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special proceedings, but no jury trial shall be had unless demanded as herein provided for. (1917, c. 273, s. 4; C. S., s. 5287.)

Cross Reference.—As to appeal in special proceedings, see §§ 1-272 and 1-276.

Jurisdiction of Superior Court.—The superior court, upon certification of the opinion of the Supreme Court, has jurisdiction to retain the cause for hearing upon the appeal from the clerk's order, this section providing that appeals from the clerk in drainage assessment proceedings shall be the same as in special proceedings, and § 1-276, giving the superior court jurisdiction to hear and determine all matters in controversy upon appeal from the clerk in special proceedings. Spence v. Granger, 207 N. C. 19, 175 S. E. 824 (1934). See Flat Swamp, etc., Canal Co. v. McAlister, 74 N. C. 159 (1876).

§ 156-30. Confirmation of report.—Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within twenty days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions

shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within twenty days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided. (1917, c. 273, s. 5; C. S., s. 5288.)

§ 156-31. Payment in installments.—The amount to be recovered from any person as compensation for digging or cutting the drainway after the amount shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court, and one payment on the same day of each year thereafter until the full amount be paid. The amount to be recovered from the person, firm, or corporation cutting or digging the drainway, on account of any damages in excess of benefits to the lands of any landowner, shall be payable in one installment which shall be due and payable one year from the filing of the report of the viewers with the clerk of the superior court. (1917, c. 273, s. 6; C. S., s. 5289.)

ARTICLE 2.

Jurisdiction in County Commissioners.

§ 156-32. Petition filed; board appointed; refusal to serve misdemeanor.—Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interests of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within ten days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days' notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars for the payment of current expenses not otherwise provided for in this article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1887, c. 267; Rev., ss. 3379, 4011; C. S., s. 5290.)

Local Modification.—Hyde: 1901, c. 166.

§ 156-33. Duty of board; refusal to comply with their requirements misdemeanor.—The board provided for in § 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such watercourse, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed:

Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a misdemeanor and fined not exceeding two hundred dollars, or imprisoned not exceeding two years. (1887, c. 267, ss. 2, 7; Rev., ss. 3377, 4012; C. S., s. 5291.)

§ **156-34. Report filed.**—The board shall make a written report to the county commissioners showing all the acts and decisions of the board as to the length, depth, and width of the ditch, the names of all the owners of the lands that will be drained, and the amount of work to be performed and the amount of money to be paid by each person benefited by such drainage. But in case the board determines that the lands described in the petition shall not be drained, then the expenses of the board shall be paid out of the funds deposited with the county treasurer by the petitioners. (1887, c. 267, s. 3; Rev., s. 4013; C. S., s. 5292.)

§ **156-35. Owners to keep ditch open.**—All persons whose lands shall be drained under the provisions of this article shall keep the ditch on their lands clear of all rafts of logs, brush, or any trash that will obstruct the flow of water through the ditch. (1887, c. 267, s. 4; Rev., s. 4014; C. S., s. 5293.)

§ **156-36. Compensation of board.**—The compensation of the board shall be as follows: The county surveyor shall receive three dollars per day and the other members shall receive one dollar and fifty cents per day while engaged in the duties imposed in this chapter. (1887, c. 267, s. 5; Rev., s. 4015; C. S., s. 5294.)

SUBCHAPTER II. DRAINAGE BY CORPORATION.

ARTICLE 3.

Manner of Organization.

§ **156-37. Petition filed in superior court.**—Any proprietor in fee of swamp lands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie. (1868-9, c. 164, s. 2; Code, s. 1311; Rev., s. 3996; C. S., s. 5295.)

Cross References.—As to constitutionality of, and general procedure under, this chapter, see notes to §§ 156-1 and 156-2. As to prerequisites to establishment of drainage corporation, see note to § 156-40.

Evidence Insufficient to Show Establishment of Drainage Corporation.—Where petitioners show only the granting of an easement in response to a petition by an individual to be allowed to drain into an existing canal on the lands of another under the provisions of §§ 156-2, 156-3 and 156-10, such evidence is insufficient to show the establishment of a drainage corporation under the provisions of this section. In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

Burden of Proof Where Drainage Assessment Challenged.—When the validity of a drainage assessment is challenged the burden is upon the drainage district or corporation to show that it was created in substantial compliance with the applicable statutes and that the assessments were levied pursuant to and in compliance with the statutory provisions. In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ **156-38. Commissioners appointed; report required.**—On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report:

(1) Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

(2) Through the lands of what other persons a canal to drain the lands of the petitioner would properly pass, considering the interests of all concerned.

(3) A description of the several pieces of lands through which the canal would pass, and the present values of such portions of the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

(4) The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

(5) The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

(6) The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary and in which each ought, in equity and justice, to pay toward their construction and permanent support.

(7) With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report. (1868-9, c. 164, s. 3; Code, s. 1312; Rev., s. 3997; C. S., s. 5296.)

Prerequisites to Establishment of Corporation.—See note to § 156-40.

Validity of Assessment.—An assessment made under the provisions of this subchapter is constitutional and valid. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Collateral Attack on Assessment.—When an assessment does not appear to be void on its face, it may not be collaterally attacked by a defendant owner of lands embraced in the district, in an action to enforce its payment. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. (1916).

When Report of Commissioners Confirmed.—The report of the commissioners, assessing persons for benefits accruing to their lands from the operations of the plaintiff canal company, should have been confirmed by the court, as to those defendants who did not object; but as to those who did, the court should have proceeded to try the issues involved in the controversy. Locks Creek Canal Co. v. McKeithan, 89 N. C. 52 (1883).

Notice to Landowners.—Landowners, whose interests might be affected under proceedings under the provisions of this chapter, are entitled to notice. Gamble v. McCrady, 75 N. C. 509 (1876).

It is immaterial whether the owner of lands had notice of a meeting at which a committee had been appointed to assess the lands in the district and determine the amount of each assessment, when the assessment has been accordingly made, and duly ratified and confirmed at a subsequent meeting regularly called and held in accordance with the statute, of which he had notice. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-39. Surveyor employed.—The commissioners may employ a surveyor to prepare the map required to accompany their report. (1868-9, c. 164, s. 4; Code, s. 1313; Rev., s. 3998; C. S., s. 5297.)

§ 156-40. Confirmation of report.—If it appear that the lands on the lower level will be increased in value twenty-five per cent or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three-fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one-half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable. (1868-9, c. 164, s. 5; Code, s. 1314; Rev., s. 3999; C. S., s. 5298.)

Prerequisites to Establishment of Drainage Corporation.—In order to establish a drainage corporation it is necessary that a petition in conformity with § 156-37 be filed, and that commissioners be appointed and that they file a report in conformity with § 156-38 and that there be an adjudication and confirmation of the report. It is only after such confirmation that the corporation may be declared to exist and may proceed to organize and levy assessments. In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-41. Proprietors become a corporation.—Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are adjudged liable for the expense of making and keeping up the improvement. (1868-9, c. 164, s. 6; Code, s. 1315; Rev., s. 4000; C. S., s. 5299.)

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949).

§ 156-42. Organization; corporate name, officers and powers.—The clerk of the court of the county in which the proceeding is pending or any corporator, who is a petitioner, may call a meeting of the corporators, at which meeting the corporators shall choose a name for the corporation, unless the commissioners selected the name, elect a president, vice-president, secretary and treasurer, but said officers shall be chosen or elected from the corporators who are petitioners in the proceeding; and they shall also choose or elect a board of directors and they shall be chosen or elected from the corporators who are petitioners in the proceeding. The corporators shall also make all bylaws and regulations, not contrary to law, which may be necessary and proper for effecting the purpose of the corporation, but said duty may be delegated to the board of directors. They shall fix the number of shares of stock, and assign to each proprietor or corporator his proper number, but this duty and right may be delegated to and done by the board of directors. The board of directors shall have such powers as are generally given to directors under the corporation law of the State; and they shall assess the sums or amount which shall be paid by each proprietor or corporator in conformity with and in compliance with the report of the commissioners on which the corporation is based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which such proceeding was instituted, the same shall be passed upon by the clerk of court and when approved by the clerk, said assessments shall become judgments against the several proprietors, corporators and owners so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also have power, if they deem it proper, to fix and prescribe the time, mode and manner of payment; and do such other things as are necessary for the construction, enlargement and keeping up or maintaining said canal and improvement. In every meeting of the corporators or stockholders, each proprietor or corporator shall have one vote for each share of stock owned by him. (1868-9, c. 164, s. 7; Code, s. 1316; Rev., s. 4001; C. S., s. 5300; 1939, c. 180, s. 1.)

Editor's Note.—The 1939 amendment rewrote this section.

Cited in In re Atkinson-Clark Canal Co., 231 N. C. 131, 56 S. E. (2d) 442 (1949); In re Atkinson-Clark Canal Co., 234 N. C. 374, 67 S. E. (2d) 276 (1951).

§ 156-43. Incorporation of canal already constructed; commissioners; reports.—Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one-third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the names of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such

bylaws and regulations as such corporation shall make and declare. But those who fail to avail themselves of the benefit of this subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on ten days' notice to each owner of the land, under such rules and regulations as the bylaws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered.

Upon the return date of the summons or on the hearing by the clerk as provided in this section, the clerk of the court may appoint three persons as commissioners, who having been duly sworn shall examine the premises and inquire and report:

(1) The route and plan of the canal, including the breadth, depth and slope as nearly as they can be calculated, with all other particulars necessary for calculating the cost of enlarging and improving said canal.

(2) The probable cost of the improvement and enlargement of said canal.

(3) The proportion which each proprietor or corporator ought in equity and justice to pay toward the enlargement, improvement and permanent support and upkeep of said canal.

(4) With their report they shall return a map explaining as accurately as may be, the various matters required and necessary in aid or explanation of their report.

(5) The said report shall be heard and determined as other reports in special proceedings, and if approved by the clerk, such proprietors shall become a body corporate or a corporation.

(6) A meeting of the corporators may be called by the clerk of court or by any corporator or proprietor who is a petitioner in the proceeding, and at such meeting a president, vice-president, secretary and treasurer shall be elected from the proprietors or corporators who are petitioners; and also a board of directors shall be elected from the proprietors or corporators who are petitioners in the proceeding.

(7) The board of directors shall assess the sum or amount which shall be paid by each proprietor or corporator in conformity and compliance with the report of the commissioners on which the corporation was based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which said proceeding was pending and instituted, the same shall be passed upon by the clerk of court, and when approved by the clerk, said assessments shall become judgments against the several proprietors or corporators so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also, if they deem it proper, fix and prescribe the time, manner and mode of payment. (1889, c. 380; 1901, c. 670; Rev., s. 4008; C. S., s. 5301; 1939, c. 180, s. 2.)

Editor's Note.—The 1939 amendment struck out a former proviso to the first paragraph and added the remainder of the section.

Assessment Can Be Levied Only on Property Benefited.—The general rule is well settled that a special assessment for a purpose of drainage can be levied only upon property benefited by the improvement. It is said that the legal theory underlying drainage assessments is one of benefit increasing the value of the land and justifying its assessment. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

Where it clearly appears that the canal will neither drain a particular tract of land nor render it more accessible, there is no valid reason for including it in the district, and if it is nevertheless arbitrarily made a part thereof, the owner may obtain relief. In re Westover Canal, 230 N. C. 91, 52 S. E.

(2d) 225 (1949).

The statutory provisions determine the property liable to drainage assessment. Hence to constitute a valid assessment the particular land against which it is levied must come within the meaning of this section. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

"Land Tributary to the Canal."—As here used the phrases "land tributary thereto" and "land tributary to the canal" mean land from which water drains or flows into the canal. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

Burden of Proof on Appeal.—This section gives to any person dissatisfied with an assessment the right to appeal to a jury at a regular term of the superior court of the county. In such event, it would seem that the authority undertaking to establish the assessment would still have the burden of proving the provisions of the statute essential to the creation of a valid assessment. It may be that the order of the clerk of the superior court approving and confirming the assessment as proposed by the commissioners and the board of directors of the corporation creates a prima facie case. But a prima facie case, or prima facie evidence, does not change the burden of proof. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

In order to constitute a valid drainage assessment it is necessary that the land assessed drain or flow into the canal, and therefore on appeal to the superior court on a landowner's exceptions to the order of the clerk confirming assessments as proposed by the commissioners, the drainage district has the burden of proving the number of acres of land the exceptor owns which drain into the canal and what amount said land should be assessed per acre. The fact that exceptor first introduced evidence, presumably on the theory that the order of the clerk made out a prima facie case, does not alter the rule as to the burden of proof. In re Westover Canal, 230 N. C. 91, 52 S. E. (2d) 225 (1949).

Finality of Judgment of Clerk of Superior Court.—A judgment entered by a clerk of the superior court in a special proceeding under this section will stand as a judgment of the court, if not excepted to and reversed or modified on appeal, as allowed by law. In re Atkinson-Clark Canal Co., 234 N. C. 374, 67 S. E. (2d) 276 (1951).

Where the clerk's decision was erroneous, and the petitioner undertook to appeal therefrom and the appeal was dismissed in the superior court, and notice of appeal was given to the Supreme Court, but the appeal was not perfected the judgment of the clerk of the superior court was as final and effective as if no appeal therefrom had been attempted. In re Atkinson-Clark Canal Co., 234 N. C. 374, 67 S. E. (2d) 276 (1951).

Article 4.

Rights and Liabilities in the Corporation.

§ 156-44. Shares of stock annexed to land.—The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except a tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void. (1868-9, c. 164, s. 8; Code, s. 1317; Rev., s. 4002; C. S., s. 5302.)

Stated in Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

§ 156-45. Shareholders to pay assessments.—Every corporator shall be bound to obey the lawful bylaws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing. (1868-9, c. 164, s. 9; Code, s. 1318; Rev., s. 4003; C. S., s. 5303.)

Cross Reference.—As to collection of assessments out of other property of delinquent, see § 156-106.

Assessments—Lien upon Land.—An assessment made upon owners of lands constitutes a lien upon the lands therein and

is enforceable by proceedings in rem in a court having equitable jurisdiction. Personal judgment against the defendant may not be had, as in actions arising ex contractu. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N. C. 523, 92 S. E. 368 (1917).

Same—Enforcement by Justice of Peace.—Therefore, a justice of the peace has no jurisdiction over actions to enforce the payment of such assessments, and they will be dismissed upon motion to nonsuit when brought in that court. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N. C. 523, 92 S. E. 368 (1917).

Same—Execution.—Assessments, made in accordance with the statute, become liens on the lands when properly certified by the officers of the corporation and docketed in the office of the superior court of the proper county; and executions may issue directing that such lands be sold to pay the assessments and the costs. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Same—Review by Certiorari.—The courts will review by writ of certiorari the action of the drainage corporation in making illegal assessments and enjoin such assessments that are absolutely void upon their face. Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1 (1916).

Same—Collateral Attack.—An assessment, that does not appear to be void on its face, cannot be attacked collaterally. Middle Canal Co. v. Whitley, 172 N. C.

§ 156-46. Payment of dues entitles to use of canal.—Every corporator paying his dues legally assessed without regard to the number of his shares, shall be entitled to the full and free use of the canal for drainage and navigation, and of the road for passage and transportation. Bylaws may be made to regulate these rights, but not so as to produce an inequality. (1868-9, c. 164, s. 10; Code, s. 1319; Rev., s. 4004; C. S., s. 5304.)

§ 156-47. Rights of infant owners protected.—If any proprietor whose lands are adjudged to be benefited by a canal shall be an infant, no process shall be issued against him during his minority, or within twelve months thereafter, to enforce payments of any assessment, and he may, at any time within such twelve months, apply to have any order, judgment, or decree made against him set aside as to him. If the infant or his guardian shall, during his minority, and the twelve months next thereafter, pay the dues assessed on him, he shall have all the rights and privileges of corporator, to be exercised through his guardian. If the infant shall fail to pay, he shall not have any such rights, but if no action to set aside the judgment of the court creating the corporation shall have been brought by him as aforesaid, or upon the decision of such action against him, he shall be entitled to receive his proper share of stock and to possess all the rights and be bound by all the liabilities of a corporator, including a liability for assessments made during his minority, but not for interest on such, nor for any penalty for their prior nonpayment. (1868-9, c. 164, s. 11; Code, s. 1320; Rev., s. 4005; C. S., s. 5305.)

§ 156-48. Compensation for damage to lands.—If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damages the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporator as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment. (1868-9, c. 164, s. 12; Code, s. 1321; Rev., s. 4006; C. S., s. 5306.)

§ 156-49. Dissolution of corporation.—If, from any cause, the canal or other improvement shall become or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it. (1868-9, c. 164, s. 13; Code, s. 1322; Rev., s. 4007; C. S., s. 5307.)

§ 156-50. Laborer's lien for work on canal.—Whenever work or repair shall be done on such canal and any of the parties owning lands liable to be assessed for such work or repairs shall fail or refuse to pay the amount assessed upon their land, then and in that event the laborers performing such work shall have a lien upon such land to the extent of the amount assessed against the same by the corporation, and

such lien may be enforced in the same manner as provided by the laws of this State for the enforcement of laborers' lien. (1899, c. 600, s. 2; Rev., s. 4009; C. S., s. 5308.)

§ **156-51. Penalty for nonpayment of assessments.**—Whenever any person whose lands have been adjudged liable to contribute to the maintenance or repair of such canal shall fail or refuse to pay the amount assessed against his land for such maintenance or repair for thirty days after such payment has been demanded by the company, then the company may give such person notice in writing of its intention to cut off his right of drainage into the canal, and if such person shall still neglect and refuse to pay such assessment for thirty days after such notice, then the company may proceed to so obstruct and dam up the ditches of such delinquent as will effectually prevent his draining in the canal. (1899, c. 600, s. 3; Rev., s. 4010; C. S., s. 5309.)

Applicability of Section.—The provisions of this section providing for a penalty for nonpayment of assessments relate only to the remedy available where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

In a proceeding by drainage corporations to have lands of respondents assessed for improvements upon allegations that respondents are not members of the corporation but that nevertheless their lands drain into the canals and would be materially benefited by the improvements, it was held that respondents' contention that the sole remedy of petitioners is under the provisions of this section to construct dams to prevent water draining from respondents' lands into the canals is untenable, since the provisions of this section are inapplicable to such proceeding, being applicable solely as a remedy where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N. C. 664, 62 S. E. (2d) 67 (1950).

Cited in Sawyer Canal Co. v. Keys, 234 N. C. 360, 67 S. E. (2d) 259 (1951).

§ **156-52. Corporation authorized to issue bonds.**—The corporations organized under this subchapter are authorized to issue bonds to such an amount and in such denomination as they may elect, payable at such times as may be provided, and to sell the same at not less than par, the proceeds of the sale of such bonds to be used for the payment of the costs of survey and construction and maintenance of the canal. The bonds shall constitute a lien upon the lands drained or improved by the canal as described in the reports of the commissioners. (1908, c. 75, s. 1; C. S., s. 5310.)

§ **156-53. Payment of bonds enforced.**—Upon default of the payment of the interest or principal of such bonds, the holders of the bonds of the corporations organized under this subchapter shall have a right to enforce the lien created by § 156-52 by civil actions in the superior courts of the State. (1908, c. 75, s. 2; C. S., s. 5311.)

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ **156-54. Jurisdiction to establish districts.**—The clerk of the superior court of any county in the State of North Carolina shall have jurisdiction, power and authority to establish levee or drainage districts either wholly or partly located in his county, and which shall constitute a political subdivision of the State, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tidal gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed land; and it is hereby declared that the drainage of swamp lands and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public use and benefit and conducive to the public health, convenience and welfare, and that the districts heretofore and hereafter created under the law shall be and constitute political subdivisions of the State, with authority to provide by law to levy taxes and assessments for the construction and maintenance of said public works. (1909, c. 442, s. 1; C. S., s. 5312; 1921, c. 7.)

Cross References.—As to provision that county prisoners may be used to maintain and keep up public drainage districts, see § 153-198. As to construction of this subchapter, see § 156-135.

Editor's Note.—Prior to the 1921 amendment the authority of the clerk of the superior court to establish levee or drainage districts was limited to his county alone. The amendment made drainage districts political subdivisions of the State with authority to levy taxes and assessments.

For act relating to Scuppernong Drainage District in Washington County, see Session Laws 1947, c. 934. As to construction of drainage act for Mattamuskeet Lake, see Carter v. Commissioners, 156 N. C. 183, 72 S. E. 380 (1911).

Constitutionality.—This and the following sections of the subchapter are constitutional. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910); In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913); Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913); Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915); Drainage Com'rs v. Mitchell, 170 N. C. 324, 87 S. E. 112 (1915); Lumber Co. v. Drainage Commissioners, 174 N. C. 647, 94 S. E. 457 (1917).

Vested Rights Not Affected.—The proceedings in forming a drainage district under the original act was judicial and not administrative, and the 1921 amendment could not affect vested rights of landowners acquired under orders, judgments, or decrees made in pursuance of the powers conferred by the original act. Broadhurst v. Board of Commissioners, 195 N. C. 439, 142 S. E. 477 (1928).

The rights of landowners in the Mattamuskeet Drainage District having been determined in a court having jurisdiction as to assessments in proportion to the benefits conferred, was not affected by the subsequent amendment of 1921, for such would be to impair the vested rights of those whose property had been assessed by the final judgment. O'Neal v. Mann, 193 N. C. 153, 136 S. E. 379 (1927).

State-Wide Public Statute.—The drainage act, with its various amendments, is a State-wide public statute. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Purpose and Nature—Scheme or System of Drainage.—This subchapter authorizing the establishment of certain levee or drainage districts, is to present a scheme for the drainage of lowlands in which the public of the locality is generally interested, is at once comprehensive, adequate and efficient, in which the rights of all persons to be affected have been fully considered and protected, and is not objectionable on the ground that it is for the benefit of private landowners and not for public purposes. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

This subchapter adopts a system for the co-operation of landowners in the drainage of lands by forming drainage districts, which are to become quasi-public corporations, for the purpose of improving the health of the district and the fertility of the lands, under which the lands are assessed in proportion to the benefits derived and an organization is effected in each district, to execute and maintain a system of drainage. In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913).

Basis of Legislative Authority.—The authority of the legislature to provide for the creation of levee and drainage districts is based upon the police power, the right of eminent domain, and the taxing power. Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

The drainage of swamps and of surface water from agricultural lands in a drainage district is of public benefit and conducive to the public health, etc., thus falling within the police power; and proceedings thereunder are in the exercise of the right of eminent domain. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Clerk's Authority Not a Delegation of Legislative Power.—The authority and powers conferred by this subchapter upon the clerk of the court is not a delegation of legislative power and duty to the judicial department of the State prohibited by the Constitution, the powers and duties conferred being of a judicial nature in relation to the prescribed proceedings to be instituted for the establishment of drainage districts. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

Drainage Districts Are Quasi-Municipal Corporations.—Drainage districts created pursuant to the provisions of this subchapter are quasi-municipal corporations. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

And Can Alter Their Boundaries Only as Permitted by Statute.—Municipal or quasi-municipal corporations created and having their boundaries fixed by statutory formula can alter their boundaries only as permitted by statute. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961). See § 156-93.2 et seq.

Lands in Several Counties.—Where, in a proceeding in Beaufort county, a drainage district, comprising lands in both Beaufort and Craven counties, is duly created and organized under this and the following sections, and assessment rolls, showing assessments against each tract of land in the district, have been made and filed in each county, such assessments, as they become due, are liens upon the lands within the district to which they relate, and it is error for the court to dismiss an action in the nature of a mortgage foreclosure, for the collection of such drainage assessments against lands in Craven County, even where the assessment rolls for Craven County have been removed and there is left in that county no other record relating to the drain-

age district, except a map on which are shown the boundaries of the several tracts of land within the district in Craven County —the map itself being sufficient notice to a subsequent purchaser of the proceedings, including the assessment rolls filed in Beaufort County. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Collateral Attack on District.—The validity of a district laid off according to the drainage acts cannot be collaterally attacked. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266 (1913); Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

Proceedings Not Defective for Delay.—Proceedings for the establishment of a drainage district, under this and the following section of this article, and bonds to be issued therefor, will not be held as defective because further steps were not taken for several years after they had been commenced, the court holding, they were still pending, and because of the fact that the engineer and viewers did not file a profile map showing the surface of the ground, bottom grades, etc., at the time of the final report, as required by § 156-69, it appearing that this was later done upon order of the board of drainage commissioners, and otherwise the provisions of the statutes had been strictly followed. Oden v. Bell, 185 N. C. 403, 117 S. E. 340 (1923).

Right of Receiver to Intervene and Become Party to Suit in Federal Court.—See Board of Drainage Com'rs v. Lafayette Southside Bank, 27 F. (2d) 286 (1928).

Pendency of Proceedings Is Notice as to All Lands Embraced.—The pendency of a proceeding to lay off a drainage district under the provisions of the act is notice as to all the lands embraced in the district. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266 (1913).

§ 156-55. Venue; special proceeding.—When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county shall have and exercise the jurisdiction herein conferred, and the venue shall be in that county in which the petition is first filed. The law and the rules regulating special proceedings shall be applicable in this proceeding, so far as may be practicable; and the proceedings hereunder may be ex parte or adversary. (1909, c. 42, ss. 2, 38; C. S., s. 5313.)

Proceedings in Rem.—Proceedings to form drainage district under this subchapter are regarded as proceedings in rem. Staton v. Staton, 148 N. C. 490, 62 S. E. 596 (1908); Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915); Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

§ 156-56. Petition filed.—A petition signed by a majority of the resident landowners in a proposed drainage district or by the owners of three-fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in the office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

The petition will also show whether or not the proposed drainage is for the reclamation of lands not then fit for cultivation or for the improvement of land already under cultivation. It shall also state that, if a reclamation district is proposed to be established, such lands so reclaimed will be of such value as to justify the reclamation. (1909, c. 442, s. 2; C. S., s. 5314; 1921, c. 76; Pub. Loc. 1923, c. 88, s. 2; 1925, c. 85; 1927, c. 98.)

Local Modification.—Edgecombe: 1937, c. 278; 1939, c. 7; Halifax: 1939, c. 227; Hertford: 1939, c. 371; Iredell: 1925, c. 144; Nash: 1939, c. 376; Northampton: 1939, c. 227; Pitt: 1925, c. 205; Robeson: 1925, c. 144; Rowan: 1925, c. 144.

Editor's Note.—The 1921 amendment was repealed by Public Local Laws 1923, c. 88, inapplicable to Franklin, Hyde, Nash and Wilson counties, and also by Public Laws 1925, ch. 85. The 1923 amendment added a proviso to this section which was also repealed by the 1925 amendment. The second paragraph of the section was added by the 1927 amendment. For the distinction between the reclamation districts and improvement districts, see § 156-62, subdivision (5).

This is a flexible proceeding, and is to be modified and molded by decrees from time to time to promote the objects of the proceeding. Adams v. Joyner, 147 N. C.

77, 60 S. E. 725 (1908); Station v. Station, 148 N. C. 490, 62 S. E. 596 (1908); In re Lyon Swamp Drainage District, 175 N. C. 270, 95 S. E. 485 (1918).

Assent of Statutory Number of Owners Sufficient.—It is not necessary that every owner of land within a drainage district should have assented to its formation when the statutory number thereof have done so. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Property Must Be Described.—One of the essentials of the proceeding is that the property sought to be charged shall be identified by description in the proceedings. Dover Lumber Co. v. Board, 173 N. C. 117, 91 S. E. 714, 845 (1917).

Applied in In re Ahoskie Creek, 257 N. C. 337, 125, S. E. (2d) 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-57. Bond filed and summons issued.—Upon filing with the petition a bond for the amount of fifty dollars per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk shall issue a summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendants who cannot be personally served as provided by law. (1909, c. 442, s. 2; C. S., s. 5315.)

Cross Reference.—See Local Modification under § 156-56.

In General.—The drainage laws of North Carolina have been largely copied from the acts in Indiana and Illinois, and following the construction of these acts for the long period of time the acts have been in force, it is essential that notice of summons in all such proceedings be given to all parties who will be affected thereby. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

Summons on All Landowners.—This section is mandatory in requiring a "summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district." Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917). "But the statute requires only landowners to be made parties in such drainage proceedings." Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

Same—Mortgagee Not Included.—It would interfere with a much-needed public development if, as a prerequisite thereto, and before a final order can be made, all defects of title and mortgages or liens that may be claimed must be looked up and adjudicated. It is sufficient that summons shall be served upon the parties in possession under an apparent legal title, and that before final adjudication notice shall be given in the manner prescribed in order that parties claiming liens by mortgage or otherwise, or title to the land adversely to those in possession, shall have opportunity to come in and oppose confirmation of the final report. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915). See Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 81 S. E. 947 (1914).

Effect of Failure to Serve Summons.—Where a landowner having an interest within the meaning of the statute, has not been served, and it does not appear that he was an apparent party, an order laying an assessment on his property is void, and the proceedings as they relate to him are a nullity, and the assessment may be restrained. Banks v. Lane, 170 N. C. 14 (1915), holding a mortgagee not a necessary party, cited and distinguished. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

Same—Subsequent Notification.—The proceedings for forming a drainage district are in rem; and where a valid statute has been complied with therein, and it appears that an owner has not been served with process, it is admissible to notify him, in possession, nunc pro tunc, and have the lands therein assessed. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

§ 156-58. Publication in case of unknown owners.—If, at the time of the filing of the petition, or at any time subsequent thereto, it shall be made to appear to the court by affidavit or otherwise that the names of the owners of the whole or any share of any tracts of land are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be pub-

lished in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired. (1911, c. 67, s. 1; C. S., s. 5316; 1953, c. 675, s. 25.)

Editor's Note.—The 1953 amendment rewrote the first part of the first sentence of this section.

Owners Bound if Section Is Followed.—By virtue of the notice required by this section the owners of land have opportunity to intervene and assert any right they might have to oppose the proceeding, if deemed contrary to their interest. Not having done so, they are bound by the judgment under which bonds were issued. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

Judgment Presumed Regular.—Where publication in accordance with this section has been made, every presumption is in favor of the regularity of the judgment. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Mortgagee Must Assert Rights.—In proceedings to form a drainage district under this statute, notice by publication is given of the filing of the report in the office of the clerk of the superior court, which is open to inspection to the landowner or other person interested, and a mortgagee of lands who does not intervene and assert his rights to oppose the proceedings is bound by the final judgment. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

§ 156-59. Board of viewers appointed by clerk.—The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Water Resources; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C. S., s. 5317; 1961, c. 614, s. 4; c. 1198.)

Cross Reference.—See Local Modification under § 156-56.

Editor's Note.—The first 1961 amendment deleted from the beginning of the section "Upon the return day the clerk shall" and inserted in lieu thereof "The clerk shall, on the filing of petition and bond."

The second 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development."

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-60. Attorney for petitioners.—The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The

foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary. (1917, c. 152, s. 1; C. S., s. 5318.)

§ 156-61. Estimate of expense and manner of payment; advancement of funds and repayment from assessments.—The clerk may make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall some into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement.

In lieu of the procedures set forth in the preceding paragraph, the board of county commissioners may advance funds, or any part thereof, for the purposes set forth in the preceding paragraph. Such advances shall be made to a county official designated by the commissioners, and shall be disbursed upon such terms as the county commissioners may direct. If the district shall be organized, the funds advanced shall be repaid from assessments thereafter levied. (1917, c. 152, s. 1; C. S., s. 5319; 1941, c. 342; 1961, c. 614, s. 6; c. 662.)

Editor's Note.—The third sentence of this section was added by the 1941 amendment. The first 1961 amendment substituted "may" for "shall," being the third word of the section. The second 1961 amendment added the second paragraph.

§ 156-62. Examination of lands and preliminary report.—The board of viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same

purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within thirty days, unless the time shall be extended by the court, a written report, which shall set forth:

(1) Whether the proposed drainage is practicable or not.

(2) Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.

(3) Whether the improvement proposed will benefit the lands sought to be benefited.

(4) Whether or not all the lands that are benefited are included in the proposed drainage district.

(5) Whether or not the district proposed to be formed is to be a reclamation district or an improvement district. A reclamation district is defined to be a district organized principally for reclaiming lands not already under cultivation. An improvement district is defined to be a district organized principally for the improvement of lands then under cultivation. The board of viewers shall further report, if the district is a reclamation district within the above definition, whether or not the proposed drainage would be justified by the additional value for agricultural purposes given to land so drained.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings. (1909, c. 442, s. 3; C. S., s. 5320; 1927, c. 98, s. 2.)

Editor's Note.—Subdivision (5) distinguishing between reclamation districts and improvement districts, was added by the 1927 amendment.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-63. First hearing of preliminary report.—The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and such petition shall likewise be dismissed at the cost of the petitioners if it is sought to set up a reclamation district and the viewers report that the cost of reclaiming the land would be so great as not to justify the expense of draining it. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered. (1909, c. 442, s. 4; C. S., s. 5321; 1927, c. 98, s. 3.)

Editor's Note.—The last part of the second sentence of this section, providing that the petition be dismissed where it is sought to set up a reclamation district and the viewers report unfavorably as to the cost, was added by the 1927 amendment.

Date for Objections Set by Clerk.—See Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-64. Notice of further hearing.—If the petition is entertained by the court, notice shall be given by publication once a week for at least two (2) consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or

printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least fifteen days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing. (1909, c. 442, s. 5; C. S., s. 5322; 1963, c. 767, s. 1.)

Editor's Note.—The 1963 amendment substituted "once a week for at least two (2) consecutive weeks" for "for two consecutive weeks" near the beginning of the section.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-65. Further hearing, and district established.—At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right of way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

The court shall further determine, if it is sought to establish a reclamation district, whether or not the increased value of the particular land should be so great as to justify the cost and expenses of its reclaiming. (1909, c. 442, s. 6; 1911, c. 67, s. 2; C. S., s. 5323; 1927, c. 98, s. 4.)

Editor's Note.—The 1927 amendment added the second paragraph, which applies when the proposed district is a reclamation district. The distinction between reclamation and improvement districts was introduced by amendment and references to it will be found in §§ 156-56, 156-62, 156-63 and 156-98. The two classes of districts are defined in § 156-62, par. 5.

Public Benefits Govern.—It is because of the benefits which accrue to the public from the establishment of a drainage district under the statute, that power conferred thereby upon the court to include lands of owners who are unwilling to sign the petition, or who oppose the establishment of the district, is sustained. O'Neal v. Mann, 193 N. C. 153, 136 S. E. 379 (1927).

Minority Landowner Cannot Contest Formation of District.—A minority landowner included in a proposed drainage district to be laid out may not contest the formation of the district, but can raise only the issue as to his benefits therefrom. Shel-

ton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

Signer of Original Petition Can Object.—Upon report of the viewers at the final hearing in proceedings to lay off a drainage district, one who signed the original petition may have ascertained from the information contained in the report, contrary to his previous opinion, that the cost of the improvements and damages will amount to more than the benefits to his land, and hence he may then file his objections, and the same procedure is then open to him as if he had not signed the petition. Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

Boundaries Must Include All Lands Benefited.—The court has no authority to decree the establishment of a drainage district which does not include within its boundaries all lands benefited by the work to be done. It must enlarge the boundaries to include all such land. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

A smaller drainage district may be laid off within the boundaries of a larger one, theretofore organized, the purposes of each harmonizing with the purposes of the other. Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 81 S. E. 947 (1914).

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-66. Right of appeal.—Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in termtime, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars, signed by two or more solvent sureties or in some approved surety company to be approved by the court. (1909, c. 442, s. 8; C. S., s. 5324.)

Cross References.—As to appeal from final hearing, see § 156-75 and note. As to power to change route, see note to § 136-45.

Proceedings upon Appeal.—A petition for the establishment of a drainage district of a majority of the resident landowners or of the owners of three-fifths of the land therein, approved by the report of the viewers and affirmed by the clerk, permits a majority owner to raise only the issue of fact for the jury to determine as to the benefit to his lands; and should the jury find in favor of the objector, he is not entitled as a matter of right to have his land excluded, but it is for the judge to decide whether this may be done without injury to the district, and if not, he may order that such land be retained, upon payment of the damages to be awarded by the jury, as in condemnation of lands; all other matters embodied in the report are subject to approval by the clerk, and reviewal by the judge without the intervention of a jury, being questions of fact. Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913).

Proper Appeal Is Notice to Purchaser of Bond.—Where the owner of land in a drainage district has duly excepted under this section and again under § 156-75 and has appealed, the purchaser of bonds issued by the district takes with notice of the rights of the complaining party so excepting, and acquires the bonds subject thereto. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

Effect of Failure to Appeal.—Appeals are separately provided for under this section when the drainage district has been laid off, and under § 156-75 when the final act is passed upon; and where the complaining owner of land in the district has not entered an exception under either of these two sections as the statute provides, and bonds have been duly issued on the lands of the district for drainage purposes, and thereafter application has been made by the commissioners for the issuance of additional bonds, in the further proceedings he may not be permitted to go back and change the formation of the district and the classification and assessments already made, by attacking the reports of the engineers and viewers, and withdraw a large part of his lands from the district theretofore formed. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

Cited in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-67. Condemnation of land.—If it shall be necessary to acquire a right of way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be substantially as provided by law for the condemnation of rights of way for railroads so far as the same may be applicable, and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C. S., s. 5325.)

§ 156-68. Complete survey ordered.—After the district is established the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding sixty days. (1909, c. 442, s. 9; C. S., s. 5326.)

§ 156-69. Nature of the survey; water retardant structures and storage of water.—The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established among the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

The board of viewers shall consider the need and feasibility of the construction of water retardant structures which shall control the flow of water in the proposed district. If it recommends the construction of water retardant and control structures, the specifications, location and estimate of cost of such shall be included in its report. The board of viewers shall set forth:

(1) The determination of the right-of-way and easement of the canal and the areas needed for water retardant structures and the storage of water.
(2) Upon whose lands such are located.
(3) The area of land necessary to be acquired from each landowner.

The map accompanying the report shall show thereon the location of:

(1) The right-of-way or easement.
(2) The location of water retardant structures; and
(3) The location of water storage areas.

The board of viewers may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of the State of North Carolina whereby such agency will furnish all or a part of the service necessary to obtain the information set forth in the preceding paragraph and in G. S. 156-68.

The board of viewers may accept such information as furnished by such agencies and include such information in their final report to the clerk.

The board of viewers and engineers of the district may use control or semi-control, mosaic aerial photographs or other sources and stereoscopic or other methods, generally used and deemed acceptable by civil and drainage engineers for the purpose of obtaining the information required in this section and in lieu of a detailed ground survey. In the event a detailed ground survey is not made, only those ground markings need be made as the board of viewers deem necessary. The location of

the proposed canals must be shown on the ground prior to actual construction. (1909, c. 442, s. 10; C. S., s. 5327; 1959, c. 597, s. 1; 1961, c. 614, ss. 5, 9.)

Editor's Note.—The 1959 amendment added all of this section beginning with the second paragraph except the present last paragraph.

The 1961 amendment substituted "district" for "canals" at the end of the first sentence of the second paragraph. It also added the last paragraph.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-70. Assessment of damages.—It shall be the further duty of the engineer and viewers to assess the damages claimed by anyone that are justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damages shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands. (1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16; C. S., s. 5328.)

Independent Action for Damages.—The principles that conclude parties to proceedings in the formation of drainage districts under the statute by final judgment, from a recovery of damages to their lands, applies to such as may have accrued in the laying out and the establishment of the district under the procedure prescribed, and does not prevent an injured proprietor, within or without the district, from maintaining his independent action to recover damages caused by an unauthorized and substantial departure from the scheme and plan established by the decrees and orders in the cause, nor where the damage complained of is attributable to the negligence of the company, or its officers or agents in carrying out the proposed work. Spencer v. Wills, 179 N. C. 175, 102 S. E. 275 (1920).

Same—Permanent Damages Recoverable.—The whole of plaintiff's land was originally included in a drainage district to be established under the statutory provisions, but the final judgment so restricted and modified the survey, plat and boundaries as to exclude all except a comparatively small portion of the land, the preliminary survey showing that a canal would go through the land included as well as through the land, or a large part thereof, excluded by the final judgment. There was no evidence that ancillary proceedings for this outside land by condemnation had been resorted to and it was held, that the plaintiff, in his independent action, may elect to recover the permanent damages caused to his land. Sawyer v. Drainage Dist., 179 N. C. 182, 102 S. E. 273 (1920).

Pendency of Proceedings as Notice to Landowners and Grantees.—The pendency of a proceeding to lay off a drainage district under the provisions of the act is notice as to all the lands embraced in the district. And the grantees thereof are bound by the statutory requirements as to the procedure to recover damages to the lands, as were their grantors who were parties to the proceedings and who owned the lands at that time. Newby v. Drainage District, 163 N. C. 24, 79 S. E. 266 (1913).

Damage to Timber Included.—While under the drainage acts no assessments for benefits can be made against the owner of timber interests, only the land itself being liable, the owner of the land and of timber within the district, by the provision of the statute, when made a party to the proceedings and duly notified, is required to present his claim for the entire injury, inclusive of that to his timber, and the damages to the timber should thus be included and allowed in the final judgment in the proceedings. Lumber Co. v. Drainage Com'rs, 174 N. C. 647, 94 S. E. 457 (1917). And if this is not done, grantees of the landowner cannot recover damages for the loss of the timber in an action against the commissioners.

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ 156-70.1. When title deemed acquired for purpose of easements or rights-of-way; notice to landowner; claim for compensation; appeal.—The district shall be deemed to have acquired title for the purpose of easements or rights-of-way to those areas of land identified in the final report of the board of viewers and as shown on the map accompanying said report, at the time said final report is confirmed by the clerk of the superior court.

The board of viewers shall cause notice as to the area or areas of land involved, to be given to each landowner so affected, which notice shall be in writing and mailed to the last known address of the landowner at least seven (7) days prior to the hearing on the final report as provided by G. S. 156-73.

If the landowner desires compensation for the land areas so acquired by the dis-

trict, claim for the value of the same shall be submitted to the board of viewers on or before the time of the adjudication upon the final report as provided for by G. S. 156-74.

If the board of viewers shall approve the claim, the amount so approved shall be added to the total cost of the district as estimated in said final report and this shall be done by amendment to the final report submitted to the clerk of the superior court on or before the adjudication provided for in G. S. 156-74.

If the board of viewers shall not approve said claim, the clerk of the superior court shall consider the claim and determine what in his opinion is a fair value and the amount so determined shall be shown in the said final report as amended and confirmed by said adjudication. If landowner does not accept the value fixed by the clerk of the superior court, appeal may be had upon the question of value, to the superior court and such appeal shall follow the procedure provided in G. S. 156-75. (1959, c. 597, s. 2; c. 1085.)

Editor's Note.—The second 1959 act substituted "seven (7) days" for "fifteen (15) days" in the second paragraph.

§ 156-71. Classification of lands and benefits.—It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or watercourse or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one landowner need not be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes. In any district lands may be included which are not benefited for the agriculture or crop production, or slightly so, but which will receive benefit by improvement in health conditions, and as to such lands the engineer and viewers may assess each tract of land without regard to the ratio and at such a sum per acre as will fairly represent the benefit of such lands. Villages or towns or parts thereof and small parcels of land located outside thereof and used primarily for residence or other specific purposes, and which require drainage, may also be included in any drainage district which by reason of their improved conditions and the limited area in each parcel under individual ownership, it is impracticable to fairly assess the benefits to each separated parcel of land by the ratio herein provided, and as to such parcels of land the engineer and viewers may assess each parcel of land without regard to the ratio and at a higher rate per acre respectively by reason of the greater benefits. If the streets or other property owned by any incorporated town or village are likewise benefited by such drainage works, the corporation may be assessed in proportion to such benefits, which assessment shall constitute a liability against the corporation and may be enforced as provided by law.

The board of viewers may determine that some areas of the district will receive more benefits than other areas and if such is determined, the varying benefits shall be

reflected in the manner of classification of benefits to each area and the tracts of land therein. (1909, c. 442, s. 12; C. S., s. 5329; 1923, c. 217, s. 1; 1961, c. 614, s. 7.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—The 1923 amendment added the last three sentences of the first paragraph.

The 1961 amendment added the second paragraph.

Classification Discretionary in Local Act.—The legislature, in authorizing the establishment of a drainage district, may very largely commit to the commissioners the exercise of their judgment as to what should be done in carrying out the general provisions specified by the statute; and the special act of the legislature creating the Gaston County Drainage Commission, ch. 427, Public-Local Laws of 1911, thus construed, does not relieve a landowner therein from paying his authorized assessments for benefits solely because the commission failed to strictly and literally divide the lands into the number of classes therein set out. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

Applied in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-72. Extension of time for report.—In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the court shall set another date by which the report shall be completed and filed. (1909, c. 442, s. 14; C. S., s. 5330.)

§ 156-73. Final report filed; notice of hearing.—When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than twenty days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made once a week for at least three consecutive weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other persons interested within the district. (1909, c. 442, s. 15; C. S., s. 5331; 1959, c. 807, ss. 1, 2; 1963, c. 767, s. 2.)

Editor's Note.—The 1959 amendment substituted "ten" for "twenty" and "one week" for "two weeks" in the second sentence.

The 1963 amendment substituted "twenty" for "ten" and "once a week for at least three consecutive weeks" for "for at least one week" in the second sentence.

When Publication Unnecessary.—It is not necessary to the validity of bonds issued by a drainage district, that the notice of the time of hearing objections to the final report was not published in some newspaper of general circulation in the county, when it appears that no newspaper was published therein, or elsewhere, which has a general circulation in the county, and that the landowners affected had actual and ample notice of such time and raised no objection. Board v. Brett Engineering Co., 165 N. C. 37, 80 S. E. 897 (1914).

§ 156-74. Adjudication upon final report.—At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall

dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Water Resources may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C. S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198.)

Editor's Note.—The 1959 amendment added the part of the section beginning with the second paragraph.

The 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development" in the first paragraph.

Effect of Final Decree.—A final decree in proceedings to lay off a statutory drainage district is an adjudication that the benefits derived to the land within the district are more than the burdens assessed against it for such purpose. Banks v. Lane, 170 N. C. 14, 86 S. E. 713 (1915).

Failure to Object Is Waiver.—The question as to whether an owner of land within a drainage district has realized the benefits anticipated is eliminated when there is the establishment of the district upon the report; and where such owner remains silent or makes no objection or exception at the proper time as to the proceedings of the board, his silence is a waiver of any right he may have therein had, and the independent remedy by injunction is not open to him. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

Where a drainage district has been duly laid off in conformity with the statute, and a landowner therein has not excepted to either the preliminary or final report, he may not after the appointment of the commissioners, be heard to complain that the benefits he is to receive are not as great as those he had contemplated. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

§ 156-75. Appeal from final hearing.—Any party aggrieved may, within ten days after the confirmation of the assessor's report, appeal to the superior court in termtime. Such appeal shall be taken and prosecuted as now provided in special proceedings. Such appeal shall be based and heard only upon the exceptions theretofore filed by the complaining party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any appeal to the superior court in termtime or in chambers taken under this section or any other section or provision of the drainage laws of the State, general or local, the same shall have precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. (1909, c. 442, s. 17; 1911, c. 67, s. 3; C. S., s. 5333; 1923, c. 217, s. 2.)

Cross References.—See § 156-104 as to application of this section. See also note to § 156-66.

Editor's Note.—The last two sentences were added by the 1923 amendment.

In General.—This section providing for an appeal upon exception to the final report by an owner of lands in a drainage district laid off under the provisions of the statute necessarily refers to the formation of the district and the assessments of the lands embraced in it. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

Authority of Referee.—Where, by consent of the parties to an action, the court has ordered a referee for hearing and determining "all matters in controversy," and the controversy has arisen upon exceptions taken by a landowner to the final report on the plan and assessments made in forming a drainage district, by this section, the complaining party may not successfully except to the authority of the referee in passing upon questions therein arising which

have been referred to him. Drainage District v. Parks, 170 N. C. 435, 87 S. E. 229 (1917).

Appeal Only upon Exceptions Filed Below.—An appeal from the final order of the clerk in establishing a drainage district under the provisions of this section is heard only upon the exceptions thereto filed as to issues of law or fact. In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913). Shelton v. White, 163 N. C. 90, 79 S. E. 427 (1913). And it is sufficient that the clerk has found as a fact that the allegations set out in the petition are true, if these allegations are sufficient, and distinctly and clearly made. In re Drainage District, 162 N. C. 127, 78 S. E. 14 (1913).

Cited in In re Ahoskie Creek, 257 N. C. 337, 125 S. E. (2d) 908 (1962).

§ **156-76. Compensation of board of viewers.**—The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Water Resources and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C. S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198.)

Editor's Note.—The 1959 amendment deleted "shall not exceed four dollars per day" and inserted in lieu thereof "shall be in such amount per day as may be fixed by the clerk of the superior court."

The 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development."

§ **156-77. Account of expenses filed.**—The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey. (1909, c. 442, s. 13; C. S., s. 5335.)

§ **156-78. Drainage record.**—The clerk of the superior court shall provide a suitable book, to be known as the "Drainage Record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book. (1909, c. 442, s. 18; C. S., s. 5336.)

Purpose of Record Book.—Upon the filing of the final report by the viewers, etc., in a proceeding to establish a drainage district under the provisions of the statute, a record is required by the statute to be kept in a book for the purpose, giving all interested in the proceedings notice of all that has been done materially affecting them; and when they have failed to make objection within three years, semble, they have lost their right to object, by the delay. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

§ **156-78.1. Municipalities.**—(a) Any municipality may participate in drainage district works or projects upon mutually agreeable terms relating to such matters as the construction, financing, maintenance and operation thereof.

(b) Any municipality may contribute funds toward the construction, maintenance and operation of drainage district works or projects, to the extent that such works or projects:

(1) Provide a source of municipal water supply for the municipality, or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity, or implement or facilitate the disposal of sewage of the municipality; or

(2) Protect against or alleviate the effects of floodwater or sediment damages affecting, or provide drainage benefits for property owned by the municipality or its inhabitants.

(c) Municipal expenditures for the aforesaid purposes are declared to be for necessary expenses. Municipalities may enter continuing contracts, some portion or all of which may be performed in an ensuing year, agreeing to make periodic payments in ensuing fiscal years to drainage districts in consideration of benefits set forth in subsection (b) (2) of this section, but no such contract may be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The municipal governing body shall, in the budget ordinance of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G. S. 160-411.1 to be printed, written or typewritten on all contracts, agreements, or requisitions requiring the payment of moneys shall be placed on such a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made.

(d) The provisions of this section are permissive. If a municipality does not participate in accordance with the provisions of this section, then the other provisions of subchapter III shall apply and be followed. (1961, c. 614, s. 10.)

Article 6.

Drainage Commissioners.

§ 156-79. Election and organization under original act.—After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, who shall be designated as the board of drainage commissioners. Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such landowners the court shall appoint all or the remainder from among those voted for in the election. Any vacancy thereafter occurring shall be filled by the clerk of the superior court. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of ..... District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S., s. 5337; 1947, c. 273; 1963, c. 767, s. 3.)

Local Modification.—Columbus, Chadburn Drainage District: 1939, c. 70; 1953, c. 1020; Hyde, Mattamuskeet Lake District: 1909, c. 509; Pub. Loc. 1927, c. 407; Iredell, Davidson Creek Drainage District: 1933, c. 466. See also, Local Modification under § 156-56.

Editor's Note.—The 1947 amendment substituted in the fifth sentence "by the clerk of the superior court" for "in like manner."

The 1963 amendment deleted the former ninth sentence, which read "The treasurer of the county in which the proceeding was instituted shall be ex officio treasurer of such drainage commissioners."

Individual Acts of Officials Do Not Bind District.—A drainage district is a corporation and as any other corporation, public or private, cannot be bound by the acts of its officials or agents acting separately or individually. Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 17 S. E. (2d) 1 (1941).

Conferring Special Rights on One Landowner.—The board of drainage commissioners, being a quasi-public corporation, created for the "public benefit," the powers usually pertaining to such corporations would not authorize a drainage district to enter into a contract that would give special or particular rights or claims to one landowner in the drainage district that is not enjoyed by all landowners similarly situated. Davenport v. Pitt County Drainage Dist., 220 N. C. 237, 17 S. E. (2d) 1 (1941).

Appointment of Commissioners under Special Act.—As to appointment of commissioners for particular drainage district established under special act, see State v. Gibbs, 156 N. C. 44, 72 S. E. 82 (1911).

§ 156-80. Name of districts.—The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and such district shall also be designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; the name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, one thousand nine hundred and seventeen. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S., s. 5338.)

§ 156-81. Election and organization under amended act.—(a) Method of Election.—In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one-half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.

In lieu of the above method of election of drainage commissioners, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and such drainage commissioners so appointed by the clerk shall have the same authority as if they had been elected by the method above described.

(b) Organization.—Immediately after the election of the board of drainage commissioners, and after the members of the board shall be appointed by the clerk, the clerk of the court shall notify each of them in writing to appear at a certain time and place within the county and organize. The clerk of the superior court shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he shall consider carefully and impartially the respective qualifications of each of the members for the position.

(c) Term of Office.—The term of service of the members of the board of drainage commissioners so elected and appointed shall begin immediately after their organization. One commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be designated by the clerk of the court or designated by lot among the members, in the discretion of the clerk. Thereafter each member shall be elected for three years. In the year when the term of any member or members shall expire the clerk of the court shall provide for an election of their successors to be held on the second Monday in August preceding the expiration of their term on the thirtieth day of September. The clerk of the court shall record in the drainage record the date of election, the members elected, and the beginning and expiration of their term of office.

(d) Vacancies Filled.—If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk shall keep a similar record of any election to fill vacancies, and the member or members shall be elected in like manner as the original members, and shall serve until the expiration

of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the clerk of the superior court of any vacancy in the board.

(e) Failure to Elect.—If for any reason the clerk of the court shall fail to provide for an election of drainage commissioners on the second Monday in August to succeed those whose terms will expire on the thirtieth day of September, the clerk shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold their office as commissioners until their successors are elected and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire on the thirtieth day of September, nineteen hundred and seventeen, and their successors shall be elected on the second Monday in August, nineteen hundred and seventeen, in the manner provided by law.

(f) Meetings.—The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owner of a majority in area of the land in the district.

(g) Compensation.—The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twelve dollars ($12.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(h) Application of Section.—The provisions of this section shall apply to all drainage districts now or hereafter existing in this State, without regard to the date of organization, whether before or after April 14, 1949.

(i) Appointment by Clerk of Superior Court as Alternative to Election.—In lieu of the methods of election and filling of vacancies in the position of drainage commissioner as provided in § 156-79 and this section, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and fill such vacancies, and such drainage commissioners so appointed by the clerk shall have the same authority and responsibility as if they had been elected or appointed as provided under § 156-79 or this section. (1917, c. 152, s. 5; 1919, cc. 109, 217; C. S., s. 5339; 1947, c. 935; 1949, c. 956, ss. 1-3; 1957, c. 912, s. 1.)

Local Modification.—Hyde, Mattamuskeet Drainage District: C. S. 5339; Pitt: 1935, c. 469, s. (4a); 1939, c. 350.

Editor's Note.—The 1947 amendment added the second paragraph of subsection (a). The 1949 amendment rewrote subsections (g) and (h) and added subsection (i).

The 1957 amendment substituted "twelve dollars ($12.00)" for "five dollars ($5.00)" in the first paragraph of subsection (g).

Where one of three drainage commissioners dies, the two surviving have authority, until the election and qualification of their successors, to levy an additional assessment against the lands of the district necessary to discharge the obligations of the district. Peoples Loan, et., Bank v. King, 212 N. C. 349, 193 S. E. 663 (1937).

§ 156-81.1. Treasurer.—The clerk of the superior court for the county where the district was organized, shall appoint a treasurer for the drainage district for a term not to exceed twelve (12) months. The treasurer so appointed may be a member of the board of commissioners of the district or some other person deemed competent, and shall furnish bond as may be required by the said clerk of the

superior court. The treasurer shall continue in office until a successor has been appointed and qualified.

All references in subchapter III of chapter 156 of the General Statutes of North Carolina, to "treasurer" or "county treasurer" or "county auditor" are hereby amended to refer exclusively to the treasurer appointed as hereinbefore provided. (1963, c. 767, s. 4.)

§ 156-82. Validation of election of members of drainage commission.—All irregularities caused by failure of any officer whose duty it was to provide for the election of a member or members of board of drainage commissioners of any drainage district, or the failure of any candidate to make a deposit as may be required by law, shall not invalidate such election where the following facts appear affirmatively:

(1) That said election was held at the time and place prescribed by law.

(2) That a ballot box was provided for the ballots cast for drainage commissioner.

(3) That the ballots were canvassed and the results declared by the judge of the general election.

(4) That the candidate receiving the greatest number of votes was declared elected.

(5) That no candidate for election as a member of board of drainage commissioners made any deposit as prescribed by law.

(6) That the candidate receiving the majority votes at said election has already qualified and is acting as such drainage commissioner.

This section shall not apply to any election contested before March 9, 1921. (1921, c. 210; c. C. S., s. 5339(a).)

§ 156-82.1. Duties and powers of the board of drainage commissioners.—(a) The board of drainage commissioners shall proceed with the levying of assessments, issuance of bonds and construction of canals, water retardant structures and other improvements and acquisition of equipment as approved by the court in the adjudication upon the final report of the board of viewers, either in the creation of the district or in subsequent proceedings authorized by article 7B.

(b) The commissioners shall maintain the canals, water retardant structures, and all other improvements and equipment of the district.

(c) The commissioners, with the approval of the clerk of the superior court, may use surplus funds in such manner as they deem best for (i) the maintenance of the improvements, (ii) construction or enlargement of canals and water retardant structures, or other improvements or equipment, (iii) replacement or acquisition of equipment or structures, and (iv) for payment of any or all operating expenses including salaries, fees and costs of court.

The term "surplus funds" is defined to mean any funds remaining after the payment of those items set forth specifically in the certificate of assessment, as well as funds provided in said certificate for maintenance and contingencies, and also, shall include maintenance and any other funds which the said commissioners may have on hand and which are not necessary for the payment of the bonds and interest thereon which have been issued by the said district.

(d) The board of commissioners may agree, or contract, with any agency of the government of the United States or of North Carolina for such engineering or other services as may be provided by such agency.

(e) The board of commissioners may, in its discretion, release areas taken for rights-of-way if it determines, after the construction of the canals, that such are not needed for the purpose of the district. The release must be approved by the clerk of the superior court and such release shall be filed in the proceedings by virtue of which the district was created.

(f) The board of drainage commissioners shall have all the duties and powers as set forth and imposed upon them by the various sections of this subchapter and all others which are necessary to promote the purposes of the district.

All improvements constructed and acquired under the provisions of this subchapter shall be under the control and supervision of the board of drainage commissioners. It shall be their duty to keep all improvements in good repair. (1961, c. 614, s. 2.)

ARTICLE 7.

Construction of Improvement.

§ 156-83. Superintendent of construction.—The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Water Resources, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C. S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5.)

Local Modification.—Hyde: 1957, c. 714.

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—The 1959 amendment added the second paragraph.

The 1961 amendment substituted "Department of Water Resources" for "Board of Conservation and Development" in the first paragraph.

The 1963 amendment deleted at the end of the first sentence "by and with the approval and recommendation of the Department of Water Resources."

§ 156-84. Letting contracts.—The board of drainage commissioners shall cause notice to be given of the letting of the contract. The notice shall be posted at the courthouse door in the county wherein the district was organized. Notice shall be posted no less than fifteen (15) days prior to the opening of the bids and shall be published at least once a week for two (2) consecutive weeks immediately prior to the opening of the bids, in some newspaper published in the county wherein such improvement is located, if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to no less than twenty-five nor more than one hundred per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be

opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment, they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court. (1909, c. 442, s. 21; 1911, c. 67, s. 4; C. S., s. 5341; 1959, c. 806; 1963, c. 767, s. 6.)

Editor's Note.—The 1959 amendment substituted "one week" for "two consecutive weeks" in the former first sentence.

The 1963 amendment added the first and second sentences and rewrote the portion of the third sentence relating to the time of giving notice. It also substituted "no less than twenty-five nor more than one hundred" for "twenty-five" in the sixth sentence.

Power of Commissioners Is Discretionary.—This section directs that the levee or drainage commissioners shall convene with the superintendent of construction and let the work contemplated to the "lowest responsible bidder," thereby conferring a discretionary power in adjudging the responsibility of the bidder, in all respects, with which the courts will not interfere in the absence of undue influence or a procurement by fraud. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

Acceptance of Work by Commissioners.—The acceptance of the work of the contractors as a compliance on their part with the contract is a judicial act of the board of commissioners and cannot be questioned except for fraud or collusion, and then only to make the commissioners personally and individually liable. Craven v. Board, 176 N. C. 531, 97 S. E. 470 (1918).

Section Authorizes Only Minor Changes in Report.—The authority given by this section to correct errors and modify the details of the report contemplates only such minor changes of detail as may occur in carrying out the plans, etc., specified in the final report and not a substantial departure therefrom. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

§ 156-85. Monthly estimates for work and payments thereon; final payment.—The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum of the work done, according to the specifications and contracts; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided. (1909, c. 442, s. 22; C. S., s. 5342.)

§ 156-86. Failure of contractors; reletting.—If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1909, c. 442, s. 23; 1911, c. 67, s. 5; C. S., s. 5343.)

§ 156-87. Right to enter upon lands; removal of timber.—In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right of way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him. (1909, c. 442, s. 24; C. S., s. 5344.)

Cross Reference.—As to recovery of damages for timber, see note to § 156-70.

Purpose of Section.—The drainage acts contemplate that all damages to the owner

of lands shall be assessed, including the taking of his timber necessary to carry out its plans, this section being designed to give the owner of the timber the privilege of taking such timber if he so elects. Lumber Co. v. Drainage Com'rs, 174 N. C. 647, 94 S. E. 457 (1917).

Not an Unlawful Taking.—The objection that this section is an unconstitutional taking of the owner's timber and giving it to the contractor, without compensation cannot be maintained. Lumber Co. v. Drainage Com'rs, 174 N. C. 647, 94 S. E. 457 (1917).

§ 156-88. Drainage across public or private ways.—Where any public ditch, drain or watercourse established under the provisions of this subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the State Highway Commission the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Commission, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Commission shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Commission and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the Supreme Court, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Commission is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Commission for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Commission.

Where any public ditch, drain, or watercourse established under the provisions of this subchapter crosses a public highway or road, not under the supervision of the State Highway Commission, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the State Highway Commission, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private road; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the State Highway Commission or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11.)

Editor's Note.—The 1947 amendment inserted the first two paragraphs and made changes in the third paragraph.

The 1953 amendment substituted "or" for "of" immediately before the word "authority" in the last sentence of the third paragraph.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in the first, third and fourth paragraphs.

§ **156-89. Drainage across railroads; procedure.**—Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural watercourse, and the same would cross the right of way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or watercourse crosses the right of way of such company, the notice fixing the time of such meeting, which shall not be less than ten days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right of way. When the time fixed for such conference shall arrive, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right of way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right of way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right of way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction. (1909, c. 442, s. 26; C. S., s. 5346.)

Mandamus against County Commissioners.—A judgment in proceedings for mandamus against the county commissioners to compel them to pay an assessment of a drainage district for benefit to the public roads therein, that the defendants pay the same, with interest and cost, out of the first moneys coming into their hands and not otherwise appropriated, is valid and not in violation of the Constitution or statutes relating to taxation. Drainage District v. Board, 174 N. C. 738, 94 S. E. 530 (1917).

§ **156-90. Notice to railroad.**—The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement. (1909, c. 442, s. 27; C. S., s. 5347.)

§ **156-91. Manner of construction across railroad.**—(a) Duty of Railroad.—After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right of way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with

the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right of way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

(b) Utilities Commission to Settle.—If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the Utilities Commission of the State, and thereupon the Utilities Commission shall cause an investigaton to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the Utilities Commission thereon shall be binding upon the superintendent of construction representing the district and the railroad company, and the work shall be done in such time as may be fixed by the Utilities Commission.

(c) Penalty for Delay.—In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right of way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

(d) Payment of Expense.—Within thirty days after the work is completed an itemized bill for actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right of way of the railroad company at the contract price, and pay the difference, if any, to the railroad company. (1909, c. 442, s. 28; 1911, c. 67, s. 7; C. S., s. 5348; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

§ 156-92. Control and repairs by drainage commissioners.—Whenever any improvement constructed under this subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this subchapter, and any person causing such injury shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C. S., s. 5349; 1947, c. 982, s. 1.)

Editor's Note.—Sections 156-118 and 156-123 were added by Public Laws 1923, ch. 231 and had the effect of amending this section. This section authorizes the drainage commissioners to levy an assessment upon the lands in the district for the purpose of keeping up the drainage. The amending statutes provided that the commissioners could issue bonds instead of levying an assessment. In order to do so, they had to file a petition with the clerk of the superior court showing the nature of the work to be done, that the expense would be more than one dollar per acre for the lands in the district, and to raise the money by one assessment would be an unreasonable burden upon the land. Upon filing such petition, the proceeding was somewhat similar to the original organization of the district, requiring the appointment of a board of viewers, and their report as to whether the bonds should be issued, the filing of maps and profiles, with a reclassification of the lands if found to be necessary. If the commissioners thought it would help the sale of the bonds, they could have, with approval of the clerk of the superior court, added to the amount so to be secured an amount sufficient to cover all the obligations of the district, so as to have had only one bond issue. See 1 N. C. Law Rev. 288. Sections 156-118 to 156-120 were repealed in 1961.

The 1947 amendment substituted "maintenance or repair" for "construction" in the second sentence.

The case of In re Perquimans County Drainage District No. Four, 254 N. C. 115, 118 S. E. (2d) 431 (1961), is in accord with the first three sentences of the Editor's Note in the Recompiled Volume. However, this case was decided prior to the repeal of §§ 156-118 to 156-120. For present provisions as to improvement, renovation, etc., of canals and structures, see article 7B of this chapter.

Assessments Authorized on Properties Benefited by Repairs.—It is the duty of the commissioners to keep the drains and works of the districts in good repair. For this purpose they are authorized to levy assessments on the properties within the district benefited by the repairs. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

Provision Limiting Assessments.—A provision in the petition limiting the amount of assessments to be made on lands within a drainage district being formed under the provisions of the statute, which was not inserted in the final judgment rendered in due course, may not at a subsequent term be supplied by amendment, being also contrary to the statutory provisions and invalid. Mann v. Mann, 176 N. C. 353, 97 S. E. 175 (1918).

Meaning of Original Assessments.—Under the provisions of the statute creating the Mattamuskeet Drainage District the control thereof, after its completion, is continued in the board of drainage commissioners for the purpose of its maintenance, and authority is given it to levy assessments therefor on the lands benefited in the same manner and in the same proportion as the "original assessments" were made, and collected by the same officers as those by whom the State and county taxes are collected. It was held that the term "original assessments" refers to those made for construction work on bonds issued therefor, and the assessments for maintenance should be collected by the sheriff of the county for the purpose of maintenance, as taxes for general county purposes are to be collected by him. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ 156-93. Construction of lateral drains.—The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or watercourse, as herein provided, shall have the right to use the ditch, drain, or watercourse as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or watercourse by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms and conditions on which he may enter their lands and construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. (1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3; C. S., s. 5350.)

ARTICLE 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water retardant structures; borrowing in anticipation of revenue.—(a) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners

and must be approved by the clerk of the superior court prior to their annual levy. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district as approved by the clerk of the superior court.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work.

(b) The board of drainage commissioners of a drainage district may join with the commissioners of one or more districts for the purpose of employing engineering assistance, equipment, superintendents and equipment operators for the maintenance of the canals in the several districts desiring to co-ordinate their maintenance operations and the drainage districts desiring to co-ordinate a common maintenance force may have a common office with the necessary employees for the furtherance of the joint operations for maintenance. The districts may co-ordinate their work without regard to county lines.

(c) The board of commissioners of a drainage district may, individually or jointly with the commissioners of other drainage districts, purchase, lease, rent, sell, or otherwise dispose of at public or private sale, equipment for the original construction or maintenance of the canals in the individual or joint districts or the said drainage districts may make contracts with private construction firms for the maintenance and construction of their canals. Contracts made with private construction companies are to be advertised as provided for the contract for the original construction of the canals.

The drainage districts may use the equipment owned by them for the purpose of maintenance of the canals and the construction of extensions to the system of canals in the individual or several drainage districts.

(d) The drainage districts desiring to consolidate their maintenance services and equipment may set up a board composed of one member from each district for the purpose of control and use of the personnel and equipment employed on a joint basis, and in all matters coming before the joint board, the representative of each district shall have a voting strength equal to the proportionate acreage of his drainage district as compared with the total acreage of the combined districts.

(e) The collection of the annual maintenance assessments shall be made by the county tax collector. The board of county commissioners of the county in which a drainage district is located shall upon the request of the board of drainage commissioners of the said district cause to be shown on the tax statement or notice issued by the county to its taxpayers the amount due the drainage district by the landowners in the same manner as other special assessments are shown thereon. This amount shall be collected by the county tax collector in the same manner as county taxes and deposited to the credit of the district in which the land is located.

(f) The provisions for maintenance as set forth in this article and elsewhere in this subchapter III shall include water retardant structures and the operation of such.

(g) The board of commissioners may borrow money in anticipation of revenue from maintenance assessments, as hereinbefore provided for, from which assessments the loan shall be repaid. The amount which the commissioners may borrow shall not be limited to the revenues anticipated for any one year. The terms and provisions of such loan shall be approved by the clerk of the superior court which approval shall be requested in the form of a petition and order in the proceeding by virtue of which the district was organized. The proceeds of said loan shall be used only for purposes set forth in article 7A of chapter 156. (1949, c. 1216; 1959, c. 597, s. 4; 1961, c. 614, s. 8.)

Local Modification.—Beaufort: 1963, c. 142.

Editor's Note.—The 1959 amendment added subsections (f) and (g).

The 1961 amendment rewrote the second sentence in subsection (a).

Quoted in In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

Article 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

§ 156-93.2. Proceedings for improvement, renovation and extension of canals, structures and equipment.—The board of commissioners may construct, renovate, improve, enlarge and extend the drainage systems and water retardant structures and any equipment of the district, by complying with the following provisions:

(1) The commissioners shall file with the clerk of the superior court in the county in which the district was organized, a petition which sets forth the need for the improvements requested and a general description of the proposed improvements.

(2) Upon the filing of the petition, the clerk shall then appoint a board of viewers with the same composition and qualifications as is required by G. S. 156-59. He shall direct the board of viewers to consider the proposals of the board of commissioners and report to him (i) whether or not the improvement proposed will benefit the lands sought to be benefited and (ii) whether or not the proposed improvement is practicable.

The board of viewers shall make their report to the clerk within thirty days after their appointment unless the time shall be extended by the court upon the showing of a meritorious cause for the extension.

(3) a. If the board of viewers shall report (i) that none of the improvement proposed will benefit the lands sought to be benefited, or (ii) that it is not practicable, the petition of the board of commissioners shall be dismissed and shall not be submitted again within six months thereafter.

b. If the board of viewers shall report (i) that part or all the improvement proposed will benefit the lands sought to be benefited and (ii) the proposed improvement is practicable, then the clerk shall fix a time and place for a hearing upon said report. The said hearing shall be no less than twenty, nor more than thirty, days after the filing of said report.

(4) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places within the district;
3. The notice shall be posted at least twenty days prior to said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks.

b. Contents:

1. The notice shall state the time and place for the hearing;
2. Describe in general terms the improvements proposed;
3. That the court will consider and adjudicate the report of the board of viewers.

(5) At the date appointed for the hearing the clerk shall hear and determine any objections that may be offered to the said report. The clerk may make such modifications and changes which tend to increase the benefits of the proposed work or improvement.

(6) a. If the clerk shall adjudicate that (i) none of the improvements proposed will benefit any of the lands sought to be benefited or (ii) that none of the improvements are practicable, he shall dismiss the proceedings and the petition shall not be submitted again within six months thereafter.

b. If the clerk shall approve the said report, he shall then direct the

board of viewers to prepare a further and detailed report which shall include the following:

1. Specific plans and profiles together with estimates of the cost of the work recommended by the said board of viewers and an estimate of all other costs including those incurred by the board of viewers;
2. If directed by the clerk, a new property map of the district which shall show thereon the general location of each tract of land which will be benefited by the proposed work;
3. A statement showing the classification of benefits to be received by the several tracts of lands. This classification shall be determined and shown in the same manner as is provided for in G. S. 156-71. The board of viewers may adopt the original classification. Only those lands to be benefited by the proposed work shall be classified for assessment.

The board of viewers shall have, insofar as applicable, the same powers and duties as relate to the final report as are required and provided in article 5 by G. S. 156-69, 156-70, 156-70.1 and 156-71.

The board of viewers shall make their report to the clerk within sixty days after their appointment. The clerk may extend this time upon the showing of meritorious cause for the extension.

The expense of the board of viewers, their assistants, and all costs incurred by them shall be paid from any surplus funds of the district, as defined in this subchapter, or if such are not sufficient, by the same means of financing as are available for such purposes when the district is originally organized. The estimate of the expenditures shall be shown in its report and all amounts of money expended shall be reimbursed when funds are available.

(7) Upon the filing of the said report, the clerk shall fix a time and a place for a hearing thereupon.

(8) The notice of the hearing upon said report shall be given in the same manner as required for the notice of the proposed work as required by the preceding subdivision (4) which relates to the preliminary hearing.

Also, a notice of said hearing shall be mailed at least ten days prior to the hearing, to those landowners as their names appear upon the statement of classification of benefits filed with the report of the board of viewers and whose names and addresses are shown on the tax scrolls of the county wherein their land is situated. The attorneys for, or commissioners of, the district shall use due diligence to determine the said names and addresses from the tax scrolls.

The filing with the clerk of the superior court of a certificate by the attorney for, or the commissioners of, the district, that due diligence has been used to obtain the names and addresses from the tax scrolls and that notice has been mailed to those persons at the address shown, shall be sufficient showing that this provision has been complied with. The certificate shall state the names, addresses and dates to whom such notice was mailed.

(9) At the date set for the hearing any landowner may appear in person, or by counsel, and file his objections in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all landowners in the district.

If the clerk shall adjudicate that the benefits which will accrue to the

lands affected are greater than the cost of the improvements, the report of the board of viewers shall be confirmed. The clerk shall then direct the commissioners of the district to proceed with the improvements as approved.

If, however, the clerk finds that the cost of the improvements is greater than the resulting benefits that will accrue to the lands affected, the clerk shall dismiss the proceedings.

(10) Any landowner who is aggrieved may, within ten days, after the confirmation of the report of the board of viewers, appeal to the superior court in term time or in chambers. The appeal shall be heard only upon exceptions theretofore filed in writing, by the complaining party. All of the terms, provisions and procedures of G. S. 156-75 shall apply to the appeal. (1961, c. 614, s. 1.)

Purpose of Article.—The legislature, when it enacted subchapter III authorizing the establishment of drainage districts, made no provision for an alteration and enlargement of boundaries subsequent to the date of creation for the simple reason that the boundaries as finally determined had to include all lands benefited by the improvement, and the lands so benefited were required to be assessed for the benefits accruing. Hence no assessment could be levied either for original construction or for cost of maintenance on lands beyond the boundaries. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

The 1961 legislature, recognizing that lands not originally expected to receive benefit from works to be performed by a drainage district might, by changing conditions and the modification or enlargement and maintenance of the drains, receive benefits from work subsequently proposed to be done, made provision for the enlargement of boundaries of drainage districts. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

§ 156-93.3. Extension of boundaries.—The boundaries of a drainage district may be extended upon compliance with the requirements and procedures as follows:

(1) The request for extension shall be made by the board of commissioners of the district, in the form of a petition in the name of the drainage district, to the clerk of the superior court of the county wherein the district was originally organized. The proceeding may be ex parte or adversary.

(2) The area proposed to be included within the boundaries of the district must be either:

a. Located upstream and adjacent to the existing boundary of the district and must have as its only source of drainage either:

1. The canals of the district; or
2. Natural or artificial drain ways which empty into or are benefited by the canals of the district; and
3. Must be within the watershed of the existing district; or

b. Adjacent to the existing boundary of the district and have a common outfall with the existing district.

(3) a. In the event the area meets the requirements of (2) a, it shall only be necessary for the petition to be filed by the board of commissioners of the district.

b. In the event the area meets the requirement of (2) b of this section, the owners of fifty per cent (50%) or more of the land area which it is proposed to include or forty per cent (40%) or more of the resident landowners who will be benefited within such area, must join with and be petitioners with the commissioners of the existing district, asking for the extension of boundaries and inclusion of land within the existing district.

(4) Upon filing of the petition for extension of the boundaries, the clerk of the superior court shall appoint a board of viewers with the same composition and qualifications as is required by G. S. 156-59. The board of viewers shall examine the area proposed to be included within the bound-

aries of the district to determine whether or not, in their opinion, it is feasible and equitable to include said area within the boundaries of the district, and report their finding to the court. The report must be made within thirty days after the appointment of said board of viewers. The time for filing said report may be extended by the clerk upon a showing of a meritorious cause for the extension.

(5) If the board of viewers shall report that the proposed extension of boundary is not feasible or equitable, the petition shall be dismissed and shall not be submitted again until after six months from date of dismissal.

(6) a. If the board of viewers shall report that the proposed extension of boundary is feasible and equitable, then the clerk of the superior court shall order the board of viewers to make a further and detailed report which shall include a map of the area that is proposed to be annexed which shall show:

1. Boundaries of the existing district;
2. Boundaries of the proposed extension;
3. A general location of each individual tract of land which will be benefited.

b. In the event no additional work is proposed, the board of viewers shall report the following:

1. The allocation of benefits derived from the existing canals, structures or other improvements, between the existing district and the area to be included within the boundaries of the existing district, which shall be a percentage figure and shall be the major factor for the determination of the requirements set forth in the succeeding paragraphs 2 and 3;
2. The amount of money, if any, which the owners of the land to be included within the district should pay for the use of the canals, structures or other improvements of the district;
3. The per cent of the cost of maintenance and operating expenses which the owners of the land to be included, should pay;
4. Classification of the additional lands as to benefits derived from the existing canals, structures or other improvements of the district which shall be in accordance with the provisions of G. S. 156-71. The area of the existing district shall not be classified, unless directed by the clerk of the superior court;
5. The names and addresses of the landowners within the areas proposed to be included insofar as may be determined from the tax records of the county;
6. Such other information as may be appropriate or as may be directed by the clerk of the superior court.

c. In the event additional work is proposed, the report of the board of viewers shall also contain the information required in G. S. 156-93.2, as it applies to the final report of the board of viewers.

(7) The board of viewers shall file their detailed or final report within sixty (60) days after their appointment. The time for filing of said report may be extended by the clerk upon a showing of meritorious cause for the extension.

(8) Upon the filing of said report those landowners in the area to be included who are not parties to the proceedings and who do not desire to sign the petition, shall be made parties defendant. Summons shall be served upon the defendants in the manner required for special proceedings.

There shall be attached to and served with the summons, in lieu of a copy of the petition or final report, a statement which shall set forth (i) the purpose of the proceedings and (ii) that the report of the board of viewers is on file in the office of the clerk of the superior court and may be examined by persons interested.

(9) The attorney for, or the commissioners of, the district shall use due diligence to give notice to every landowner within the area proposed to be included, who has not signed the petition asking for such extension of boundaries and/or the proposed improvements.

The filing of a certificate by the attorney for, or the commissioners of, the district that due diligence has been used to notify each of said defendant landowners shown by the report of the board of viewers, either by personal service or by publication, shall be sufficient showing of compliance with this provision. The certificate shall contain the names of such landowners served personally, the date of service and the names of those served by publication and the date of service by publication.

(10) Upon filing of said certificate the clerk shall fix a time and place for a hearing upon said report, which date shall be no less than twenty days after filing of said certificate.

(11) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places in the district and in the area to be included;
3. The notice shall be posted at least twenty days prior to the said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks;
5. Mailing a copy of the notice to those persons for whom an address is shown in the certificate filed by the attorney for, or commissioners of, the district.

b. Contents:

1. The notice shall state the time and place for the hearing;
2. Describe in general terms the area proposed to be included and work proposed, if any;
3. That the court will consider and adjudicate the report of the board of viewers.

(12) At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all of the landowners and the existing district.

(13) The clerk shall, after making adjustments in the report of the board of viewers, if any, determine:

a. If the area(s) of land sought to be included, or any part thereof, is, or will be, benefited by the canals, structures or other improvements of the district.

b. If such area(s) should equitably be included within the boundary of the district because of the benefits received or to be received from the district.

c. If the requirements of the preceding subdivision (3) b, if applicable, are met.

If the clerk shall determine that all of the three preceding requirements are met, he shall direct that the area(s) of land to be included within

the boundaries of the district, in accordance with the provisions of the report of the board of viewers, as approved.

(14) If the clerk shall determine either:

a. That no part of the area proposed to be included is or will be benefited by the canals, structures or other improvements of the district and equitably should not be included within the boundaries of the district; or

b. That the requirements of the preceding subdivision (3) a or b, whichever is applicable, have not been complied with; he shall dismiss the proceeding.

(15) Any landowner who is aggrieved may, within ten days, after the confirmation of the report of the board of viewers appeal to the superior court in term time or in chambers. The appeal shall be heard only upon those exceptions theretofore filed in writing by the complaining party. All of the terms, provisions and procedures of G. S. 156-75 shall apply to the appeals.

(16) The duties and powers of the board of commissioners as to those lands included within the district by the current proceedings shall be the same as to those in the original proceeding. (1961, c. 614, s. 1.)

§ 156-93.4. Coordination of proceedings under G. S. 156-93.2 and 156-93.3.—In the event a proceeding shall be instituted as provided for in G. S. 156-93.2 and shall also include the extension of boundaries, as provided for in G. S. 156-93.3, the provisions of G. S. 156-93.2 and 156-93.3 shall be coordinated and if there shall be any conflict as to procedure, that provided for in G. S. 156-93.3 shall be followed. (1961, c. 614, s. 1.)

§ 156-93.5. Assessments and bonds for improvement, renovation, enlargement and extension.—The board of drainage commissioners shall, for the purposes set forth in this article, levy the necessary assessments and may issue bonds or other debentures for the purpose of providing funds for the construction or acquisition of any of the improvements or works authorized by this article. The time and manner of levying assessments and the issuance of bonds or other debentures and the terms thereof shall be the same as provided for in article 8 of subchapter III. (1961, c. 614, s. 1.)

§ 156-93.6. Rights of way and easements for existing districts.—All drainage districts heretofore created shall be deemed to own an easement or right of way in and to those lands upon which there are existing canals and spoil banks.

Whenever the proposed repairs, maintenance or other improvement make it necessary for the drainage district to acquire additional land for easements or right of way, the procedure to secure the same shall be in accordance with G. S. 156-70.1. (1961, c. 614, s. 1.)

§ 156-93.7. Existing districts may act together to extend boundaries within watershed.—If there should be more than one drainage district in a drainage basin, or watershed, the board of drainage commissioners of the several districts may join with the owners of land within the drainage basin and which are not included in a drainage district, in a petition to the court, asking for the creation of a drainage district that will include the entire drainage basin, or watershed. In the event this method should be followed, the requirements hereinafter set forth shall be complied with:

(1) The board of drainage commissioners of the several districts shall act for the several landowners within each district, and by their doing so it shall not be necessary for the several landowners within the districts to sign the petition.

(2) The proceedings shall be the same as provided in G. S. 156-93.2 and 156-93.3.

(3) The board of drainage commissioners and the individual landowners within each district may appear and be heard at any hearing before the court, with the same rights as those landowners in the drainage basin who are not within the boundaries of a drainage district.
(4) The requirements of subdivisions (2) and (3) of G. S. 156-93.3 shall be applicable.
(5) The board of viewers shall, in their final report, include the following:
a. Allocation of the percent of cost of construction, maintenance, operating and all other cost and expenses between the several existing districts and the areas not in an existing district;
b. Classify the benefits in the areas not included within existing districts in accordance with G. S. 156-71.
(6) The board of drainage commissioners of the existing districts shall be responsible for the levy and collection of costs allocated to the several districts.
(7) The board of drainage commissioners of the comprehensive district shall be responsible for the levying and collection of all costs and expenses allocated to the area not within an existing district.
(8) The provisions for the levying of assessments and the issuance of bonds or other debentures, shall be the same for the existing districts and the comprehensive district, as is provided in G. S. 156-93.5. (1961, c. 614, s. 1.)

Article 8.

Assessments and Bond Issue.

§ 156-94. Total cost for three years ascertained.—After the classification of lands and the ratio of assessments of the different classes to be made thereon has been confirmed by the court, the board of drainage commissioners shall ascertain the total cost of the improvement, including damages awarded to be paid to owners of land, all costs and incidental expenses, and also including an amount sufficient to pay the necessary expenses of maintaining the improvement for a period of three years after the completion of the work of construction, not exceeding ten per centum of the estimated actual cost of constructing the drainage works or the contract price thereof if such contract has not been awarded, and after deducting therefrom any special assessments made against any railroad or highway, and, thereupon, the board of drainage commissioners, under the hand of the chairman and secretary of the board, shall certify to the clerk of the superior court the total cost, ascertained as aforesaid; and the certificate shall be forthwith recorded in the drainage record and open to inspection of any landowner in the district. (1909, c. 442, s. 31; 1911, c. 67, s. 8; C. S., s. 5351; 1923, c. 217, s. 4.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—This section which requires an estimate of the expense necessary for maintaining for three years the improvement constructed, was changed by the 1923 amendment by adding a limitation, "not exceeding ten per centum of the estimated actual cost of constructing the drainage works or the contract price thereof." See 1 N. C. Law Rev. 287.

§ 156-95. Assessment and payment; notice of bond issue.—If the total cost of the improvement is less than an average of twenty-five cents per acre on all the land in the district, the board of drainage commissioners shall forthwith assess the lands in the district therefor, in accordance with their classification, and said assessment shall be collected in one installment, by the same officer and in the same manner as State and county taxes are collected, and payable at the same time. In case the total cost exceeds an average of twenty-five cents per acre on all lands in the district, the board of drainage commissioners shall give notice for three weeks by publication in some newspaper published in a county in which the district, or some part thereof, is situated, if there be any such newspaper, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places

in the district, reciting that they propose to issue bonds for the payment of the total cost of the improvement, giving the amount of bonds to be issued, the rate of interest that they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may, within fifteen days after the publication of such notice, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheet and the certificate of the board showing the total cost of the improvement, and have his lands released from liability to be assessed for the improvement; but such land shall continue liable for any future assessment for maintenance or for any increased assessment authorized under the law. (1909, c. 442, s. 32; 1911, c. 67, s. 9; C. S., s. 5352.)

Assessments Not "Taxes."—Assessments made for the maintenance of a drainage district, incorporated under the provisions of the statute, are not "taxes," though they may be so incorrectly denominated therein; they are only assessments made for the special benefits to the land within the district and not imposed for the purpose of general revenue. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Assessments Are Liens in Rem.—Assessments upon lands in a drainage district are liens in rem, resting upon the lands, into whosoever hands it may be at the time they accrue, and do not come within the terms of a warranty against encumbrances by deed. Taylor v. Commissioners, 176 N. C. 217, 96 S. E. 1027 (1918).

Timber Interest Not Liable.—A conveyance of the timber, under the usual deed, providing for its cutting and removal from the land within a stated period, is regarded as a severance thereof from the land, and the grantee in the deed is not liable for an assessment for drainage purposes laid thereon. Dover Lumber Co. v. Board of Commissioners, 173 N. C. 117, 91 S. E. 714, 845 (1917).

One Owner Not Liable for Failure of Others.—No owner is responsible for other owners by reason of their failure to pay, except through the method of assessment provided by the statute. Carter v. Drainage Commissioners, 156 N. C. 183, 72 S. E. 380 (1911).

Owner Liable for Additional Assessments.—The land of the owner who has paid his assessments, as provided by this section, is subject to additional assessments, the lands in the district being liable until the original bond issue for making the improvements or indebtedness incurred therefor is paid in full. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N. C. 577, 178 S. E. 228 (1935).

Courts Can Enjoin Collection of Assessments.—The courts, in proper instances, have the power to interfere and stay amounts assessed against the owner of lands within an established drainage district, when it appears that the commissioners, in carrying out the ministerial duties imposed on them, endeavor to collect from him a sum in excess of their own assessment, or that they had made out these rolls in utter disregard to the classifications and ratio of assessments established by the final report, or they had made such changes in the plans and specifications thereof as to exceed their powers and work substantial wrong and hardship upon a landowner, if he is not guilty of laches and has not unduly delayed asserting his rights. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

But where a drainage district has been fully and lawfully established in accordance with the statute, and the commissioners duly appointed and bonds issued in furtherance of the scheme, an injunction restraining the collection of the assessment against the landowners therein, at the suit of one of them, will not issue, as against the interest of the holder of the bonds, unless it clearly appears that the commissioners have substantially departed, to the injury of the claimant, from the scheme set forth in the final report of the viewers, etc.; and it appearing in this case that such has not been done, the restraining order is properly dissolved, and the further order that the plaintiff may proceed in his action against the commissioners is approved. Griffin v. Board, 169 N. C. 642, 86 S. E. 575 (1915).

Purchaser Takes with Notice of Assessments.—The purchaser of lands within a drainage district formed under the provisions of this chapter is fixed by the statute with notice of the assessments and the time thereof, whether a resident of another state or not. Pate v. Banks, 178 N. C. 139, 100 S. E. 251 (1919).

Presumption as to Notice.—The presumption is in favor of the regularity of the official proceedings of the commissioners of a drainage district, and applies as to the sufficiency of notice to a landowner within the district of a meeting duly had to assess such owners according to benefits received from the improvements therein. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

Waiver of Notice.—Where the owner of land in a drainage district, formed under the provisions of the statute, appears at a meeting of the commissioners held for the purpose, and is silent, making no objection or exception to the assessment imposed upon his land, the question as to whether he had been sufficiently served with notice of the meeting becomes immaterial, his appearance being construed as a waiver thereof, or rather as dispensing with formal notice. And he cannot collaterally, by injunction, restrain the collection of these assessments by sheriff's sale; and this ap-

plies to his grantee who knew that the lands were situate within the district and subject to the assessments. Mitchem v. Drainage Comm., 182 N. C. 511, 109 S. E. 551 (1921).

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514 (1937).

§ 156-96. Failure to pay deemed consent to bond issue.—Every person owning land in the district who shall fail to pay to the treasurer the full amount for which his land is liable, as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of drainage bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his rights of defense to the payment of any assessments which may be levied for the payment of bonds, because of any irregularity, illegality, or defect in the proceedings prior to this time, except in case of an appeal, as hereinbefore provided, which is not affected by this waiver. The term "person" as used in this subchapter includes any firm, company, or corporation. (1909, c. 442, s. 33; 1911, c. 67, s. 10; C. S., s. 5353; 1963, c. 767, s. 4.)

Editor's Note.—The 1963 amendment deleted "county" before "treasurer" near the beginning of the section.

Cited in Board of Drainage Com'rs v. Jarvis, 211 N. C. 690, 191 S. E. 514 (1937).

§ 156-97. Bonds issued.—At the expiration of fifteen days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the treasurer. Bonds issued by the board of drainage commissioners shall comply with the following provisions:

(1) The bonds shall be serial bonds;

(2) The denomination of the bonds shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00);

(3) The interest upon said bonds shall not be more than six per cent per annum, from the date of issue and payable semiannually;

(4) The first annual installment of principal shall fall due not less than three years nor more than six years after the date of the bonds;

(5) Each annual installment of principal shall be not less than two per cent nor more than ten per cent of the total bonds authorized;

(6) If the total amount of bonds to be issued does not exceed ten per cent of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipation bonds which shall mature over a period of not less than four nor more than ten years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than six per centum per annum;

(7) The board of commissioners may issue bond anticipation note or notes to be redeemed and paid upon the sale and delivery of bonds herein provided for. If such bond anticipation note or notes are issued, at the discretion of the commissioners, such may be done after the bonds have been sold and prior to the printing and delivery of said bonds and must be paid from the proceeds of said bonds when delivered. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C. S., s. 5354; 1923, c. 217, s. 5; 1955, c. 1340; 1957, c. 1410, s. 1; 1961, c. 601, s. 1; 1963, c. 767, s. 4.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—As to effect of the 1923 amendment, see 1 N. C. Law Rev. 287.

The 1961 amendment rewrote all of this section, as amended in 1955 and 1957, except the first sentence.

The 1963 amendment deleted the word "county" preceding "treasurer" at the end of the first sentence.

Cited in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N. C. 338, 121 S. E. (2d) 599 (1961).

Effect of Interest of Clerk Appointing Commissioners.—An issue of bonds by a drainage commission, is not void by reason that the clerk of the court who appointed the commissioners owned an interest in a tract of land within the drainage district, as such an interest is too minute, and not directly the subject matter of the litigation. White v. Lane, 153 N. C. 14, 68 S. E. 895 (1910).

Cited in Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942).

§ 156-97.1. Issuance of assessment anticipation notes.—In lieu of the bonds provided for in G. S. 156-97, the board of drainage commissioners may issue assessment anticipation notes of the district for an amount not to exceed the assessment levied by the commissioners and approved by the clerk of the superior court, less such amounts as shall have been paid in in cash to the treasurer. It shall be optional with the board of drainage commissioners in issuing assessment anticipation notes to issue serial notes in any denominations bearing not more than six per cent (6%) interest from the date of issue, payable semiannually. The first annual installment of principal shall be due not less than one year nor more than two years after date thereof, and each annual installment of principal shall not be less than two per cent (2%) nor more than twenty-five per cent (25%) of the total amount of notes authorized and issued.

Such assessment anticipation notes, when issued, shall have the same force and effect of bonds issued under the provisions of this article and shall be collectible in the same manner.

The commissioners may issue either serial notes or an amortized note. (1957, c. 912, s. 2; 1961, c. 601, s. 3; 1963, c. 767, ss. 4, 7.)

Editor's Note.—The 1961 amendment substituted "two per cent (2%)" for "ten per cent (10%)" near the end of the first paragraph.

The 1963 amendment deleted the word "county" preceding "treasurer" at the end of the first sentence and added the third paragraph.

§ 156-98. Form of bonds and notes; excess assessment.—All bonds and notes authorized and issued shall be signed by the chairman and secretary of the board of drainage commissioners and the corporate seal of the district affixed thereto, and the interest coupons shall be authenticated by the facsimile signature of the secretary, and both the principal and interest coupons shall be payable at some bank or trust company to be designated by the board of drainage commissioners and incorporated in the body of the bond. The form of the bond shall be authorized by the board of drainage commissioners or by the board and the purchaser of the bonds jointly, at the option of the board.

All bonds of reclamation districts shall have that fact noted upon the face of the bond, either by stamping or printing the same thereon. All bonds of improvement districts shall also have that fact noted upon their face.

For the purpose of meeting any possible deficit in the collection of annual drainage assessments or any deficit arising out of unforeseen contingencies there shall be levied, assessed and collected during each year when either the interest or principal or both interest and principal on the outstanding bonds shall be due, an assessment as will yield ten per cent more than the total of interest and principal due in such years; that is to say, for every one hundred dollars of principal and interest, or either, due in any one year, there shall be levied, assessed and collected a sufficient drainage assessment to yield one hundred and ten dollars for such year. When this excess of drainage tax so levied, assessed and collected shall accumulate so that the aggregate surplus in the hands of the treasurer of the district shall amount to more than fifteen per cent of the total principal of the bonds of the district outstanding and unpaid, then such surplus above fifteen per cent thereof may be available for expenditure by the board of drainage commissioners in the maintenance and upkeep of the drainage work in such district in the manner provided by law: After all the drainage assessments have been collected except the last assessment, if the surplus which has accumulated amounts to more than five per cent of the total issue of bonds of the district, then and in such event the board of drainage commissioners may in their discretion apply such excess above five per cent toward the reduction of the total amount embraced in the last assessment, reducing the same pro rata as to each tract of land embraced in the district, and having regard to the classification, to the end that such reduction shall be fairly and justly made. As to such surplus as shall accumulate in the hands of the treasurer of the district over and above all obligations of the district which may be due, the treasurer is hereby directed to deposit same in some solvent bank or banks

at the highest rate of interest obtainable therefor, and the said treasurer shall be authorized, if he deems it necessary, to demand satisfactory security for such deposits; but the said treasurer shall reserve the right to demand a repayment at any time upon giving not exceeding thirty days' notice thereof. Whereas the proceeds of the first drainage assessment may not be collected and in the hands of the treasurer of the district prior to the maturity of the first and second semi-annual installments of interest upon the issue of bonds, the treasurer of the district is hereby directed to pay the interest coupons first maturing and also the interest coupons next maturing, if necessary, out of funds in his hands for the purpose of maintaining the improvement for the period of three years after the completion of the work or construction. As a surplus fund with the treasurer arising out of the annual additional assessment of ten per centum shall accumulate in any one year in excess of fifteen per centum of the total principal of the bonds of the district outstanding and unpaid, as herein provided, the treasurer shall transfer in each of such years such surplus fund to the fund for maintaining the improvement after completion, as a reimbursement of the fund formerly withdrawn therefrom for the payment of the first and second installments of interest coupons until such reimbursement shall be fully made. The treasurer shall thereafter keep separate accounts of the proceeds of such additional ten per cent assessment remaining each year after the payment of all maturing obligations, and also a separate account of the funds provided for maintaining the improvement for the period of three years after completion of improvement and all payments therefrom and reimbursements thereto. (1917, c. 152, s. 13; C. S., s. 5355; 1923, c. 217, s. 6; 1927, c. 98, s. 5; 1961, c. 601, s. 2.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—As to effect of 1923 amendment, see 1 N. C. Law Rev. 288.

The 1927 amendment inserted the second paragraph distinguishing between reclamation and improvement districts.

The 1961 amendment inserted "and notes" near the beginning of the section.

Quoted in In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ 156-99. Application of funds; holder's remedy.—The commissioners of the district may sell the bonds or notes of the district for not less than par and devote the proceeds to the payment of the work as it progresses and to the payment of the other expenses of the district provided for in this subchapter. The proceeds from the sale of the said bonds or notes shall be for the exclusive use of the levee or drainage district specified therein. A copy of said bonds or notes shall be recorded in the drainage record. If serial bonds or notes are issued it shall only be necessary to record the first numbered bond or note, with a statement showing the serial numbers, the amount and the due dates of principal and interest.

There shall be set out specifically in the drainage record of said proceeding, a description of the lands embraced in the district for which the tax or assessment has not been paid in full, and which is subject to the lien of the said obligations. A reference to the tract number on the map of the district as recorded in the drainage proceedings or in the office of the register of deeds is sufficient description.

If any installment of principal or interest represented by the bonds and notes, shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six (6) months, the holders of such bonds or notes upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district, its officers, including the tax collector and treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and costs of action; and such other remedies are hereby vested in the holders of such bonds or notes in default, as may be authorized by law and the right of action is hereby vested in the holders of such bonds or notes upon which default has been made, authorizing them to institute suit against any officer on his

official bond for failure to perform any duty imposed by the provisions of this subchapter.

The official bond for the tax collector and treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bond may be increased by the board of county commissioners. (1909, c. 442, s. 34; 1911, c. 67, s. 11; c. 205; C. S., s. 5356; 1923, c. 217, s. 7; 1963, c. 767, s. 8.)

Local Modification.—Brunswick, Columbus: 1929, c. 299.

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—The 1923 amendment made a deletion in the first sentence relating to interest on bonds.

The 1963 amendment rewrote this section.

Action against Landowner Is Unauthorized.—The remedy provided by statute to the holders of drainage bonds to enforce payment of their obligations is by action against the drainage district and its commissioners and the tax collector and treasurer to compel these officers to perform their legal duties in pursuing the statutory procedure for the collection and application of drainage assessments, which remedy is adequate and exclusive, and the holder of past-due bonds may not maintain an action against the owner of land within the district to enforce the lien of delinquent drainage assessments against the land. Wilkinson v. Boomer, 217 N. C. 217, 7 S. E. (2d) 491 (1940).

Effect of Foreclosure of Tax Liens under § 105-414.—Where, in an action to foreclose a tax lien under § 105-414 service of process on "bondholders, lien holders or other persons having or claiming some interest in the land" was had by publication, but the publication made no reference to any drainage district, drainage assessment, liens or bonds or bondholders of any drainage district, the publication was held insufficient to give the court jurisdiction of the holders of bonds of the drainage district in which the lands or any part of them lay, and the judgment therein could not preclude the bondholders from exercising their remedy under prescribed conditions to have the drainage district levy additional assessments against the lands for the purpose of paying the drainage bonds. Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942).

§ 156-100. Sale of bonds.—In making the sale of drainage bonds the board of drainage commissioners shall prepare a notice of such sale containing the usual and appropriate information regarding the terms and provisions of the bonds, and shall publish the same for at least a period of two weeks in at least one paper of general circulation published within the State and in at least one other newspaper of large circulation among the buyers of bonds, in which they shall invite sealed bids from prospective purchasers to be opened on a certain day, and may require a cash deposit to accompany all bids, and shall reserve the right to reject any and all bids. In such notice the commissioners may hold in reserve information as to the date when the first installment of principal shall fall due, the annual installments of principal to be paid, the number of years within which the serial bonds are to be paid, the form of the bonds, and the name of the bank or trust company at which the interest coupons and the installments of principal are to be made payable, and shall state that the information and data so withheld may subsequently be agreed upon between the drainage commissioners and the purchaser of the bonds; or the board of drainage commissioners in their advertisement asking bids may make optional propositions in the respects above recited, inviting bids as to each kind of bond so proposed. The board of drainage commissioners shall accept the highest bona fide bid for such bonds and issue and sell the same accordingly, provided the highest bid shall equal or exceed the par value of the bonds with any accrued interest thereon. If no satisfactory bid shall be received, the board of drainage commissioners may readvertise the bonds for sale in the manner above provided, or they may accept any private bid for the bonds at not less than their par value, with any accrued interest thereon. The board of drainage commissioners shall in good faith make diligent effort to sell the bonds at a price not less than their par value, with accrued interest. Bonds of any drainage district heretofore sold or contracted to be sold by the Local Government Commission in the manner provided by the Local Government Act, either alone or in conjunction with the board of drainage commissioners, shall be deemed to have been lawfully sold or contracted to be sold. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 15; C. S., s. 5357; 1941, c. 142.)

Editor's Note.—The 1941 amendment added the provision relative to bonds sold by the Local Government Commission.

§ 156-100.1. Sale of assessment anticipation notes.—Should assessment anticipation notes be issued by a drainage district under the provisions of G. S. 156-97.1, the board of drainage commissioners may accept any private bid for said assessment anticipation notes at not less than their par value, with accrued interest thereon without the necessity of advertising the sale hereof as is provided for in the sale of bonds under the provisions of G. S. 156-100. (1957, c. 912, s. 3.)

§ 156-100.2. Payment of assessments which become liens after original bond issue.—Payment of assessments not included in the original bond or note issue shall be financed in the following manner:

(1) In the event of appeal from the order of the clerk of superior court approving the final report of the board of viewers, the assessment approved by the appellate court shall be due and payable thirty (30) days from the entry of the final order in said appeal.

(2) In the event land should be included within the district for any other reason, the assessment thereon shall be due and payable thirty (30) days after the date of the agreement or court order by which said land is included.

(3) In the event the assessments referred to in the preceding subdivisions one (1) and two (2) are not paid at the expiration of the said thirty-day period, then the commissioners may provide for installment payments of said assessment upon such terms as may be approved by the clerk of the superior court who has jurisdiction of the said drainage proceeding.

The commissioners of the district may issue bonds or notes for an amount equal to the total of the installment payments, upon terms as approved by the clerk of the superior court. The lien of the assessment, the rights of the bond or note holder, and all other liabilities and rights shall be the same as prescribed in this subchapter III for other bonds and notes of the district. (1963, c. 767, s. 9.)

§ 156-100.3. Sinking fund.—The commissioners of the drainage district may establish a sinking fund to be used to pay bonds and notes issued by the district. The terms and conditions by which the said sinking fund is established shall be approved by the clerk of the superior court who has jurisdiction of said district. (1963, c. 767, s. 10.)

§ 156-101. Refunding bonds issued.—In any case where the board of drainage commissioners of any drainage district have issued or may issue bonds for the purpose of constructing or completing the drainage works in such district, the payment of which at maturity would in the judgment of the board of drainage commissioners be an unreasonable burden on the owners of the lands in such district assessed for the payment of such bonds and interest, or if it shall appear for other good and substantial reasons that the welfare of the district and the owners of lands therein would be promoted thereby, the board of drainage commissioners shall have the power to refund such bonds, or any part thereof, and issue new bonds equal to the amount of bonds outstanding and unpaid, or any part thereof. The new or refunding bonds shall bear a rate of interest not exceeding six per cent, payable semiannually, and shall be divided into such annual installments not exceeding ten per cent and not less than five per cent of the outstanding bonds so refunded. The new assessments shall be levied and collected with which to pay the principal and interest on the bonds in the manner provided by law. The first installment of principal on the bonds so refunded may be made payable at a certain date in the future not exceeding six years from the date of the refunding bonds, and in the meantime annual assessments shall be levied and collected for the payment of the interest. (1917, c. 152, s. 14; C. S., s. 5358.)

§ 156-102. Drainage bonds received as deposits.—The State Treasurer is authorized to receive drainage bonds issued by drainage districts in North Carolina

as deposits from banks, insurance companies, and other corporations required by law to make deposits with the State Treasurer: Provided, that the Attorney General shall have approved the form of such bonds. (1917, c. 152, s. 7; C. S., s. 5359.)

Local Modification.—Edgecombe, Pitt: 1937, c. 334.

§ 156-103. Assessment rolls prepared.—The board of drainage commissioners shall immediately prepare the assessment rolls or drainage tax lists, giving thereon the names of the owners of land in the district and a brief description of the several tracts of land assessed and the amount of assessment against each tract of land. The first of these assessment rolls shall be due and payable on the first Monday in September following the date of such bonds, and shall provide funds sufficient for the payment of interest on such bonds for one year. The second assessment roll shall make like provision for the payment of the interest for one year. Annual assessment rolls shall thereafter provide funds sufficient to meet the interest for one year on the issue of bonds outstanding. During the year previous to maturity of any annual installment due upon the principal of said bonds there shall be an assessment roll sufficient to provide funds for the payment of both the interest for one year and for the payment of the annual installment due upon the principal of the bonds. Such annual assessments shall be made from year to year to provide funds to meet the interest for one year and the annual installment of the principal due upon the bonds outstanding, until the whole principal due upon the outstanding bonds and the interest thereon shall be fully paid. In making up such assessment rolls there shall be included ten per cent additional as provided in § 156-98. Each of the assessment rolls shall specify the time when collectible and be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of assessments made by the viewers. These assessment rolls shall be signed by the chairman of the board of drainage commissioners and by the secretary of the board. There shall be four copies of each of the assessment rolls, one of which shall be filed with the drainage record, one shall be filed with the chairman of the board of drainage commissioners, who shall carefully preserve the same, one shall be preserved by the clerk of the court, without change or mutilation, for the purposes of reference or comparison, and one shall be delivered to the sheriff, or other county tax collector, after the clerk of the superior court has appended thereto an order directing the collection of such assessments, and the assessments, shall thereupon have the force and effect of a judgment as in the case of State and county taxes. If the drainage commission which has assessed the lands of a drainage district prior to March 11th, 1919, shall file the aforesaid four copies of assessment rolls within six months from April 1st, 1919, the filing of such assessment rolls shall have the same legal effect as if filed strictly in accordance with this section immediately after the preparation of such assessment rolls. The State having authorized the creation of drainage districts and having delegated thereto the power to levy a valid tax in furtherance of the public purposes thereof, it is hereby declared that drainage districts heretofore or hereafter organized under existing law or any subsequent amendments thereto are created for a public use and are political subdivisions of the State. (1911, c. 67, s. 12; 1917, c. 152, s. 9; 1919, c. 282, s. 1; C. S., s. 5360; 1921, c. 7; 1923, c. 217, s. 8.)

Cross Reference.—See § 156-104 as to application of this section.

Editor's Note.—As to effect of 1923 amendment, see 1 N. C. Law Rev. 288.

Completion of Rolls.—The assessment arises upon the completion of the assessment rolls. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Cited in Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942); Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ 156-104. Application of amendatory provisions of certain sections; amendment or reformation of proceedings.—All the provisions of chapter 217 of the Public Laws of 1923 amendatory of §§ 156-71, 156-75, 156-83, 156-94, 156-97,

156-98, 156-99 and 156-103 shall apply to all drainage districts which shall hereafter be organized, and also to all districts where proceedings for the organization thereof have been instituted and are now pending and where the bonds have not been actually issued, sold, and delivered to the purchaser thereof. If it shall be necessary to amend or reform any of the pleadings or orders made by the court or any action taken by the board of drainage commissioners in any drainage proceedings instituted and pending before March 6, 1923, full authority is granted to make any such amendments, to the end that the said drainage proceedings shall conform with the provisions hereof. (1923, c. 217, s. 9; C. S., s. 5360(a).)

Local Modification.—Hyde: 1923, c. 217, s. 10; C. S. 5360(a).

§ 156-105. Assessment lien; collection; sale of land.—The assessments shall constitute a first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the State and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any date except Sunday or another legal holiday, which may be designated by the board of drainage commissioners. After any such sale date has been designated by the board of drainage commissioners, if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be re-advertised and sold on any day which the board of drainage commissioners may or shall designate during the same hours and without any order being obtained therefor during the same calendar year. Nothing in this section shall be construed to require any order from any court for any sale or resale held hereunder. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold; and in all other respects, except as herein or otherwise modified or amended, the existing law as to the collection of State and county taxes shall apply to the collection of such drainage assessments. No bid at any sale shall be received unless sufficient in amount to discharge all the drainage assessments and other charges due by the delinquent lands or owner thereof, together with all costs and expenses of sale. If no sufficient bid be received, the board of drainage commissioners of the district shall be deemed the purchaser in its corporate capacity at a sum sufficient to pay all assessments which are due and costs as above stated, and shall be entitled to receive a certificate of purchase and deed in the manner provided by law for purchasers at tax sales. The board of drainage commissioners shall only be required to pay to the sheriff the costs and expenses of sale before receiving a certificate of purchase. The board of drainage commissioners of the district in their corporate capacity shall be in like position and have the same rights and be subject to the same duties as the purchaser of lands at any tax sale under the general law. If the board of drainage commissioners shall have been the purchaser of lands so sold, the amount paid in redemption by the owner, or any person having an estate therein or lien thereon, shall include the sum bid therefor plus the penalty. The board of drainage commissioners shall pay to the sheriff or tax collector the amount representing their bid at the sale of said lands before they shall be entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the drainage district in the same manner as other funds received by him. The board of drainage commissioners, after acquiring a deed for said lands, may hold the same as an asset of the district, and shall be liable for the payment of all drainage assessments and State and county taxes accruing after the sale at which the district was a bidder, and in all respects be deemed the owner of said lands and subject to the same

privileges and liabilities as any other landowner, including the right to convey the said lands for a consideration and pay the proceeds of said sale to the treasurer of the district, which may be distributed by the drainage commissioners for the benefit of the district in the same manner as other district funds.

If any sheriff or tax collector failed for any reason to collect drainage assessments upon lands in any drainage districts due in one thousand nine hundred and seventeen, or any subsequent years, and further failed to make valid sales of the lands so delinquent in the payment of such assessments, then and in such event the existing sheriff or tax collector is hereby authorized and directed to proceed to collect such unpaid drainage assessments, with interest thereon from the dates when such assessments respectively became due, and in default of payment being made he is further authorized to make sales of such lands as may be in default at any time hereafter, at the times and in the manner authorized by law as amended herein; and the purchaser at said sales shall acquire title to such lands in the manner provided by law. If the sheriff or tax collector in office at the time such assessments were in default has since died or gone out of office, the powers herein given shall be exercised by the existing sheriff or tax collector.

The one thousand nine hundred and thirty-one amendment to this section shall have the same force and effect from and after April thirteenth, one thousand nine hundred and thirty-one, as if it had been ratified and enacted prior to the first day of January, one thousand nine hundred and twenty-nine, and no sale of drainage lands held under the provisions of section five thousand three hundred sixty-one shall be deemed or declared void by reason of the fact that they may not have been held on the day specified in section five thousand three hundred sixty-one of the Consolidated Statutes prior to this amendment. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S., s. 5361; Pub. Loc. 1923, c. 88, ss. 3, 4, 5; 1931, c. 273.)

Local Modification.—Franklin, Hyde, Nash, Wilson: Pub. Loc. 1923, c. 88.

Editor's Note.—The 1931 amendment struck out the third sentence of the former section and inserted in lieu thereof the third, fourth and fifth sentences above. The original section authorized the sale to be made on the first Monday in February in each year, and if for any cause the sale could not be made on that day, it might be continued from day to day for four days, or readvertised and sold on the first Monday in March, without any order therefor. See 9 N. C. Law Rev. 368.

The assessments upon lands in a drainage district are a lien in rem on the lands of the owner for the payment of the bonds issued by the district in accordance with the statute, the district being a geographical quasi-public corporation, and the benefits annually accruing to the advantage of successive owners, such assessments are due and payable at stated intervals. Pate v. Banks, 178 N. C. 139, 100 S. E. 251 (1919).

The legislature intended that the assessments as shown on the assessment rolls which the board of drainage commissioners is required to prepare immediately upon the sale of the bonds, become liens as they become due, affecting all of the lands on the assessment rolls, which relate to the entire district for the entire period over which the payment of the assessments is spread. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

Not Debt of Owner; Incumbrance.—"The lien of the charges for drainage is not a debt of the owner of the land therein, but is a charge solely upon the land and accrues, pari passu, with the benefits as they shall accrue thereafter. They are not liens until they successfully fall due, and are presumed to be paid out of the increased productiveness and other benefits as they accrue from time to time. These assessments are to be levied from time to time to pay, not the indebtedness of the owner of any tract, but to pay the bonded indebtedness of the district, in that they are exactly like bonds issued by the township, county or State for public benefits and which become liens on property in futuro only to the extent of the taxes falling due each year to pay the interest, and such part of the principal as may become due. One who purchases land in a township, county or State cannot complain that these successive tax liens will, from time to time, be collectible out of his realty. Whether he knew of the existence of such indebtedness or not makes no difference. They are not incumbrances within the sense of the warranty clause of a deed. The assessments in a drainage district to take the water off the land is simply an annual tax for that purpose." Pate v. Banks, 178 N. C. 139, 100 S. E. 251 (1919).

Liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N. C. 176, 141 S. E. 583 (1928).

Remedy for Collection Is Adequate.—It is provided by this section that drainage

assessments shall be collected in the same manner as taxes are collected, and such liens may be collected by sale of the land by the sheriff, with issue of certificates of sale, with right in the holder of the certificates to foreclose in due time; or by foreclosure of the lien in a suit instituted by the district or the holder of a tax deed or certificate, in the nature of an action to foreclose a mortgage, and this remedy for the collection of such assessments is adequate, and assessments collected are public funds although they are to be used soley for the purpose of paying principal and interest on drainage bonds. Wilkinson v. Boomer, 217 N. C. 217, 7 S. E. (2d) 491 (1940).

Provision Implementing Collection.—See § 156-109 and note.

A receiver cannot intervene, in a bank's action against the board, on the ground that he has the right, under this section to collect payments. See Board of Drainage Com'rs v. Lafayette Southside Bank, 27 F. (2d) 286 (1928).

Money from Assessments Is Like Public Money of County.—This and the following sections impress the moneys derived from the assessments as public money of the county, to be kept in the depository designated under the statute for such funds, although the funds in question are devoted to a particular or defined use. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Due Process of Law Not Denied.—The statute under which a drainage district is formed does not deny the district due process of law by providing for the collection and security of the assessments as other county taxes are collected, kept, etc. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Assessments Have Priority over Mortgages.—The assessments on lands for a bond issue have a prior lien to a mortgage executed thereon prior to the formation of said district. Drainage Commissioners v. Eastern Home, etc., Ass'n, 165 N. C. 697, 81 S. E. 947 (1914).

§ 156-106. Assessment not collectible out of other property of delinquent.—Only the land assessed in the drainage proceeding shall be liable for the drainage tax or assessment, and no other property of the landowner shall or may be sold for said drainage tax or assessment: Provided, that this section shall not apply to any drainage bond sold and delivered prior to March 7, 1927, or to any litigation pending at that time. (1919, c. 282, s. 2; C. S., s. 5362; 1927, c. 139.)

Local Modification.—Cumberland, Robeson: 1927, c. 139, s. 1½.

§ 156-107. Sheriff in good faith selling property for assessment not liable for irregularity.—The sheriff who executes upon property for the collection of drainage assessments under the provisions of this article shall not be liable either civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal. (1919, c. 282, s. 4; C. S., s. 5363.)

§ 156-108. Receipt books prepared.—The clerk of the superior court in each county where one or more drainage districts have been established shall be required to have prepared annually during the month of August a form of receipt, with appropriate stubs attached and properly bound, for the drainage assessments due on each tract of land as recited in the assessment rolls. This bound book of tax receipts or bills shall be indorsed "Drainage assessments of the (here give the name of the district) for the county of ....., delivered to the sheriff or tax collector as of the first Monday in September, 19.., for collection as required by law," and the same indorsement shall be printed at the top of each tax bill or blank receipt. Each tax bill or blank receipt shall contain a blank space for the name of the owner of the property, the amount of the annual drainage tax, the amount of maintenance tax, if any, and a receipt at the bottom of the same, followed by a blank line for the signature of the tax collector. This bound book of tax bills or receipts, with the blanks duly filled in, shall be delivered to the sheriff or tax collector on the first Monday of September of each year. The necessary cost of printing and binding such book of tax bills or receipts and the filling in of the same shall be a proper charge against such drainage district and shall be paid by the board of drainage commissioners. (1917, c. 152, s. 9; 1919, c. 208, s. 2; C. S., s. 5364.)

Stated in Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

§ 156-109. Receipt books where lands in two or more counties.—Where any drainage district which has been established contains lands located in a county or counties other than the county in which the district was established, the clerk of the superior court of the county in which the district was established shall have prepared annually during the month of August a form of tax bills or receipts, with appropriate stubs attached, covering all the lands in the drainage district located in such other county or counties, and in the form herein provided for the county in which the district has been established, and have the same substantially bound in book form. He shall also fill in the blanks of such tax receipts ready for the signature of the collector. On a page in such bound book after the tax bills or receipts there shall be appended an order directed to the sheriff or tax collector in the county in which such lands are located, which shall be in substantially the following form: State of North Carolina—County of ..... The Sheriff or Tax Collector of ..... County: This is to certify that the foregoing tax bills or blank receipts embrace the drainage assessments made on certain lands in the county of ....., which are located in and are a part of (here insert the name of the drainage district), which district was established in the county of ..... These assessments are due on the first Monday of September, 19.., and must be paid and collected within the time required by law. You will make monthly settlements of your collections with the treasurer of ..... County, being the county in which the district was established, and in all other respects you will discharge your duties as sheriff or tax collector as required by law. In witness whereof, I have hereunto set my hand and official seal, this ..... day of ....., 19.....

....., Clerk Superior Court ..... County.

Thereupon such drainage assessments in such county shall have the force and effect of a judgment upon the lands so assessed, as in the case of State and county taxes, and shall in all other respects be as valid assessments as those levied upon lands in the county in which the district was established. The auditor for drainage districts herein authorized shall also examine the records and accounts of the sheriff of such county. In the establishment and administration of the drainage districts the clerk of the superior court, the treasurer, and the chairman of the board of drainage commissioners shall have jurisdiction over the lands and the collection of drainage assessments in the county or counties other than the county in which the district was established to the same extent as in the county where such district was established: Provided, that in those counties which do not have a county treasurer, then the auditor provided for in this subchapter shall perform the duties required by this section for the county treasurer. (1917, c. 152, s. 11; C. S., s. 5365; 1963, c. 767, s. 4.)

Editor's Note.—Section 156-81.1, as enacted by Session Laws 1963, c. 767, s. 4, provides that all references in subchapter III of this chapter to "treasurer," "county treasurer" or "county auditor" are amended to refer exclusively to the treasurer appointed as provided in that section. Pursuant to § 156-81.1., the word "county" has been deleted preceding "treasurer" near the beginning of the third sentence of the last paragraph of this section. However, there was no practicable method of changing the proviso at the end of this section to give effect to § 156-81.1.

The first sentence of the second paragraph must be read in connection with the provisions of § 156-105 that "the assessments shall constitute a first and paramount lien, second only to State and county taxes upon the lands assessed for the payment of bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as State and county taxes are collected," and when so considered, it is clear that this section is not in conflict with § 156-105, but is intended to implement collection of the assessment by the sheriff. Nesbit v. Kafer, 222 N. C. 48, 21 S. E. (2d) 903 (1942).

§ 156-110. Authority to collect arrears.—If any sheriff or tax collector was authorized to collect drainage assessments in any year prior to 1917, and failed to collect any part of such drainage assessments, and is now out of office, or is still holding the office of sheriff or tax collector, then and in such event such sheriff or

tax collector, regardless of the expiration of his term of office, is hereby authorized and directed to proceed to the collection of such unpaid drainage assessments, and in default of payment being made, he is further authorized to make sales of such lands as may be in default at the times and in the manner authorized by law during the year one thousand nine hundred and seventeen, one thousand nine hundred and eighteen, or one thousand nine hundred and nineteen. (1917, c. 152, s. 9; C. S., s. 5366.)

§ **156-111. Sheriff to make monthly settlements; penalty.**—The sheriff or tax collector shall be required to make settlements with the treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of the interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a misdemeanor and, upon conviction, shall be subject to fine and imprisonment, in the discretion of the court, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S., s. 5367; 1963, c. 767, s. 4.)

Editor's Note.—The 1963 amendment deleted "county" preceding "treasurer" where it first appears in this section.

§ **156-112. Duty of treasurer to make payment; penalty.**—It shall be the duty of the treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The treasurer shall be guilty of a misdemeanor and subject, upon conviction, to fine and imprisonment, in the discretion of the court, if he shall willfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C. S., s. 5368; 1963, c. 767, s. 4.)

Editor's Note.—The 1963 amendment deleted "county" preceding "treasurer" at two places in this section.

Effect of Act Abolishing Office of County Treasurer.—Chapter 46, Public-Local Laws 1917, abolishes the office of county treasurer of Robeson County and substitutes therefor a depositary and financial agent, with provision that it shall perform the duties of treasurer in disbursement of the county funds. The act further provides that the sheriff, as such, or ex officio treasurer, shall turn over all moneys of the county to such depositary. It was held that moneys derived from assessments of a drainage district, being county funds, should be deposited, as the statute directs, with the depositary lawfully designated. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

§ **156-113. Fees for collection and disbursement.**—The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore prescribed shall be two per cent of the amount collected, and the fee allowed the treasurer for disbursing the revenue obtained from the sale of drainage bonds shall be one per cent of the amount disbursed: Provided, that no fee shall be allowed the sheriff or tax collector or treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised or paying off such bonds; provided, that where the sheriff, tax collector or treasurer is on a salary basis, the fees herein set out shall not be charged. (1911, c. 67, s. 13; C. S., s. 5369; 1925, c. 271, s. 1; 1957, c. 562; 1963, c. 767, s. 4.)

Local Modification.—Pitt: 1925, c. 271, s. 2.

Editor's Note.—The 1957 amendment added the second proviso.

The 1963 amendment deleted "county" before "treasurer" in the first proviso.

Construed with Other Sections.—The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors and their compensation therefor, being in pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Sheriff's Compensation Restricted.—The bringing forward of § 13, ch. 67, Public Laws 1911, in this section, providing that 2 per cent shall be allowed sheriffs "for collecting the drainage assessments as hereinbefore prescribed," is a legislative construction of the prior law, and was intended to restrict the compensation of the sheriff to 2 per cent of the amount of the assessments in drainage districts collected by him, and not to allow him a commission of 5 per cent as in case of taxes collected for general governmental purposes. Drainage Com'rs v. Davis, 182 N. C. 140, 108 S. E. 506 (1921).

Compensation of Treasurer.—This section, dealing with the compensation to be allowed the county treasurer for disbursing the revenue obtained from the sale of bonds of drainage district, provides but one compensation for all services. Drainage Com'rs v. Credle, 182 N. C. 442, 109 S. E. 88 (1921).

§ 156-114. Conveyance of land; change in assessment roll; procedure.—(a) Status of Land Fixed.—The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

(b) Conveyance before Final Report.—If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

(c) Conveyance after District Established.—After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall affect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of

drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

(d) Duty of Chairman of Drainage Commissioners and Clerk.—The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

(e) Failure of Chairman of Board to Act.—If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be willful, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

(f) When Owner May File Petition with Clerk.—If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition

to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

(g) Effect of Change in Assessment Roll.—No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

(h) Clerk to Prepare New Assessment Rolls.—It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

(i) Number of Copies.—In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records,

and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safekeeping and reference by him.

(j) Costs Determined.—As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

(k) Chairman Represents Board.—As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

(l) Application of Section.—The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C. S., s. 5370.)

§ 156-115. Warranty in deed runs to purchaser who pays assessment.—Where the land assessed by drainage commissioners under the provisions of this article has been purchased since the making of the assessment by a purchaser for value without notice under a deed of general warranty, and said purchaser pays to the sheriff the amount of said drainage assessment, which is a lien on the land purchased, then such purchaser who pays the said drainage assessment shall have a right of action against the warrantor of his title under the covenant of general warranty contained in his deed for the recovery of the amount paid. (1919, c. 282, s. 3; C. S., s. 5371.)

Section Does Not Refer to Future Assessments.—An assessment matured and due, under the decisions, would constitute "a lien on the land purchased," but this section does not refer to future assessments not due at the time the land was purchased. Branch v. Saunders, 195 N. C. 176, 141 S. E. 583 (1928).

Consequently, liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N. C. 176, 141 S. E. 583 (1928).

§ 156-116. Modification of assessments.—(a) Relevy.—Where the court has confirmed an assessment for the construction of any public levee, ditch, or drain, and such assessment has been modified by the court of superior jurisdiction, but for some unforeseen cause it cannot be collected, the board of drainage commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the superior court and to cover any deficit

that may have been caused by the order of court or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio on the lands benefited as the original assessment was made.

(b) Upon Sale of Land for Assessments.—If any person, or any number of persons, claiming to have title to any tract or tracts of land subject to assessment or drainage tax shall fail to pay any annual assessment levied against such lands, and the sheriff or tax collector shall be compelled to sell such lands under the law for the purpose of making such collection, the net proceeds of such sale shall be paid to the treasurer, to be held by him and disbursed for the purpose of paying the current assessment and future annual assessments so far as the proceeds may be sufficient. When the fund in the custody of the treasurer shall be exhausted in the payment of annual assessments against such lands, or there shall not be a sufficient sum to pay the next annual assessment, the treasurer shall immediately give written notice to that effect to the chairman of the board of drainage commissioners of the district, and also to the clerk of the superior court, whereupon the board of drainage commissioners shall institute an investigation of such tract or tracts of land to determine the market value, and if they shall find that the market value is not equal to all the future annual assessments to cover its share of installments of principal and interest on the outstanding bonds, they shall proceed, with the approval of the clerk of the superior court, to make new reassessment rolls on all the remaining lands in the district and increase the sum in sufficient sums to equal the deficit thereby created and such new assessment rolls shall constitute the future assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided in lieu of the former assessment rolls. However, the tract or tracts of land which have been so sold by the tax collector shall continue on the assessment roll in the name of the new owner, but reassessed upon the new basis, and the drainage tax collected at the same time and in the same manner as other lands as long as such lands may have sufficient market value out of which to collect the annual drainage tax, and when such lands shall cease to have such value, or shall be abandoned by the person claiming title thereto, the drainage commissioners may omit the same from the assessment roll with the approval of the clerk of the superior court, but such lands may in the same manner at any time in the future be restored to the assessment rolls.

(c) Surplus Funds.—If the funds in the hands of the treasurer at any time, arising under this section or in any other manner, shall be greater than is necessary to pay the annual installments of principal and interest, or the annual cost of maintenance of the drainage works, or both, such surplus shall be held by the treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

(d) Insufficient Funds.—If there shall be any impairment or destruction of the drainage works by any unforeseen cause or occurrence not anticipated, during the period of construction by the contractor, the contractor shall nevertheless repair and complete the works according to the contract and specifications and shall be liable therefor and also his sureties on his bond; but if the contractor shall make default and if there shall be a failure to collect all resulting damages from such contractor and the sureties upon his bond, and it shall thereby be necessary to raise a greater sum of money to complete the drainage works in accordance with the plans, or if for any other unavoidable cause it shall be necessary to raise a greater sum to complete such drainage works, the board of drainage commissioners, having first obtained the approval of the clerk of the superior court, shall prepare new assessment rolls upon all the lands in the district upon the original basis of classification of benefits and increase the same in sufficient sums to equal the deficit thereby created, and the same shall constitute the new assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided.

(e) Additional Bonds Issued.—If for any of the causes hereinbefore recited in this section, or for any other cause, a sum of money greater than the proceeds of

sale of the drainage bonds shall become necessary to complete the drainage system, and the board of drainage commissioners shall determine that the amount to be raised is greater than can be realized from the collection of one annual assessment upon the lands in the district without imposing an undue burden upon the lands, or if it is advisable or necessary to raise the money more expeditiously, then and under such conditions additional bonds may be issued in such aggregate sum as may be necessary.

(f) Manner of Issue.—The proceedings for the issue of such additional bonds shall be substantially as follows: The board of drainage commissioners shall file their petition with the clerk of the superior court, setting forth all the facts which require the expenditure of more money and the issue of additional bonds to complete the drainage system, which shall be accompanied by the recommendation of the drainage engineer who was one of the original viewers, or some other expert drainage engineer selected by the drainage commissioners; whereupon the court shall issue a notice to all the owners of land within the district reciting the substance of the petition and directing each to appear before the court on a day certain, not less than twenty days after the service upon all the parties, and to show cause, if any they have, why the additional bonds should not be authorized, which notice shall be served personally on each such landowner by reading the same, and by leaving a copy, and if the same cannot be personally served, then it shall be served in the manner authorized by law. Any landowner may file an answer denying any material allegation in the petition or setting forth any valid objection to same before the return day thereof.

Upon the day when the notice is returnable, or on such day as to which the same may have been continued, the court shall proceed to hear the petition and answers. If the court shall find that the allegations of the petition are true, and that the issue of additional bonds is advisable or necessary, the court shall make an appropriate order authorizing and directing the issue of such additional bonds, fixing the amount of such issue, the date of same, the time when the interest and principal shall be payable, and all other matters necessary and appropriate in the premises. Any landowner may appeal from the order of the clerk of the superior court, and on such appeal only the issues raised in the answer shall be considered, and such appeal and the further procedure thereon shall be as prescribed in special proceedings, except as modified by this subchapter.

After the court shall have ordered the additional issue of bonds, the further procedure as to the assessment rolls, the levying and collecting of the drainage taxes, the disbursement of the revenue therefrom for the payment of such bonds and interest thereon, and all further procedure shall be the same as required for the establishment of drainage districts. The additional bonds issued shall not exceed twenty-five per cent of the total amount originally issued. The additional issue of bonds shall bear six per cent interest per annum and may be made payable in ten annual installments, or in lesser number of annual installments as nearly equal as may be, as recommended by the board of drainage commissioners and approved by the court. (1909, c. 442, s. 35; 1911, c. 67, s. 15; C. S., s. 5372; 1963, c. 767, s. 4.)

Editor's Note.—The 1963 amendment deleted the word "county" preceding "treasurer" in the first and second sentences of subsection (b) and at two places in subsection (c).

Surplus Returned to Owners.—Where a drainage district of a county having assessed the property owners therein for improvements, and when having completed the same there is a surplus in the hands of the county treasurer, the board of drainage commissioners may, upon the exercise of a sound discretion, and in good faith, determine that the fund on hand is not necessary for further disbursements for the benefit of the district, according to the plan adopted, and distribute the same proportionately among those assessed in accordance with law especially when such owners have thereto agreed. Foil v. Board, 192 N. C. 652, 135 S. E. 781 (1926).

The disposition of funds of a drainage district is a matter of statutory regulation in North Carolina. In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

Public-Local Law Must Be Followed.—Where, under the provisions of a public-local law, a drainage district may lend its money derived from its assessments until

required for use in payment of the principal and interest on its bonds maturing serially for a period of 10 years, and the statute provides for a depository for these funds, the drainage commissioners may not contract with a different bank to deposit the funds there, in consideration of such bank buying at par a certain issue of such bonds that could not otherwise have been sold, except below par; nor could the transaction, contemplating a period of 10 years, be construed as a loan to the bank as authorized by the statute, and the transaction is void, regarded either as a deposit of the funds or a loan thereof. Com'rs v. Lewis, 174 N. C. 528, 94 S. E. 8 (1917).

Cited in Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

§ 156-117. Subdistricts formed.—Subdistricts may be formed by owners of land in main districts theretofore established in the manner provided for the organization of main districts. Such subdistricts shall have the right to use the ditches or canals of the main districts for outlets. The formation of subdistricts shall not operate to release the lands in any subdistrict from the payment of any assessment or levy made prior to the formation of such subdistricts, nor from any assessment which may thereafter be made for the completion and maintenance of the canals in main districts, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give the subdistrict any claim on the funds of such main district for its local use. It shall be the duty of the drainage commissioners of the main district to control all matters pertaining to the main district drainage. Drainage commissioners for the subdistricts shall have authority and control over all matters pertaining to drainage within their respective subdistricts, except such work as belongs exclusively to the main district. (1917, c. 152, s. 8; C. S., s. 5373.)

§§ 156-118 to 156-120: Repealed by Session Laws 1961, c. 614, s. 11.

§ 156-121. Redress to dissatisfied landowners.—Any one owning land which has been reclassified by the board of viewers who is dissatisfied with their classification shall have the same redress as has heretofore been provided where divisions of classification have been made by a petition to the clerk or otherwise. (1923, c. 231, s. 4; C. S., s. 5373(d).)

§ 156-122. Increase to extinguish debt.—If in the opinion of the board of drainage commissioners it would help the sale of the maintenance or improvement bonds, or they would deem it necessary under the provision of § 156-101, they may, with the approval of the clerk of the superior court, add to the amount estimated by the board of viewers a sufficient amount to pay off all outstanding obligations of the district, leaving this their only bond issue. (1923, c. 231, s. 5; C. S., s. 5373(e).)

§ 156-123. Proceedings as for original bond issue.—The compensation of the board of viewers and their assistants, together with all other expenses in connection with this bond issue, shall be paid in the same manner, the duties and power of the clerk, and the duties and power of the board of drainage commissioners, the bonds shall be advertised and sold, divided into such annual installments, bear such a rate of interest, the landowners shall be given the same notices and the same rights to pay cash, the contract shall be let and supervised, and contractor paid the same, as if this was the original bond issue. (1923, c. 231, s. 6; C. S., s. 5373(f).)

Cross Reference.—See Editor's Note under § 156-92.

§ 156-124. No drainage assessments for original object may be levied on property when once paid in full.—Whenever any assessment has been made or may be made by any drainage district formed under the laws of the State of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made. (1933, c. 504; 1935, c. 469, s. 5.)

Local Modification.—Mecklenburg: 1933, c. 504; 1935, c. 469.

Editor's Note.—The 1935 amendment reenacted this section without change.

This section does not apply to bonds issued prior to its effective date, or affect the right of the holders of such bonds under prescribed conditions to require the levying and collection of special assessments for the purpose of paying the bonds. Board of Com'rs v. Gaines, 221 N. C. 324, 20 S. E. (2d) 377 (1942).

Assessments to Pay Judgment Rendered Prior to Effective Date.—This section is held not to affect the liability of lands within a drainage district for additional assessments necessary to pay a judgment against the district, rendered prior to the effective date of this section, for improvements theretofore made by the district. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N. C. 577, 178 S. E. 228 (1935).

§ **156-124.1.:** Repealed by Session Laws 1961, c. 614, s. 11.

Article 9.

Adjustment of Delinquent Assessments.

§ **156-125. Adjustment by board of commissioners authorized.**—The board of commissioners of any drainage district may, in connection with the issuance of bonds for the purpose of refunding outstanding bonds of the district, and in addition to preparing a new assessment roll, for the payment of principal and interest of such refunding bonds, and when the bonds so refunded constitute all of the bonds of the district for which an assessment has been made against property therein, adjust the uncollected delinquent installments of the assessment made upon property in the district, for the payment of principal and interest of the bonds so refunded and for other purposes authorized by law before said bonds were refunded. The adjustment of such delinquent assessments may include reduction of the principal amount of the delinquent installments, not exceeding fifty per centum thereof, to which reduced installments shall be added interest computed thereon, at a rate not less than the rate of interest of the refunding bonds, from the date of delinquency of said installments to the date of the refunding bonds, and shall include any costs legally incurred for the collection of the same; the date of delinquency shall be deemed to be the first day of December following the date upon which each of said installments became due: Provided, however, all delinquent installments of such assessment shall be adjusted on the same basis and by the same method. (1935, c. 469, s. 1.)

§ **156-126. Extension of adjusted installments.**—Upon adjustment of delinquent installments of any assessment as provided herein, the payment of all delinquent installments so adjusted may be extended over a period not exceeding the life of the issue of refunding bonds, but in no event over a period exceeding twenty years. Such extension shall be made by the preparation of assessment rolls, which shall provide for the payment of installments so adjusted in equal annual installments which shall become due annually on September first, in accordance with the original assessment, and shall bear interest at the rate of four per centum per annum from December first following their due date until paid. Such assessment rolls shall be prepared and filed with the sheriff and the clerk of superior court and receipts shall be prepared and the same shall be collected in the same manner as other assessments of the district. (1935, c. 469, s. 2.)

§ **156-127. Special fund set up; distribution of collections.**—The collection of assessments adjusted under this article and of interest accrued under § 156-126 shall be set aside in a fund and shall be applied as follows: one-third of such collections may be used solely for operating and administrative expenses of the district, but the remaining two-thirds thereof shall be reserved as additional security for the payment of the refunding bonds, or for the purchase and retirement of such refunding bonds, at prices not exceeding par and accrued interest. (1935, c. 469, s. 3.)

§ **156-128. Approval of adjustments by Local Government Commission.**—Any adjustments of delinquent assessments under the provisions of this article shall be effective only upon approval of the Local Government Commission. (1935, c. 469, s. 4.)

§ 156-129. Amount of assessments limited; reassessments regulated.—The assessments made under this article shall in no instance, and against no piece of property, be greater in amount than that per cent which the per cent assessment authorized by this article bears to the unpaid original assessment upon each piece or tract of property within the district. In no instance, either under this article or any other law, shall any reassessment be made upon any piece of property for the purpose of providing money for the same purpose for which the original assessment was made, when the original assessment upon said property has been paid, or shall be paid prior to such general reassessment, nor to the extent that the original assessment has been paid. (1935, c. 469, s. 4(b).)

ARTICLE 10.

Report of Officers.

§ 156-130. Drainage commissioners to make statements.—It shall be the duty of the commissioners of all drainage districts in the State of North Carolina organized under the provisions of the laws thereof to file with the clerk of the superior court in the county where such district is organized a monthly statement or account during the course of construction of canals for the district, showing the receipts and expenditures of all funds coming into their hands belonging to such drainage district for the period of one month prior to the day on which the same is filed, and also to post a copy of such statement or account at the courthouse door in the county. After the construction of the canals has been concluded and the drainage commissioners have only to maintain the canals, said drainage commissioners shall only be required to file and post the annual statement required in § 156-131. Such statement or account shall be certified by the chairman of the board of commissioners of each drainage district and shall be attested by the secretary thereof, and a copy thereof shall be filed and kept as a part of the minutes of the district. (1917, c. 72, s. 1; C. S., s. 5374; 1927, c. 98, s. 6.)

Cross Reference.—As to this section not applying in case of special local act, see note to § 156-137.

Editor's Note.—The 1927 amendment provided that after construction of the canal, an annual report would be sufficient.

§ 156-131. Annual report.—At the end of each fiscal year the board of commissioners of all drainage districts in the State of North Carolina shall file with the clerk of the superior court in the county where the district is organized a verified itemized statement of receipts and expenditures of all funds belonging to the district during the fiscal year just closed. (1917, c. 72, s. 2; C. S., s. 5375; 1957, c. 1410, s. 2.)

Cross Reference.—As to this section not applying in case of special local act, see note to § 156-137.

Editor's Note.—The 1957 amendment deleted the former requirement for posting and publishing the report.

§ 156-132. Penalty for failure.—Any board of commissioners of any drainage district in the State, and each of the members thereof, which shall fail or refuse to file the statements or accounts, as provided in §§ 156-130 and 156-131, shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1917, c. 72, s. 3; C. S., s. 5376; 1957, c. 1410, s. 3.)

Editor's Note.—The 1957 amendment deleted the words relating to publishing and posting.

§ 156-133. Auditor appointed; duties; compensation.—The clerk of the superior court for the county where the district was organized, shall annually appoint an intelligent and competent person of sufficient experience, as auditor for each drainage district which levies current assessments or which has accumulated funds. The same person may be auditor of more than one drainage district. The auditor shall annually report to the court as to financial affairs of the drainage district. The

auditor may prepare all financial reports required by the drainage law to be made to the court by the commissioners of the drainage district. The compensation of the auditor shall be fixed by the said clerk of the superior court, and shall be paid out of the general, or operating, fund of the district. (1917, c. 152, s. 10; 1919, c. 208, s. 3; C. S., s. 5377; 1959, c. 420; 1963, c. 767, s. 11.)

Editor's Note.—The 1959 amendment increased the maximum compensation.

The 1963 amendment rewrote this section.

§ 156-134. Duties of the auditor.—The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a term of superior court in the county following the first Monday in July, and a copy to the solicitor of the judicial district in which the county is located, and it shall be the duty of such solicitor to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C. S., s. 5378; 1963, c. 767, s. 4.)

Editor's Note.—The 1963 amendment deleted "of the county" following "treasurer" near the beginning of the fourth paragraph and "county" preceding "treasurer" where it first appears in the last paragraph.

Article 11.

General Provisions.

§ 156-135. Construction of drainage law.—The provisions of this subchapter shall be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the

proceedings occurring prior to the order of the court confirming the final report of the viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this subchapter shall exclude all other remedies. (1909, c. 442, s. 37; C. S., s. 5379.)

Liberal Construction of Chapter.—The drainage laws apply to the whole State, and by the express provision of this section they should be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. Board v. Brett Engineering Co., 165 N. C. 37, 80 S. E. 897 (1914).

A Necessary Provision.—This provision that the collection of assessments shall not be defeated, etc., is absolutely necessary if the public are to be protected in their purchase of the bonds put upon the market. It is to be presumed that when the court has rendered such final judgment and the bonds are issued there will be no interference with the collection of the assessments to pay the bondholders, but that all controversies were thrashed out and settled before such final judgment. Banks v. Lane, 171 N. C. 505, 88 S. E. 754 (1916).

Formation of District Not Subject to Collateral Attack.—Board of Drainage Com'rs v. Lafayette Southside Bank, 27 F. (2d) 286 (1928).

§ 156-135.1. Investment of surplus funds.—Any drainage district organized under the provisions of subchapter III of chapter 156 of the General Statutes and the governing authority of same is hereby authorized and empowered to invest any surplus funds or any funds not needed for the immediate use of the district in United States bonds or any securities or type of investment in which guardians, executors, administrators and others acting in a fiduciary capacity are authorized to make investments by virtue of article 1 of chapter 36 of the General Statutes as amended. (1951, c. 1058, s. 1.)

Cited in In re Perquimans County Drainage District No. Four, 254 N. C. 155, 118 S. E. (2d) 431 (1961).

§ 156-136. Removal of officers.—Any engineer, viewer, superintendent of construction or other person appointed under this chapter may be removed by the court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown. (1909, c. 442, s. 38; C. S., s. 5380.)

§ 156-137. Local drainage laws not affected.—This subchapter shall not repeal or change any local drainage laws already enacted. (1909, c. 442, s. 38½; C. S., s. 5381.)

Special Local Act Not Affected.—Where a special local statute for the formation and operation of a drainage district is complete in itself in all its details, a general law expressing itself applicable to all such drainage districts in the State, adding further duties and making the failure of the commissioners to file certain reports an indictable offense, §§ 156-130, 156-131, will not be construed to apply unless special reference is made to the special local act. State v. Gettys, 181 N. C. 580, 107 S. E. 307 (1921).

§ 156-138. Punishment for violating law as to drainage districts.—If any person shall violate any of the provisions of law in reference to drainage districts as provided in this chapter, or shall leave any log, brush, trash, or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water or cut any tree so as to fall in a stream, or place any other obstruction in a stream in a drainage district, he shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1905, c. 541, ss. 7, 9; Rev., s. 3378; C. S., s. 5382.)

§ 156-138.1. Acquisition and disposition of lands; lease to or from federal or State government or agency thereof.—The district may acquire such lands as

may be necessary or convenient to enable it to accomplish the purposes for which the district was established. If the lands cannot be acquired by agreement as to the purchase price, then and in such event, the power of eminent domain is hereby conferred and the same may be condemned by the procedure set out in G. S. 156-67 and article 2, chapter 40 of the General Statutes. The land so acquired may be used in such manner and for such purposes as the commissioners of the district may deem best. If, in the opinion of the drainage commission of the district such lands should be sold, leased or rented, the board may do so, subject to the approval of the clerk of the superior court.

The commissioners of the district are hereby authorized and empowered, in their discretion, to convey or lease to the State or federal governments, or any of their agencies, with or without consideration, any properties, real or personal, belonging to said district, if in their opinion such is necessary to enable the district to receive State or federal funds available to it. The terms of such conveyance or lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established.

The commissioners of the district are authorized and empowered to lease from the State or federal governments such real or personal property as may be needed by the district to enable it to efficiently operate and maintain the district for the purposes for which it was established. The terms of such lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established. (1957, c. 539.)

§ **156-138.2. Meaning of "majority of resident landowners" and "owners of three fifths of land area."**—Wherever in this subchapter reference is made to a "majority of resident landowners" or "owners of three fifths of the land area," such reference shall be deemed to refer only to lands alleged in a petition or adjudged by the court to be benefited by the proposed construction work. (1959, c. 1312, s. 2.)

§ **156-138.3. Notice.**—Unless specifically required by the provisions of this subchapter, it is not necessary to give notice to any landowner of a motion made to, or order rendered by the clerk of the superior court or the judge of the superior court relating to the affairs of the district, financial or otherwise, except when an assessment is proposed to be made upon his land and then such notice shall be given as is required by the provisions of this subchapter. This provision for notice of assessment shall not apply to assessments for annual maintenance expenses, which are provided for in this subchapter, and specifically in article 7A and G. S. 156-92. (1961, c. 614, s. 3.)

SUBCHAPTER IV. DRAINAGE BY COUNTIES.

Article 12.

Protection of Public Health.

§ **156-139. Cleaning and draining of streams, etc., under supervision of governmental agencies.**—When the board of commissioners of any county subject to the provisions of this article shall, by resolution duly adopted, find as facts: (i) That the cleaning out and draining of any portion of any nonnavigable stream, creek or swamp area in such county is necessary and/or desirable to protect and promote the health of the citizens of such county, and (ii) that the agricultural benefits which the lands along such stream or area might receive from such cleaning out and draining would be so negligible as not to justify the levying of any special assessments against such lands on account thereof, it may order, provide for, and accomplish the cleaning out and draining of such portion of such stream, creek or swamp area by, through, and under the supervision and jurisdiction of, the health

department, or any sanitary committee, or any drainage commission, or other governmental agency or department of such county. (1943, c. 553, s. 1.)

Editor's Note.—For comment on this and the following two sections, see 21 N. C. Law Rev. 352.

§ **156-140. Tax levy.**—In order to carry out and accomplish the objects and purposes of this article, the board of commissioners of any such county may annually levy and collect a county-wide tax not exceeding two cents (2¢) upon each one hundred dollars ($100.00) in value of the taxable property in such county. (1943, c. 553, s. 2.)

§ **156-141. Article applicable to certain counties only.**—This article shall apply only to those counties which may have a population in excess of one hundred thousand persons. (1943, c. 553, s. 3.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

April 1, 1964

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of 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.

THOMAS WADE BRUTON

Attorney General of North Carolina