

THE GENERAL STATUTES OF NORTH CAROLINA

1975 CUMULATIVE SUPPLEMENT

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

UNDER THE DIRECTION OF

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

Volume 3D

**Place with Corresponding Volume of Main Set. This
Supersedes Previous Pocket Supplement, Which
May Be Retained for Reference Purposes.**

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THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.

1975

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Preface

This Cumulative Supplement to Replacement Volume 3D contains the general laws of a permanent nature enacted at the First and Second 1973 and the 1975 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein. At the First 1973 Session, the General Assembly enacted Session Laws 1973, Chapters 1 to 826. At the Second 1973 Session, which was held in 1974, the General Assembly enacted Session Laws 1973, Chapters 827 to 1482.

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

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1975 Cumulative Supplements thereto.

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

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

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

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the First and Second 1973 and 1975 Sessions of the General Assembly affecting Chapters 157 through 168 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports volumes 279 (p. 192)-288 (p. 121).
- North Carolina Court of Appeals Reports volumes 11 (p. 597)-26 (p. 535).
- Federal Reporter 2nd Series volumes 443 (p. 1217)-518 (p. 32).
- Federal Supplement volumes 328 (p. 225)-396 (p. 256).
- Federal Rules Decisions volumes 56 (p. 663)-67 (p. 193).
- United States Reports volumes 403 (p. 443)-419 (p. 984).
- Supreme Court Reporter volumes 91 (p. 1977)-95 (p. 2683).
- North Carolina Law Review volume 49 (pp. 592-1006).
- Wake Forest Intramural Law Review volumes 6 (p. 569)-7 (p. 697).
- Opinions of the Attorney General.

§ 157-1. Title of article.

Added in Session 1963-64, Chapter 11.

G.S. 1963-64, 1963-64, 1963-64, 1963-64.

§ 157-1. Notice, hearing and execution of authority; cancellation of certificate of incorporation. — Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to franchise by the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the court shall determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice at least 10 days preceding the day on which the hearing is to be held in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least 10 days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing and upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether coverage or needs inhabited dwelling accommodations exist in the city and said surrounding area, and;

(2) Whether there is a lack of adequate primary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether there are inadequate accommodations are needed or necessary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities

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VOLUME 3D

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Sec.

157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation.

Sec.

157-4.1. Alternative organization.
157-4.2. Authority budgeting and accounting systems as a part of city or county budgeting and accounting systems.
157-26. Tax exemptions.

ARTICLE 1.

Housing Authorities Law.

§ 157-1. Title of Article.

Applied in *Housing Authority v. Farabee*, 17 N.C. App. 431, 194 S.E.2d 553 (1973).

§ 157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation. — Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least 10 days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

- (1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or
- (2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities;

and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, not less than five nor more than nine commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

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

- (1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;
- (2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this Article;
- (3) The term of office of each of the commissioners;
- (4) The name which is proposed for the corporation; and
- (5) The location of the principal office of the proposed corporation.

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

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

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

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no

indebtedness has been incurred or property acquired by said housing authority. (1935, c. 456, s. 4; 1943, c. 636, s. 7; 1961, c. 987; 1971, c. 362, s. 1; c. 599.)

Editor's Note. —

This section is set out to correct an error in the replacement volume.

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

§ 157-4.1. Alternative organization.

(c) Where the governing body of any municipality has in its discretion, by resolution abolished a housing authority, pursuant to subsection (b) above, the governing body of such municipality may, at any time subsequent to the passage of a resolution abolishing a housing authority, or concurrently therewith, by the passage of a resolution adopted in accordance with the procedures and pursuant to the finding specified in G.S. 157-4.1, designate an existing redevelopment commission created pursuant to Article 37 of Chapter 160 of the General Statutes, to exercise the powers, duties, and responsibilities of a housing authority. Where the governing body of any municipality designates, pursuant to this subsection, an existing redevelopment commission created pursuant to Article 37 of Chapter 160 of the General Statutes to exercise the powers, duties, and responsibilities of a housing authority, on the day set in the resolution of the governing body passed pursuant to subsection (b) of this section, or pursuant to subsection (c) of this section:

- (1) The housing authority shall cease to exist as a body politic and corporate and as a public body;
- (2) All property, real and personal and mixed, belonging to the housing authority or to the municipality as hereinabove provided in subsections (a) or (b), shall vest in, belong to, and be the property of the existing redevelopment commission of the municipality;
- (3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the housing authority or in favor of the municipality as hereinabove provided in subsections (a) or (b), shall remain, vest in, and inure to the benefit of the existing redevelopment commission of the municipality;
- (4) All rentals, taxes, assessments, and any other funds, charges, or fees owing to the housing authority or owing to the municipality as hereinabove provided in subsections (a) or (b), shall be owed to and collected by the existing redevelopment commission of the municipality;
- (5) Any actions, suits, and proceedings pending against or having been instituted by the housing authority or the municipality, or to which the municipality has become a party as hereinabove provided in subsections (a) or (b), shall not be abated by such abolition but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the existing redevelopment commission of the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the housing authority or the municipality, and shall pay or cause to be paid any judgments rendered in such actions, suits, or proceedings, and no new processes need be served in such action, suit, or proceeding;
- (6) All obligations of the housing authority or the municipality as hereinabove provided in subsections (a) or (b), including outstanding indebtedness, shall be assumed by the existing redevelopment commission of the municipality; and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the existing redevelopment commission of the municipality;

- (7) All ordinances, rules, regulations, and policies of the housing authority or the municipality as hereinabove provided in subsections (a) or (b), shall continue in full force and effect until repealed and amended by the existing redevelopment commission of the municipality.

Editor's Note.—

Subsection (c) is set out to correct an error in subdivision (3) in the replacement volume.

As the other subsections were not affected, they are not set out.

§ 157-4.2. Authority budgeting and accounting systems as a part of city or county budgeting and accounting systems. — The council of a city or the board of commissioners of a county may by resolution provide that the budgeting and accounting systems of the city's or county's housing authority (or, if the city's redevelopment commission is exercising the powers, duties, and responsibilities of a housing authority, the budgeting and accounting systems of the redevelopment commission) shall be an integral part of the budgeting and accounting systems of the city or county. If such a resolution is adopted:

- (1) For purposes of the Local Government Budget and Fiscal Control Act, the authority (or commission) shall not be considered a "public authority," as that phrase is defined in G.S. 159-7(b), but rather shall be considered a department or agency of the city or county. The operations of the authority (or commission) shall be budgeted and accounted for as if the operations were those of a public enterprise of the city or county.
- (2) The budget of the authority (or commission) shall be prepared and submitted in the same manner and according to the same procedures as are the budgets of other departments and agencies of the city or county; and the budget ordinance of the city or county shall provide for the operations of the authority (or commission).
- (3) The budget officer and finance officer of the city or county shall administer and control that portion of the city or county budget ordinance relating to the operations of the authority (or commission). (1971, c. 780, s. 37.1; 1973, c. 474, s. 29.)

Editor's Note. — Session Laws 1973, c. 474, section, numbered 37.1. The section added to the 1971 act by the 1973 act enacted § 157-4.2, above. The 1971 act became effective July 1, 1973.

§ 157-26. Tax exemptions. — The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority used for public purposes shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority heretofore or hereafter issued are declared to be issued for a public purpose and to be public instrumentalities and, together with the interest thereon, shall be exempt from taxes. (1935, c. 456, s. 26; 1953, c. 907; 1973, c. 695, s. 7.)

Editor's Note. —

The 1973 amendment, effective Jan. 1, 1974, inserted "used for public purposes" in the second sentence.

ARTICLE 2.

Municipal Cooperation and Aid.

§ 157-42. Conveyance, lease or agreement in aid of housing project.

This Section Does Not Provide Authority to Municipalities to Use Tax or Nontax Money in Day-Care Centers and Federally Subsidized

Housing Projects. — See opinion of Attorney General to Dale Shepherd, 42 N.C.A.G. 135 (1972).

ARTICLE 1.

Local Development Act of 1972

§ 152-2: Repealed by Session Laws 1973, c. 398, s. 39, effective July 1, 1973.

§ 152-3: Repealed by Session Laws 1973, c. 401, s. 41, effective July 1, 1973.

§ 152-4: Repealed by Session Laws 1972, c. 303, s. 41, effective July 1, 1973.

§ 152-5: Repealed by Session Laws 1973, c. 399, s. 32, effective July 1, 1973.

§ 152-6: Repealed by Session Laws 1973, c. 401, s. 41, effective July 1, 1973.

§ 152-7: Repealed by Session Laws 1973, c. 401, s. 41, effective July 1, 1973.

§ 152-7.1. Local development. — Each county and city in this State is authorized to make appropriations for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants, or for such city or to the county, spending for the building of railroad or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by levy of property taxes pursuant to G.S. 152A-149 and 152A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1972, c. 371, s. 37.)

Editor's Note. — Session Laws 1973, c. 398, s. 39, effective July 1, 1973.

§ 152-7.2. Accounting for expenditures. — In the event funds appropriated for the purposes of this Article are turned over to any agency or organization other than the county or city for expenditure, no such expenditure shall be made until the county or city has approved the same, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated. (1972, c. 371, s. 38.)

Editor's Note. — Session Laws 1973, c. 398, s. 39, effective July 1, 1973.

Chapter 157A.

Historic Properties Commissions.

§§ 157A-1 to 157A-13: Transferred to §§ 160A-399.1 to 160A-399.13 by Session Laws 1973, c. 426, s. 62.

- (1) For purposes of this chapter, the term "authority" shall mean any person or persons, including an individual, a partnership, a corporation, a joint venture, or a trust, that is engaged in the operation of a business or enterprise, whether or not the operation of such business or enterprise is a public use, and whether or not the operation of such business or enterprise is a public use, and whether or not the operation of such business or enterprise is a public use, and whether or not the operation of such business or enterprise is a public use.
- (2) The budget of the authority for the fiscal year shall be prepared and submitted to the governing body of the city or county in which the authority is located, and the budget or estimate of the authority for the fiscal year shall be approved by the governing body of the city or county.
- (3) The budget officer and chief financial officer of the city or county shall review the budget of the authority for the fiscal year and shall certify to the governing body of the city or county the budget of the authority for the fiscal year.

Editor's Note: — Section 157A-13, as amended by Session Law 1973, c. 426, s. 62, is hereby repealed. The repeal of this section is effective on the date of the publication of this code.

§ 157-24. Tax exemptions. — The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority used for public purposes shall be exempt from all local and municipal taxes and for the purposes of such tax exemption it is hereby declared as a matter of legislative determination that an authority is not shall be deemed to be a partnership, corporation, trust, estate, association, or other entity of individuals or an individual, partnership, or association, and shall be deemed to be exempt from taxes and fees which are levied on individuals and partnerships and associations, and, in addition, shall be exempt from taxes and fees which are levied on individuals and partnerships and associations.

Editor's Note: — The 1973 amendments, effective July 1, 1974, created "local public purposes" in the amendments.

Chapter 158.

Local Development.

Article 1.

Local Development Act of 1925.

Sec.

158-3 to 158-7. [Repealed.]

158-7.1. Local development.

158-7.2. Accounting for expenditures.

Article 2.

Economic Development Commissions.

Sec.

158-12. Fiscal affairs generally; appropriations.

ARTICLE 1.

Local Development Act of 1925.

§ 158-3: Repealed by Session Laws 1973, c. 803, s. 39, effective July 1, 1973.

§ 158-4: Repealed by Session Laws 1973, c. 803, s. 40, effective July 1, 1973.

§ 158-5: Repealed by Session Laws 1973, c. 803, s. 41, effective July 1, 1973.

§ 158-6: Repealed by Session Laws 1973, c. 803, s. 42, effective July 1, 1973.

§ 158-7: Repealed by Session Laws 1973, c. 803, s. 43, effective July 1, 1973.

§ 158-7.1. **Local development.** — Each county and city in this State is authorized to make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1973, c. 803, s. 37.)

Editor's Note. — Session Laws 1973, c. 803, s. 48, makes the act effective July 1, 1973.

§ 158-7.2. **Accounting for expenditures.** — In the event funds appropriated for the purposes of this Article are turned over to any agency or organization other than the county or city for expenditure, no such expenditure shall be made until the county or city has approved the same, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated. (1973, c. 803, s. 38.)

Editor's Note. — Session Laws 1973, c. 803, s. 48, makes the act effective July 1, 1973.

ARTICLE 2.

Economic Development Commissions.

§ 158-8. Creation of municipal county or regional commissions authorized; composition; joining or withdrawing from regional commissions.

Local Modification. — Cherokee, Graham, Jackson and Swain; 1973, c. 1406.

§ 158-12. Fiscal affairs generally; 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.

Each municipality or county shall have authority to appropriate funds to any local or regional economic development commission which it may have created. These appropriations may be funded by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1961, c. 722, s. 2; 1973, c. 803, s. 44; c. 1446, s. 26.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, rewrote the second paragraph.

The first 1973 amendatory act also attempted to repeal the third paragraph of this section, but referred, through inadvertence, to § 148-12.

The second 1973 amendment deleted the former third paragraph, relating to budgets and audits of economic development commissions and authorizing governing bodies to impose additional requirements governing commissions' fiscal affairs.

Chapter 159.
Local Government Finance.

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Article 2.

Local Government Commission.

Sec.

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Article 3.

The Local Government Budget and Fiscal Control Act.

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Revision of Chapter. —

Session Laws 1973, c. 494, s. 47, adds to Session Laws 1971, c. 780, new ss. 40.1, 41.1, and 41.2, which read as follows:

"Sec. 40.1. This act does not invalidate or impair any bond order, bond ordinance, or bond resolution in effect on the effective date of this act, which bond order, ordinance, or resolution was adopted pursuant to any general law or special, private, or local act revised, superseded, or repealed by this act. Therefore, and in reliance on Art. V, § 4(6) of the Constitution of North Carolina, any bonds authorized by such a bond order, ordinance, or resolution, which bonds have not been issued nor advertised for sale by the effective date of this act, and any notes in anticipation of those bonds, may be issued on or

after July 1, 1973, in accordance with the terms of the bond order, ordinance, or resolution and the provisions of G.S. Chapter 159, Articles 7 and 9, as enacted by section 1 of this act.

"Sec. 41.1. If the governing board of a unit of local government or municipality as those terms are defined by G.S. Chapter 159, Subchapter IV, as enacted by section 1 of this act, has under consideration, on the effective date of this act, a bond order, bond ordinance, or bond resolution that has been introduced but not yet adopted, the governing board may adopt the bond order, ordinance, or resolution under the provisions of the law under which it was introduced, even though that law is otherwise repealed or superseded by this act. The bonds authorized by such an order, ordinance, or resolution and any

notes in anticipation of those bonds shall be issued pursuant to the provisions and procedures of G.S. Chapter 159, Articles 7 and 9, as enacted by section 1 of this act.

"Sec. 41.2. If the Local Government Commission has published notice of sale of bonds or bond anticipation notes prior to July 1, 1973, which bonds or notes are to be sold after July 1, 1973, or if bonds or bond anticipation notes have been sold prior to July 1, 1973, but will not be delivered until after July 1, 1973, the bonds or notes shall be sold and delivered, or delivered, as the case may be, in accordance with former G.S. Chapter 159, which is otherwise repealed by section 1 of this act."

Session Laws 1971, c. 780, s. 44, as amended by Session Laws 1973, c. 86, provides:

"Sec. 44. Except as provided in this section, this act becomes effective July 1, 1973. Units of local government and public authorities (as they are defined by G.S. 159-7(b), enacted by section 1 of this act) shall prepare their budgets for the fiscal year beginning July 1, 1973, in accordance with the provisions and procedures of the Local Government Budget and Fiscal Control Act (Subchapter III of G.S. Chapter 159), as enacted by section 1 of this act. However, units and public authorities shall adopt their budget ordinances for the fiscal year beginning July 1, 1973, no earlier than July 1, 1973, and no later than July 15, 1973."

SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

ARTICLE 2.

Local Government Commission.

§ 159-3. **Local Government Commission established.** — (a) The Local Government Commission consists of nine members. The State Treasurer, the State Auditor, the Secretary of State, and the Commissioner of Revenue each serve *ex officio*; the remaining five members are appointed to four-year terms as follows: three by the Governor, one by the Lieutenant Governor, and one by the Speaker of the House. Of the three members appointed by the Governor, one shall be or have been the mayor or a member of the governing board of a city and one shall be or have been a member of a county board of commissioners. The State Treasurer is chairman *ex officio* of the Local Government Commission. Membership on the Commission is an office that may be held concurrently with one other office, as permitted by G.S. 128-1.1.

(1973, c. 474, s. 2.)

Editor's Note. — The 1973 amendment rewrote subsection (a).

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

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. **Short title; definitions; local acts superseded.** — (a) This Article may be cited as "The Local Government Budget and Fiscal Control Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

- (1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.
- (2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

- (3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.
 - (4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, and to maintain sinking funds.
 - (5), (6) Repealed by Session Laws 1975, c. 514, s. 2.
 - (7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).
 - (8) "Fund" is an independent fiscal and accounting entity consisting of cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated by appropriate accounting techniques for the purpose of carrying on specific activities or attaining certain objectives in accordance with established legal regulations, restrictions, or limitations.
 - (9) Repealed by Session Laws 1975, c. 514, s. 2.
 - (10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the Executive Budget Act (G.S. 143-1 through 143-34.4) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the Executive Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
 - (11) Repealed by Session Laws 1975, c. 514, s. 2.
 - (12) "Sinking fund" means a fund held for the retirement of term bonds.
 - (13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of particular utility or public service enterprises.
 - (14) "Taxes" do not include special assessments.
 - (15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the Executive Budget Act (G.S. 143-1 through 143-34.4) and that has the power to levy taxes, and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.
- (c) It is the intent of the General Assembly by enactment of this Article to prescribe for local governments and public authorities a uniform system of budget adoption and administration and fiscal control. To this end and except as otherwise provided in this Article, all provisions of general laws, city charters, and local acts in effect as of July 1, 1973 and in conflict with the provisions of Part 1 or Part 3 of this Article are repealed. No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of Part 1 or Part 3 of this Article unless it expressly so provides by specific reference to the appropriate section. (1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1; 1973, c. 474, ss. 3, 4; 1975, c. 514, s. 2.)

Cross Reference. — As to preparation of budgets for the fiscal year beginning July 1, 1973, see the note catchlined "Revision of Chapter" at the beginning of this Chapter.

Editor's Note. — The 1973 amendment, in subsection (b), added "as prescribed in G.S. 159-8(b)" to the first sentence and deleted the second sentence in subdivision (7), deleted "pursuant to a budget or budget ordinance" following "accounting techniques" in subdivision (8), deleted "reserves" following "encumbrances" in

subdivision (9), deleted former subdivision (10), defining "nontax revenues," and renumbered former subdivisions (11) through (16) as (10) through (15), added to present subdivision (10) the language beginning "a local governmental authority," and deleted "independent" preceding "municipal corporations" at the end of the present subdivision (15). The amendment also added subsection (c).

The 1975 amendment repealed definitions in subsection (b) of "deferred revenues,"

“encumbrances,” “fund balance,” and “reserve.”

Session Laws 1975, c. 514, which amended this section and amended or added a number of other sections in this Article, provides, in s. 18, that the act shall become effective July 1, 1975, and that: “Units of local government and public authorities shall prepare their budgets for the fiscal year beginning July 1, 1976, in accordance with the Local Government Budget and Fiscal Control Act, as amended by this act. As to budget ordinances for the fiscal year beginning July 1, 1975, units of local government and public authorities may comply with the Local Government Budget and Fiscal Control Act as amended by this act, or, alternatively, may comply with the Local Government Budget and Fiscal Control Act as it existed on January 1, 1975, and to that end the provisions thereof shall remain effective until July 1, 1976.”

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 12, effective July 1, 1976, will add a new subsection (d), reading as follows:

§ 159-8. Annual balanced budget ordinance. — (a) Each local government and public authority shall operate under an annual balanced budget ordinance adopted and administered in accordance with this Article. A budget ordinance is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. Appropriated fund balance in any fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues, as those figures stand at the close of the fiscal year next preceding the budget year. It is the intent of this Article that, except for moneys expended pursuant to a project ordinance or accounted for in an intragovernmental service fund or a trust and agency fund excluded from the budget ordinance under G.S. 159-13(a), all moneys received and expended by a local government or public authority should be included in the budget ordinance. Therefore, notwithstanding any other provision of law, no local government or public authority may expend any moneys, regardless of their source (including moneys derived from bond proceeds, federal, state, or private grants or loans, or special assessments), except in accordance with a budget ordinance or project ordinance adopted under this Article or through an intragovernmental service fund or trust and agency fund properly excluded from the budget ordinance.

(b) The budget ordinance of a unit of local government shall cover a fiscal year beginning July 1 and ending June 30. The budget ordinance of a public authority shall cover a fiscal year beginning July 1 and ending June 30, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the authority's financial operations, may enter an order permitting an authority to operate under a fiscal year other than from July 1 to June 30. If the Commission does permit an authority to operate under an altered fiscal year, the Commission's order shall also modify the budget calendar set forth in G.S. 159-10 through G.S. 159-13 so as to correspond with the altered fiscal year. (1971, c. 780, s. 1; 1973, c. 474, s. 5; 1975, c. 514, s. 3.)

“(d) Except as expressly provided herein, this Article does not apply to school administrative units. The adoption and administration of budgets for the public school system and the management of the fiscal affairs of school administrative units are governed by the School Budget and Fiscal Control Act, Chapter 115, Article 9. However, this Article and the School Budget and Fiscal Control Act shall be construed together to the end that the administration of the fiscal affairs of counties and school administrative units may be most effectively and efficiently administered.”

Session Laws 1975, c. 437, s. 18(a) contains a severability clause, and s. 18(b) provides that the act shall apply to pending litigation where such application is feasible and would not work an injustice.

A Single-County Mental Health Program Is a Public Authority. — See opinion of Attorney General to Mr. Harlan E. Boyles, Local Government Commission, 44 N.C.A.G. 185 (1974).

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

As to the effective date of the amendment, see the Editor's note under § 159-7.

The 1975 amendment rewrote subsection (a).

§ 159-9. Budget officer. — Each local government and public authority shall appoint a budget officer to serve at the will of the governing board. In counties or cities having the manager form of government, the county or city manager shall be the budget officer. Counties not having the manager form of government may impose the duties of budget officer upon the county finance officer or any other county officer or employee except the sheriff, or in counties having a population of more than 7,500, the register of deeds. Cities not having the manager form of government may impose the duties of budget officer on any city officer or employee, including the mayor if he agrees to undertake them. A public authority or special district may impose the duties of budget officer on the chairman or any member of its governing board or any other officer or employee. (1971, c. 780, s. 1; 1973, c. 474, s. 6.)

Editor's Note. — The 1973 amendment substituted "serve" for "hold office" in the first sentence.

§ 159-11. Preparation and submission of budget and budget message.

(d) The budget officer shall include in the budget a proposed financial plan for each intragovernmental service fund, as required by G.S. 159-13.1, and information concerning capital projects authorized or to be authorized by project ordinances, as required by G.S. 159-13.2. (1927, c. 146, s. 6; 1955, cc. 698, 724; 1969, c. 976, s. 1; 1971, c. 780, s. 1; 1975, c. 514, s. 4.)

Editor's Note. — The 1975 amendment added subsection (d). As to the effective date of the amendment, see the Editor's note under § 159-7.

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

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing. — (a) Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the governing board shall adopt a budget ordinance making appropriations and levying taxes for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget ordinance shall authorize all financial transactions of the local government or public authority except

- (1) Those authorized by a project ordinance,
- (2) Those accounted for in an intragovernmental service fund for which a financial plan is prepared and approved, and
- (3) Those accounted for in a trust or agency fund established to account for moneys held by the local government or public authority as an agent or common-law trustee or to account for a retirement, pension, or similar employee benefit system.

The budget ordinance may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source.

(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

- (1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.
- (2) The full amount of any deficit in each fund shall be appropriated.
- (3) A contingency appropriation shall not exceed five percent (5%) of the total of all other appropriations in the same fund, except there is no limit on contingency appropriations for public assistance programs required by Chapter 108. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the governing board, which resolution shall be deemed an amendment to the budget ordinance setting up an appropriation for the object of expenditure authorized. The governing board may authorize the budget officer to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditures shall be reported to the board at its next regular meeting and recorded in the minutes.
- (4) No appropriation may be made that would require the levy of a tax in excess of any constitutional or statutory limitation, or expenditures of revenues for purposes not permitted by law.
- (5) The total of all appropriations for purposes which require voter approval for expenditure of property tax funds under Article V, Sec. 2(5), of the Constitution shall not exceed the total of all estimated revenues other than the property tax (not including such revenues required by law to be spent for specific purposes) and property taxes levied for such purposes pursuant to a vote of the people.
- (6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal year.
- (7) Amounts to be realized from collection of taxes levied in prior fiscal years shall be included in estimated revenues.
- (8) Repealed by Session Laws 1975, c. 514, s. 6.
- (9) No appropriation may be made from funds established pursuant to Chapter 115 of the General Statutes to any other fund except to a capital reserve fund account for school purposes or to the debt service fund for servicing school-related debt.
- (10) Appropriations made to another fund from a fund established to account for property taxes levied pursuant to a vote of the people may not exceed the amount of revenues other than the property tax available to the fund, except for appropriations from such a fund to an appropriate account in a capital reserve fund.
- (11) Repealed by Session Laws 1975, c. 514, s. 6.
- (12) No appropriation may be made from a public assistance fund or a separate category of expenditure maintained in accordance with Chapter 108 to any other fund or category of expenditure, as the case may be, except in accordance with G.S. 108-57.
- (13) No appropriation of the proceeds of a bond issue may be made from the capital project fund account established to account for the proceeds of the bond issue except (i) for the purpose for which the bonds were issued, (ii) to the appropriate debt service fund, or (iii) to an account within a capital reserve fund consistent with the purposes for which the bonds were issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than bond proceeds available to the account.
- (14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or

exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes.

- (15) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.
- (16) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues, as those figures stand at the close of the fiscal year next preceding the budget year.
- (17) No appropriations may be made from a county reappraisal reserve fund except for the purposes for which the fund was established.
- (18) No appropriation may be made from a service district fund to any other fund except (i) to the appropriate debt service fund or (ii) to an appropriate account in a capital reserve fund unless the district has been abolished.

Notwithstanding subdivisions (9), (10), (11), (12), (14), (17), or (18) of this subsection, any fund may contain an appropriation to another fund to cover the cost of (i) levying and collecting the taxes and other revenues allocated to the fund, and (ii) building maintenance and other general overhead and administrative expenses properly allocable to functions or activities financed from the fund.

(1973, c. 474, ss. 7-9; c. 489, s. 3; 1975, c. 514, ss. 5, 6.)

Editor's Note. — The first 1973 amendment, in subsection (a), substituted "10" for "20" in the first sentence and "each of the following funds applicable to the unit or public authority" for "at least the following funds" in the second sentence of the introductory paragraph, substituted the language beginning "G.S. Chapter 115" for "Chapters 115 and 115A of the General Statutes" at the end of subdivision (3), substituted "established pursuant to G.S. Chapter 108" for "required by Chapter 108 of the General Statutes" at the end of subdivision (4), substituted "or" for "and" following "owned" and added "or public authority" in the first sentence of subdivision (6), substituted "to account for the proceeds of" for "for" near the beginning of the first sentence and added the second sentence in subdivision (7), inserted "or public authority" and "or special assessments" in subdivision (8) and added subdivision (9). In subsection (b), the amendment substituted "Chapter 115" for "Chapters 115 and 115A" in subdivision (9), added the language beginning "except for appropriations" at the end of subdivision (10), substituted "function" for "exist or to levy taxes" at the end of subdivision (11), rewrote subdivision (12), inserted "of the proceeds of a bond issue" and "account" and substituted "the" for "a" preceding "bond issue except" in the first sentence and added the second sentence of subdivision (13), rewrote subdivision (14), added subdivisions (15), (16), and (17) and inserted the references to subdivisions (17) and (18) in the last paragraph of the subsection.

The second 1973 amendment added subdivision (10) of subsection (a) and subdivision (18) of subsection (b).

Session Laws 1975, c. 514, ratified June 10, 1975, rewrote subsection (a) to read as set out above, and, in subsection (b), rewrote the first sentence of subdivision (3), rewrote subdivision (5), added the second sentence in subdivision (16), and repealed subdivision (8), dealing with estimates of revenues other than the property tax, and subdivision (11), restricting appropriations from funds established to account for taxes collected on behalf of special districts. As to the effective date of Session Laws 1975, c. 514, see the Editor's note under § 159-7.

This section was also amended by Session Laws 1975, c. 437, ss. 13 and 14, ratified May 29, 1975, and effective July 1, 1976. It is possible that c. 514, having the later ratification date, might be held to supersede c. 437, or that c. 437, having the later effective date, might be held to supersede c. 514. The amendments in c. 437 are set out in the note below.

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

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, ss. 13, 14, effective July 1, 1976, amends subsections (a) and (b)(11). Subsection (a) as amended by Session Laws 1975, c. 437, s. 13, reads as follows:

“(a) Not earlier than 10 days after the budget is presented to the board and not later than July 1, the governing board shall adopt a budget ordinance making appropriations and levying taxes for the budget year in such sums as the board may deem sufficient and proper, whether greater or less than the sums recommended in the budget. The budget ordinance may be in any form that the board deems most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall be so organized that the accounting system will show appropriations and revenues by line items within each of the following funds applicable to the unit or public authority:

- (1) General fund.
- (2) Debt service fund.
- (3) Repealed by Session Laws 1975, c. 437, s. 13, effective July 1, 1976.
- (4) Public assistance funds established pursuant to Chapter 108.
- (5) A fund for each function or activity financed in whole or in part by property taxes voted by the people pursuant to Article V, Sec. 2(5) of the Constitution.
- (6) A fund for each utility or other public service enterprise owned or operated by the unit or public authority. When a water system and a sanitary sewer system are operated as a consolidated system, one fund may be established and maintained for the consolidated system.
- (7) A capital project fund to account for the proceeds of each bond order and for all other resources used for the capital projects financed by the bond proceeds. A unit or public authority may account for two or more bond orders in one capital project fund, but the proceeds of

each such bond order and the other revenues associated with that bond order shall be separately accounted for in the fund.

- (8) A fund for each special district, school administrative unit, or public authority whose taxes or special assessments are collected by the unit.
- (9) A reappraisal reserve fund, as required by G.S. 153-150.
- (10) A fund for each service district established pursuant to the County Service District Act or the Municipal Service District Act to account for the proceeds of taxes levied for the district and all other revenues allocated to the district.

The board may establish any other funds it deems advisable.

“Portions of the budget ordinance applicable to community colleges and technical institutes shall be organized as provided in Chapter 115A of the General Statutes.”

Subdivision (11) of subsection (b) as rewritten by Session Laws 1975, c. 437, s. 14, reads as follows:

“(11) Appropriations made to a school administrative unit by a county may not be reduced after the budget ordinance is adopted, unless the board of education of the administrative unit agrees by resolution to a reduction, or unless a general reduction in county expenditures is required because of prevailing economic conditions.”

Session Laws 1975, c. 437, s. 18(a) contains a severability clause, and s. 18(b) provides that the act shall apply to pending litigation where such application is feasible and would not work an injustice.

§ 159-13.1. Financial plan for intragovernmental service funds. — (a) If a local government or public authority establishes and operates one or more intragovernmental service funds, it need not include such a fund in its budget ordinance. However, at the same time it adopts the budget ordinance, the governing board shall approve a balanced financial plan for each intragovernmental service fund. A financial plan is balanced when estimated expenditures do not exceed estimated revenues.

(b) The budget officer shall include in the budget he submits to the board, pursuant to G.S. 159-11, a proposed financial plan for each intragovernmental service fund to be operated during the budget year by the local government or public authority. The proposed financial plan shall be in such form and detail as prescribed by the budget officer or governing board.

(c) The approved financial plan shall be entered in the minutes of the governing board, as shall each amendment to the plan approved by the board. Within five days after approval, copies of the plan and copies of each amendment thereto shall be filed with the finance officer, the budget officer, and the clerk to the governing board.

(d) Any change in a financial plan must be approved by the governing board. (1975, c. 514, s. 7.)

§ 159-13.2. Capital project ordinances. — (a) **Capital Project Defined.** — In this section “capital project” means a project financed in whole or in part by the proceeds of bonds or notes or a project involving the construction or acquisition of a capital asset.

(b) **Alternative Budget Methods.** — A local government or public authority may, in its discretion, authorize and budget for a capital project either in its annual budget ordinance or in a project ordinance adopted pursuant to this section. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year. A bond order does not constitute a project ordinance.

(c) **Adoption of Project Ordinances.** — If a local government or public authority intends to authorize a capital project by a project ordinance, it shall not commence the project until it has adopted a balanced project ordinance. A project ordinance is balanced when revenues available for the project equal appropriations for the project. Such an ordinance shall identify and authorize the capital project to be undertaken, identify the revenues that will finance the project, and make the appropriations necessary for the project. The governing board may amend a project ordinance at any time subsequent to the ordinance’s adoption, as long as it remains balanced.

(d) **Ordinance Filed.** — Each project ordinance shall be entered in the minutes of the governing board. Within five days after adoption, copies of the ordinance shall be filed with the finance officer, the budget officer, and the clerk to the governing board.

(e) **Inclusion of Project Information in Budget.** — Each year the budget officer shall include in the budget information in such detail as he or the governing board may require concerning capital projects (i) expected to be authorized by project ordinances during the budget year and (ii) authorized by previously adopted project ordinances, under which expenditures are expected to be made during the budget year. (1975, c. 514, s. 8.)

Editor’s Note. — As to the effective date of this section, see the Editor’s note under § 159-7.

§ 159-14. Trust and agency funds; budgets of special districts. — (a) **Budgets of Special Districts.** — If the tax-levying power of a special district is by law exercised on its behalf by a county or city, and if the county or city governing board is vested by law with discretion as to what rate of tax it will levy on behalf of the special district, the governing board of the special district shall transmit to the governing board of the county or city on or before June 1 a request to levy taxes on its behalf for the budget year at a stated rate. The county or city governing board shall then determine what rate of tax it will approve, and shall so notify the district governing board not later than June 15. Failure of the county or city governing board to act on the district’s request on or before June 15 and to so notify the district governing board by that date shall be deemed approval of the full rate requested by the district governing board. Upon receiving notification from the county or city governing board as to what rate of tax will be approved or after June 15 if no such notification is received, the district governing board shall complete its budget deliberations and shall adopt its budget ordinance.

If the tax-levying power of a special district is by law exercised on its behalf by a county or city, and if the county or city governing board has no discretion as to what rate of tax it will levy on behalf of the special district, the governing board of the district shall notify the city or county by June 15 of the rate of tax it wishes to have levied. If the district does not notify the county or city governing board on or before June 15 of the rate of tax it wishes to have levied, the county or city is not required to levy a tax for the district for the fiscal year.

If the taxes of a special district are collected on its behalf by a county or city, and if the county or city governing board has no power to approve the district tax levy, the district governing board shall adopt its budget ordinance not later than July 1 and on or before July 15 shall notify the county or city collecting its taxes of the rate of tax it has levied. If the district does not notify the county or city governing board on or before July 15 of the rate of tax it has levied, the county or city is not required to collect the district's taxes for the fiscal year.

(b) Transfers from Certain Trust and Agency Funds. — Except for transfers to the appropriate special district or public authority, a unit of local government may not transfer moneys from a fund established to account for taxes collected on behalf of a special district or from a fund established to account for special assessments collected on behalf of a public authority unless the special district or public authority has ceased to function. (1971, c. 780, s. 1; 1973, c. 474, ss. 10, 11; 1975, c. 514, s. 9.)

Editor's Note. — The 1973 amendment inserted "on or after June 15 if no such notification is received" in the last sentence of the first paragraph and added the second paragraph.

The 1975 amendment designated the former provisions of this section as subsection (a) and added subsection (b). As to the effective date of the 1975 amendment, see the Editor's note under § 159-7.

§ 159-15. Amendments to the budget ordinance. — Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes. (1927, c. 146, s. 13; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 12.)

Editor's Note. — The 1973 amendment substituted "the ordinance's" for "its" and added the language beginning "so long as the

ordinance" in the first sentence and inserted "property" in two places in the second sentence of the first paragraph.

§ 159-17. Ordinance procedures not applicable to budget adoption. — Notwithstanding the provisions of any city charter, general law, or local act:

- (1) Any action with respect to the adoption or amendment of the budget ordinance may be taken at any regular or special meeting of the governing board by a simple majority of those present and voting, a quorum being present;
- (2) No action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article;
- (3) The adoption and amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the governing board and ending with the adoption of the budget ordinance, the governing

board may hold any special meetings that may be necessary to complete its work on the budget ordinance. Any provisions of law concerning the call of special meetings do not apply during that period so long as (i) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up. This section does not allow the holding of closed meetings or executive sessions by any governing board otherwise prohibited by law from holding such a meeting or session, and may not be construed to do so.

No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this section unless it expressly so provides by specific reference to this section. (1971, c. 780, s. 1; 1973, c. 474, s. 13.)

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

Part 2. Capital Reserve Funds.

§ 159-19. Amendments. — The resolution or ordinance may be amended from time to time in the same manner in which it was adopted. Amendments may, among other provisions, authorize the use of moneys accumulated or to be accumulated in the fund for capital outlay purposes not originally stated. (1943, c. 593, s. 7; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 14.)

Editor's Note. — The 1973 amendment inserted "or ordinance" in the first sentence.

§ 159-20. Funding capital reserve funds. — Capital reserve funds may be funded by appropriations from any other fund consistent with the limitations imposed in G.S. 159-13(b). When moneys or investment securities, the use of which is restricted by law, come into a capital reserve fund, the identity of such moneys or investment securities shall be maintained by appropriate accounting entries. (1943, c. 593, s. 4; 1945, c. 464, s. 2; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 15.)

Editor's Note. — The 1973 amendment deleted "and transfer of moneys or investment securities" following "appropriations" in the first sentence.

§ 159-22. Withdrawals. — Withdrawals from a capital reserve fund may be authorized by resolution or ordinance of the governing board of the local government or public authority. No withdrawal may be authorized for any purpose not specified in the resolution or ordinance establishing the fund or in a resolution or ordinance amending it. The withdrawal resolution or ordinance shall authorize an appropriation from the capital reserve fund to an appropriate appropriation in one of the funds maintained pursuant to G.S. 159-13(a). No withdrawal may be made which would result in an appropriation for purposes for which an adequate balance of eligible moneys or investment securities is not then available in the capital reserve fund. (1943, c. 593, ss. 11, 16; 1945, c. 464, s. 2; 1949, c. 196, s. 3; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 16.)

Editor's Note. — The 1973 amendment inserted "or ordinance" in the first sentence, substituted "an appropriation" for "the disbursement of moneys" in the third sentence, deleted "of moneys or investment securities" following "appropriation" in the fourth sentence and deleted the former fifth sentence, relating to withdrawals from a capital reserve fund

account established for school purposes, and the former sixth sentence, relating to withdrawals from a capital reserve fund account established for public health or mental health purposes.

Part 3. Fiscal Control.

§ 159-24. Finance officer. — Each local government and public authority shall appoint a finance officer to hold office at the pleasure of the appointing board or official. The finance officer may be entitled “accountant,” “treasurer,” “finance director,” “finance officer,” or any other reasonably descriptive title. The duties of the finance officer may be imposed on the budget officer or any other officer or employee on whom the duties of budget officer may be imposed. (1971, c. 780, s. 1; 1973, c. 474, s. 17.)

Editor’s Note. — The 1973 amendment deleted “Except as hereinafter provided” at the beginning of the third sentence.

§ 159-25. Duties of finance officer; dual signatures on checks; internal control procedures subject to Commission regulation. — (a) The finance officer shall have the following powers and duties:

- (1) He shall keep the accounts of the local government or public authority in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.
- (2) He shall disburse all funds of the local government or public authority in strict compliance with this Chapter, the budget ordinance, and each project ordinance and shall preaudit obligations and disbursements as required by this Chapter.
- (3) As often as may be requested by the governing board or the manager, he shall prepare and file with the board a statement of the financial condition of the local government or public authority.
- (4) He shall receive and deposit all moneys accruing to the local government or public authority, or supervise the receipt and deposit of money by other duly authorized officers or employees.
- (5) He shall maintain all records concerning the bonded debt of the local government or public authority, determine the amount of money that will be required for debt service during each fiscal year, and maintain all sinking funds.
- (6) He shall supervise the investment of idle funds of the local government or public authority.
- (7) He shall perform such other duties as may be assigned to him by law, by the manager, budget officer, or governing board, or by rules and regulations of the Commission.

All references in other portions of the General Statutes, local acts, or city charters to county, city, special district, or public authority accountants, treasurers, or other officials performing any of the duties conferred by this section on the finance officer shall be deemed to refer to the finance officer.

(b) Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer and countersigned by another official of the local government or public authority designated for this purpose by the governing board. If the board makes no other designation, the chairman of the board or chief executive officer of the local government or public authority shall countersign these checks and drafts. The governing board of a unit or authority may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(c) The Local Government Commission has authority to issue rules and regulations having the force of law governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets by units of local government and public authorities, may inquire into and investigate the internal control procedures of a local government or public authority, and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public moneys. (1971, c. 780, s. 1; 1973, c. 474, ss. 18-20; 1975, c. 514, s. 10.)

Editor's Note. — The 1973 amendment substituted "accountants" for "accountant" in the last sentence of subsection (a), deleted, following "official depository" near the beginning of the first sentence of subsection (b), "and all other instruments or documents converting demand deposits, time deposits, investment securities, or other assets into cash, negotiable instruments, or any other form of deposit or investment," substituted "checks and drafts" for "instruments and documents" at the

end of the second sentence of subsection (b), added the third sentence of subsection (b) and inserted "having the force of law" near the beginning of subsection (c).

The 1975 amendment rewrote subdivision (2) of subsection (a) and inserted "or a properly designated deputy finance officer" in the first sentence of subsection (b). As to the effective date of the 1975 amendment, see the Editor's note under § 159-7.

§ 159-26. Accounting system. — (a) **System Required.** — Each local government or public authority shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget ordinance and each project ordinance as originally adopted and subsequently amended.

(b) **Funds Required.** — Each local government or public authority shall establish and maintain in its accounting system such of the following funds and ledgers as are applicable to it. The generic meaning of each type of fund or ledger listed below is that fixed by generally accepted accounting principles.

(1) **General fund.**

(2) **Special Revenue Funds.** — Such funds shall be established for each function or activity financed in whole or in part by property taxes voted by the people, for each service district established pursuant to the Municipal or County Service District Acts, and as required by Chapter 115.

(3) **Debt Service Funds.** — A unit may combine the school debt service fund required by Chapter 115 with the unit's general debt service fund.

(4) **A Fund for Each Utility or Enterprise Owned or Operated by the Unit or Public Authority.** — If a water system and a sanitary sewerage system are operated as a consolidated system, one fund may be established and maintained for the consolidated system.

(5) **Intragovernmental service funds.**

(6) **Capital Project Funds.** — Such a fund shall be established to account for the proceeds of each bond order and for all other resources used for the capital projects financed by the bond proceeds. A unit or public authority may account for two or more bond orders in one capital projects fund, but the proceeds of each such bond order and the other revenues associated with that bond order shall be separately accounted for in the fund.

(7) **Trust and agency funds,** including a fund for each special district or public authority whose taxes or special assessments are collected by the unit.

(8) **A ledger or group of accounts** in which to record the details relating to the general fixed assets of the unit or public authority.

- (9) A ledger or group of accounts in which to record the details relating to the general obligation bonds and notes and other long-term obligations of the unit.

In addition, each unit or public authority may establish and maintain any other funds it considers advisable and shall establish and maintain any other funds required by other statutes or by State or federal regulations.

(c) Basis of Accounting. — Except as otherwise provided by regulation of the Commission, local governments and public authorities shall use the modified accrual basis of accounting in recording transactions.

(d) Encumbrance Systems. — Except as otherwise provided in this subsection, no local government or public authority is required to record or show encumbrances in its accounting system. Each city or town with a population over 10,000 and each county with a population over 50,000 shall maintain an accounting system that records and shows the encumbrances outstanding against each category of expenditure appropriated in its budget ordinance. Any other local government or any public authority may record and show encumbrances in its accounting system. In determining a unit's population, the most recent federal decennial census shall be used.

(e) Commission Regulations. — The Commission may prescribe rules and regulations having the force of law as to:

- (1) Features of accounting systems to be maintained by local governments and public authorities.
- (2) Bases of accounting, including identifying in detail the characteristics of a modified accrual basis, identifying what revenues are susceptible to accrual, and permitting or requiring use of a basis other than modified accrual in a fund that does not account for the receipt of a tax.
- (3) Definitions of terms not clearly defined in this Article.

The Commission may vary these rules and regulations according to the size of the local government or public authority, or according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. (1971, c. 780, s. 1; 1975, c. 514, s. 11.)

Editor's Note. — The 1975 amendment rewrote this section. As to the effective date of the amendment, see the Editor's note under § 159-7.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 514, s. 16, effective July 1, 1976, will amend subsection (b) to read as follows:

"(b) Funds Required. — Each local government or public authority shall establish and maintain in its accounting system such of the following funds and ledgers as are applicable to it. The generic meaning of each type of fund or ledger listed below is that fixed by generally accepted accounting principles.

- "(1) General fund.
- "(2) Special Revenue Funds. — Such funds shall be established for each function or activity financed in whole or in part by property taxes voted by the people, and for each service district established pursuant to the Municipal or County Service District Acts.
- "(3) Debt service funds.
- "(4) A Fund for Each Utility or Enterprise Owned or Operated by the Unit or

Public Authority. — If a water system and a sanitary sewerage system are operated as a consolidated system, one fund may be established and maintained for the consolidated system.

- "(5) Intragovernmental service funds.
- "(6) Capital Project Funds. — Such a fund shall be established to account for the proceeds of each bond order and for all other resources used for the capital projects financed by the bond proceeds. A unit or public authority may account for two or more bond orders in one capital projects fund, but the proceeds of each such bond order and the other revenues associated with that bond order shall be separately accounted for in the fund.
- "(7) Trust and agency funds, including a fund for each special district, public authority, or school administrative unit whose taxes or special assessments are collected by the unit.
- "(8) A ledger or group of accounts in which to record the details relating to the

general fixed assets of the unit or public authority.

“(9) A ledger or group of accounts in which to record the details relating to the general obligation bonds and notes and other long-term obligations of the unit.

In addition, each unit or public authority may establish and maintain any other funds it

considers advisable and shall establish and maintain any other funds required by other statutes or by State or federal regulations.”

Session Laws 1975, c. 514, s. 16, was made effective at the same time as the amendments made by Session Laws 1975, c. 437, to Chapter 115. Chapter 437 was made effective July 1, 1976.

§ 159-27. Distribution of tax collections among funds according to levy.

— (a) The finance officer shall distribute property tax collections among the appropriate funds, according to the budget ordinance, at least monthly.

(d) This section applies to taxes levied by a unit of local government on behalf of another unit, including school administrative units. (1971, c. 780, s. 1; 1973, c. 474, s. 21; 1975, c. 437, s. 15.)

Editor’s Note. — The 1973 amendment rewrote subsection (a).

The 1975 amendment added subsection (d).

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: “This act shall apply to pending

litigation where such application is feasible and would not work an injustice.”

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

§ 159-28. Budgetary accounting for appropriations. — (a) Incurring

Obligations. — No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

.....
(Signature of finance officer).”

Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(b) Disbursements. — When a bill, invoice, or other claim against a local government or public authority is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget ordinance or a capital project authorized by a project ordinance, the finance officer may approve the claim only if

- (1) He determines the amount to be payable and
- (2) The budget ordinance or a project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

The finance officer may approve a bill, invoice, or other claim requiring disbursement from an intragovernmental service fund or trust or agency fund not included in the budget ordinance, only if the amount claimed is determined to be payable. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the governing board. The finance officer shall establish procedures to assure compliance with this subsection.

(c) Governing Board Approval of Bills, Invoices, or Claims. — The governing board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local government or public authority that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget ordinance or in a project ordinance, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The governing board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(d) Payment. — A local government or public authority may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the governing board (or signed by the chairman or some other member of the board pursuant to subsection (c) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act.

.....
 (Signature of finance officer)."

Certificates in the form prescribed by G.S. 153-131 or 160-411.1 as those sections read on June 30, 1973, or by G.S. 159-28(a) as that section read on June 30, 1975, are sufficient until supplies in existence on June 30, 1975, are exhausted.

No certificate is required on payroll checks or drafts on an imprest account in an official depository, if the check or draft depositing the funds in the imprest account carried a signed certificate.

(e) Penalties. — If an officer or employee of a local government or public authority incurs an obligation or pays out or causes to be paid out any funds in violation of this section, he and the sureties on his official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, he and the sureties on his official bond are liable for any sums illegally committed or disbursed thereby. (1971, c. 780, s. 1; 1973, c. 474, ss. 22, 23; 1975, c. 514, s. 12.)

Editor's Note. — The 1973 amendment substituted "responsibility for administering the function or agency to which the expense is to be charged" for "duty of administering that portion

of the budget ordinance to which it is to be charged" in the first sentence and deleted "or bonds or notes duly authorized" following "appropriation duly made" in the form in the third sentence of the first paragraph of subsection (a). In subsection (b), the amendment deleted in the first sentence clauses relating to provision for payment of sums to fall due made by the sale of bonds or notes and provision for payment of sums to fall due made by binding

grants or loans or grant or loan commitments by a State or federal agency. The amendment also deleted, in the form in the second sentence of subsection (b) "bonds or notes duly authorized, or binding grants or loans or grant or loan commitments duly made" following "appropriation duly authorized."

The 1975 amendment rewrote this section. As to the effective date of the amendment, see the Editor's note under § 159-7.

§ 159-28.1. Facsimile signatures. — The governing board of a local government or public authority may provide by appropriate resolution or ordinance for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders. The board shall charge the finance officer or some other bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. (1975, c. 514, s. 13.)

Editor's Note. — As to the effective date of this section, see the Editor's note under § 159-7.

§ 159-29. Fidelity bonds. — (a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board, not less than ten thousand dollars (\$10,000) nor more than two hundred fifty thousand dollars (\$250,000). The premium on the bond shall be paid by the local government or public authority.

(b) Each officer, employee, or agent of a local government or public authority who handles or has in his custody more than one hundred dollars (\$100.00) of the unit's or public authority's funds at any time, or who handles or has access to the inventories of the unit or public authority, shall, before being entitled to assume his duties, give a faithful performance bond with sufficient sureties payable to the local government or public authority. The governing board shall determine the amount of the bond, and the unit or public authority may pay the premium on the bond. Each bond, when approved by the governing board, shall be deposited with the clerk to the board.

If another statute requires an officer, employee, or agent to be bonded, this subsection does not require an additional bond for that officer, employee, or agent.

(c) A local government or public authority may adopt a system of blanket faithful performance bonding as an alternative to individual bonds. If such a system is adopted, statutory requirements of individual bonds, except for elected officials and for finance officers and tax collectors by whatever title known, do not apply to an officer, employee, or agent covered by the blanket bond. However, although an individual bond is required for a tax collector or finance officer, such an officer may also be included within the coverage of a blanket bond if the blanket bond protects against risks not protected against by the individual bond. (1971, c. 780, s. 1; 1975, c. 514, s. 14.)

Editor's Note. — The 1975 amendment designated the existing provisions as subsection (a), substituted "two hundred fifty thousand dollars (\$250,000)" for "one hundred thousand

dollars (\$100,000)" in the first sentence of that subsection and added subsections (b) and (c). As to the effective date of the amendment, see the Editor's note under § 159-7.

§ 159-30. Investment of idle funds.

(b) Moneys may be deposited at interest in any bank or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Commission may approve. Investment deposits shall be secured as provided in G.S. 159-31(b).

(c) Moneys may be invested in the following classes of securities, and no others:

- (1) Obligations of the United States of America.
 - (2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.
 - (3) Obligations of the State of North Carolina.
 - (4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.
 - (5) Savings certificates, investment certificates, shares of or deposits in any savings and loan association organized under the laws of this State and savings certificates, investment certificates, shares of or deposits in any federal savings and loan association having its principal office in this State to the extent that the investment in such certificates, shares or deposits is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the State to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.
 - (6) Obligations maturing no later than 18 months after the date of purchase of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, the Banks for Cooperatives, and the Federal Land Banks.
 - (7) Any form of investment allowed by law to the State Treasurer.
- (1973, c. 474, ss. 24, 25; 1975, c. 481.)

Editor's Note. — The 1973 amendment substituted "certificates of deposit or such other forms of time deposit" for "time deposits, certificates of deposit, or such other form of deposit" in the first sentence of subsection (b). The amendment also transferred the phrase "maturing no later than 18 months after the date of purchase" from the end of subdivision (6) of subsection (c) to its present position near the beginning of the subdivision and deleted "and" preceding "the Federal National Mortgage Association" in the same subdivision.

The 1975 amendment inserted the provisions relating to savings certificates, investment certificates and deposits throughout subdivision (5) of subsection (c) and substituted "Administrator of the Savings and Loan Division of the State" for "Commissioner of Insurance of North Carolina" near the end of that subdivision.

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

§ 159-31. Selection of depository; deposits to be secured. — (a) The governing board of each local government and public authority shall designate as its official depositories one or more banks or trust companies in this State or, with the written permission of the secretary, a national bank located in another state. In addition, a unit or public authority, with the written permission of the secretary, may designate a state bank or trust company located in another state as an official depository for the purpose of acting as fiscal agent for the unit or public authority. The names and addresses of the depositories shall be reported to the secretary. It shall be unlawful for any public moneys to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 159-30(b).

(1973, c. 474, s. 26.)

Editor's Note. — The 1973 amendment added the second sentence of subsection (a).

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

§ 159-32. Daily deposits. — Except as otherwise provided by law, all taxes and other moneys collected or received by an officer or employee of a local government or public authority shall be deposited in accordance with this section. Each officer and employee of a local government or public authority whose duty it is to collect or receive any taxes or other moneys shall deposit his collections and receipts daily. If the governing board gives its approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer or employee collecting or receiving taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer or employee shall be audited at least annually. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 27.)

Editor's Note. — The 1973 amendment added the first sentence, rewrote the former third sentence as the present fourth and fifth sentences, inserting "with the finance officer or" in the present fourth sentence, substituted "may at any time audit" for "shall audit at least monthly" in the present sixth sentence and

substituted the present last sentence of the section for a sentence requiring collections and receipts by an officer or employee other than the finance officer to be deposited in special clearing accounts from which withdrawals were to be made only upon the order of the finance officer.

§ 159-33.1. Semiannual reports of financial information. — The finance officer of each unit and public authority shall submit to the secretary on January 1 and July 1 of each year (or such other dates as the secretary may prescribe) a statement of financial information concerning the unit or public authority. The secretary may prescribe the information to be included in the statement and may prescribe the form of the statement. (1973, c. 474, s. 28.)

§ 159-34. Annual independent audit. — Each unit of local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Commission as qualified to audit local government accounts. The auditor shall be selected by and shall report directly to the governing board. The audit contract or agreement shall be in writing, shall include all its terms and conditions, and shall be submitted to the secretary for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The audit shall be performed and the report prepared in conformity with generally accepted auditing standards. The finance officer shall file a copy of the audit report with the secretary, and shall submit all bills or claims for audit fees and costs to the secretary for his approval. It shall be unlawful for any unit of local government or public authority to pay or permit the payment of such bills or claims without this approval. Each officer and employee of the local government or local public authority having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a governing board or any other public officer or employee shall conceal, falsify, or refuse to deliver or

divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a misdemeanor and upon conviction thereof may be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or both, in the discretion of the court. (1971, c. 780, s. 1; 1975, c. 514, s. 15.)

Editor's Note. — The 1975 amendment added the fifth sentence. As to the effective date of the amendment, see the Editor's note under § 159-7.

Part 4. Public Hospitals.

§ 159-39. Special regulations pertaining to public hospitals. — (a) For the purposes of this Part, "public hospital" means any hospital that

- (1) Is operated by a county, city, hospital district, or hospital authority, or
- (2) Is owned by a county, city, hospital district or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority, or
- (3) On whose behalf a county or city has issued and has outstanding general obligation or revenue bonds, or to which a county or city makes current appropriations (other than appropriations for the cost of medical care to prisoners or indigents).

(b) Except as provided in this Part, none of the provisions of Parts 1, 2, and 3 of this Article apply to public hospitals.

(c) Each public hospital shall operate under an annual balanced budget. A budget is balanced when the sum of appropriations is equal to the sum of estimated net revenues and appropriated fund balances.

(d) The governing board of each public hospital shall appoint or designate a finance officer, who shall have the following powers and duties:

- (1) He shall prepare the annual budget for presentation to the governing board of the public hospital and shall administer the budget as approved by the board.
- (2) He shall keep the accounts of the hospital in accordance with generally accepted principles of accounting.
- (3) He shall prepare and file a statement of the financial condition of the hospital as revealed by its accounts upon the request of the hospital governing board or the governing board of any county, city, or other unit of local government that has issued on behalf of the hospital and has outstanding its general obligation or revenue bonds or makes current appropriations to the hospital (other than appropriations for the cost of medical care to prisoners or indigents).
- (4) He shall receive and deposit all moneys accruing to the hospital, or supervise the receipt and deposit of money by other duly authorized officers or employees of the hospital.
- (5) He shall supervise the investment of idle funds of the hospital.
- (6) He shall maintain all records concerning the bonded debt of the hospital, if any, determine the amount of money that will be required for debt service during each fiscal year, and maintain all sinking funds, but shall not be responsible for records concerning the bonded debt of any county, city, or other unit of local government incurred on behalf of the hospital.

(e) The Local Government Commission has authority to issue rules and regulations governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets by public hospitals, may inquire into and investigate the internal control procedures of a public hospital, and may

require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements, mishandling of funds, or continued operating deficits.

(f) The accounting system of a public hospital shall be so designed that the true financial condition of the hospital can be determined therefrom at any time. As soon as possible after the close of each fiscal year, the accounts shall be audited by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor shall be selected by and shall report directly to the hospital governing board. The audit contract or agreement shall be in writing, shall include all its terms and conditions, and shall be submitted to the secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a written report embodying financial statements and his opinion and comments relating thereto. The finance officer shall file a copy of the audit with the secretary of the Local Government Commission and with the finance officer of any county, city, or other unit of local government that has issued on behalf of the hospital and has outstanding its general obligation or revenue bonds or makes current appropriations to the hospital (other than appropriations for the cost of medical care to prisoners or indigents).

(g) A public hospital may deposit or invest at interest all or part of its cash balance pursuant to G.S. 159-30.

(h) Public hospitals are subject to G.S. 159-31 with regard to selection of an official depository and security of deposits.

(i) Public hospitals are subject to G.S. 159-32 with regard to daily deposits.

(j) Public hospitals are subject to G.S. 159-33 with regard to semiannual reports to the Local Government Commission on the status of deposits and investments.

(k) Any hospital district or hospital authority having outstanding general obligation or revenue bonds is subject to G.S. 159-35, G.S. 159-36, G.S. 159-37, and G.S. 159-38. (1973, c. 474, s. 28.1; c. 1215.)

Editor's Note. — The 1973 amendment substituted "Is operated by" for "Is owned by or leased to" at the beginning of subdivision (a)(1) and rewrote subdivision (a)(2).

The amendatory act purported to amend "Subdivisions (1) and (2) G.S. 159-39." It is plain from the context that subdivisions (1) and (2) of subsection (a) were intended.

§§ 159-40 to 159-42: Reserved for future codification purposes.

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-43. **Short title; legislative intent.** — (a) This Article may be cited as "The Local Government Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all units of local government in North Carolina of the power to borrow money secured by a pledge of the taxing power. To this end, all provisions of special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured by a pledge of the taxing power or prescribing procedures therefor are repealed. No special, local, or private act enacted or

taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section of this Article. (1971, c. 780, s. 1; 1973, c. 494, s. 2.)

Editor's Note. — The 1973 amendment divided the former second sentence of subsection (b) into the present second and third sentences, substituted "or" for "and" preceding "prescribing," and deleted "hereby" preceding

"repealed" in the present second sentence and inserted "enacted or," substituted "may" for "shall" and substituted "expressly so provides" for "shall expressly so provide" in the present third sentence of subsection (b).

§ 159-44. Definitions. — The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

- (4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; sanitary districts; mosquito control districts; hospital districts; metropolitan sewerage districts; and metropolitan water districts.

(1973, c. 494, s. 3.)

Editor's Note. — The 1973 amendment substituted "metropolitan water districts" for "watershed improvement districts" at the end of subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (4) are set out.

§ 159-47. Additional security for utility or public service enterprise bonds.

— (a) The revenues of a utility or public service enterprise owned or leased by a unit of local government shall be applied in accordance with the following priorities:

- (1) First, to pay the operating, maintenance, and capital outlay expenses of the utility or enterprise.
- (2) Second, to pay when due the interest on and principal of outstanding bonds issued for capital projects that are or were a part of the utility or enterprise.
- (3) Third, for any other lawful purpose.

Notwithstanding the foregoing provisions, a county which owns or leases hospitals or other health-related facilities and has not issued any general obligation bonds during the period July 1, 1973, to July 1, 1974, for a capital project that is or was a part of such hospitals or other health-related facilities shall have the option of applying the revenues of such hospitals or other health-related facilities in accordance with a bond order adopted under the Local Government Revenue Bond Act.

(1973, c. 1326.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, added the last sentence of subsection (a).

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

§ 159-48. For what purposes bonds may be issued. — (a) Each unit of local government is authorized to borrow money and issue its bonds under this Article in evidence thereof for any one or more of the following purposes:

- (1) To suppress riots, insurrections, or any extraordinary breach of law and order.
- (2) To supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection

estimates made in the annual budget ordinance within the limits prescribed in G.S. 159-13.

- (3) To meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor.
 - (4) To refund outstanding revenue bonds or revenue bond anticipation notes.
 - (5) To refund outstanding general obligation bonds or general obligation bond anticipation notes.
 - (6) To fund judgments for specified sums of money entered against the unit by a court of competent jurisdiction.
 - (7) To fund valid, existing obligations of the unit not incurred by the borrowing of money.
- (b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:
- (1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.
 - (2) Providing armories for the North Carolina national guard.
 - (3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.
 - (4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.
 - (5) Providing cemeteries.
 - (6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.
 - (7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.
 - (8) Providing land for corporate purposes.
 - (9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.
 - (10) Providing library facilities, including without limitation fixed and mobile libraries.
 - (11) Providing art galleries, museums, and art centers, and providing for historic properties.

- (12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including without limitation meters, buildings, garages, driveways, and approaches.
 - (13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.
 - (14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.
 - (15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.
 - (16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.
 - (17) Providing sanitary sewer systems, including without limitation facilities for the collection, treatment, and disposal of sewage.
 - (18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.
 - (19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.
 - (20) Providing voting machines.
 - (21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.
 - (22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.
- (c) Each county is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of, in the case of subdivisions (1) to (4), inclusive, paying any capital costs of any one or more of the purposes mentioned therein and, in the case of subdivision (5), to finance the cost thereof:
- (1) Providing community college and technical institute facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.
 - (2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.
 - (3) Providing county homes for the indigent and infirm.
 - (4) Providing school facilities, including without limitation school houses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.
 - (5) Providing for the octennial revaluation of real property for taxation.
- (d) Each city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

- (1) Providing mass transit facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.
- (2) Providing cable television systems.
- (3) Providing electric systems, including without limitation facilities for the generation, transmission, and distribution of electric light and power.
- (4) Providing gas systems, including without limitation facilities for the production, storage, transmission and distribution of gas, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such systems may be located either within the State or without.
- (5) Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.
- (6) Improving existing systems or facilities for the transmission or distribution of telephone services.

(e) Each sanitary district, mosquito control district, hospital district, metropolitan sewerage district, and metropolitan water district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(f) For any of the purposes authorized by subsections (b), (c), (d), or (e) of this section, a unit may do any of the following that it considers necessary or convenient:

- (1) Acquire, construct, erect, provide, develop, install, furnish, and equip; and
- (2) Reconstruct, remodel, alter, renovate, replace, refurbish, and reequip; and
- (3) Enlarge, expand, and extend; and
- (4) Demolish, relocate, improve, grade, drain, landscape, pave, widen, and resurface.

(g) Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same bond order. However, bonds for any of the purposes listed in any subdivision of any subsection of this section shall be deemed to be for one purpose and may be authorized by the same bond order. In addition, nothing herein may be deemed to prohibit the combining of purposes from any of such paragraphs and the authorization of bonds therefor by the same bond order to the extent that the purposes are not unrelated.

(h) As used in this section, "capital costs" include, without limitation, the following:

- (1) The costs of doing any or all of the things mentioned in subsection (f) of this section; and
- (2) The costs of all property, both real and personal and both improved and unimproved, plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, franchises, and licenses used or useful in connection with the purpose authorized; and
- (3) The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures are to be moved; and
- (4) Financing charges, including estimated interest during construction and for six months thereafter; and

- (5) The costs of plans, specifications, studies and reports, surveys, and estimates of costs and revenues; and
- (6) The costs of bond printing and insurance; and
- (7) Administrative and legal expenses; and
- (8) Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(i) This section does not authorize any unit to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the borrowing of money and the issuance of bonds within the limitations set out herein to finance programs, functions, joint undertakings, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C. S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 4; c. 1037; 1975, c. 549, s. 1; c. 821, s. 1.)

Editor's Note. — The first 1973 amendment designated the former provisions of this section as subsection (a) and added subsections (b) through (i). In subsection (a), the amendment deleted "hereby" preceding "authorized" in the introductory paragraph, deleted former subdivision (1), which read "For any purpose for which it may raise or appropriate money, except for current expenses," and former subdivision (5), which read "For counties, to finance the cost of the octennial revaluation of real property for taxation," redesignated former subdivisions (2), (3), (4) and (6) as (1), (2), (3) and (4) respectively, added present subdivisions (5) and (6), substituted "limits" for "limitations" near the

end of present subdivision (2), deleted "immediately" preceding "threatening" in present subdivision (3) and rewrote subdivision (7).

The second 1973 amendment added subdivision (6) to subsection (d).

The first 1975 amendment inserted "production" in subdivision (4) of subsection (d).

The second 1975 amendment added the language beginning "where systems shall also include" at the end of subdivision (4) of subsection (d).

Session Laws 1975, c. 821, s. 6, contains a severability clause.

§ 159-49. When a vote of the people is required. — Bonds may be issued under this Article only if approved by a vote of the qualified voters of the issuing unit as provided in this Article, except that voter approval shall not be required for:

- (1) Bonds issued for any purpose authorized by G.S. 159-48(a)(1), (2), (3), or (5).
- (2) Bonds issued by a county or city for any purpose authorized by G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), or (22) or by G.S. 159-48(d)(1) or (2)) in an aggregate principal sum not exceeding two thirds of the amount by which the outstanding indebtedness of the issuing county or city has been reduced during the next preceding fiscal year.

Pursuant to Article V, Sec. 4(2) of the Constitution, the General Assembly hereby declares that the purposes authorized by G.S. 159-48(a)(4), (6), and (7) and by G.S. 159-48(b), (c), and (d) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), or (22) or by G.S. 159-48(d)(1) or (2)) are purposes for which bonds may be issued without a vote of the people, to the extent of two thirds of the amount by which the outstanding indebtedness of the issuing county or city was reduced in the last preceding fiscal year. (1971, c. 780, s. 1; 1973, c. 494, s. 5.)

Editor's Note. — The 1973 amendment rewrote all of this section that follows the introductory paragraph, substituting present subdivisions (1) and (2) for former subdivisions (1) through (5).

Part 2. Procedure for Issuing Bonds.

§ 159-54. The bond order. — After or at the same time the application is filed and accepted for submission to the Commission, a bond order shall be introduced before the governing board of the issuing unit. The bond order shall state:

- (1) Briefly and generally and without specification of location or material of construction, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt, judgment, or obligation to be funded or refunded shall be sufficient.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.
- (4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.
- (5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.
- (6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.
- (7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the bond order will take effect upon its adoption. If the bonds are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon. (1917, c. 138, s. 17; 1919, c. 178, s. 3(17); c. 285, s. 2; C. S., s. 2938; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 9; 1931, c. 60, ss. 49, 55; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1949, c. 497, ss. 1, 3; 1957, c. 856, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 6.)

Editor's Note. —

The 1973 amendment inserted "and without specification of location or material of construction" in the first sentence and "judgment, or obligation" in the second sentence of subdivision (1), added the first sentence of subdivision (7) and inserted "are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S.

159-48(b), (c), or (d) and" and substituted "adoption" for "final passage" in the second sentence of subdivision (7) and deleted the former last paragraph of the section, which provided that the order need not specify the location of any project nor the material of construction nor other details beyond the general purpose.

§ 159-55. Sworn statement of debt; debt limitation. — (a) After the bond order has been introduced and before the public hearing thereon, the finance officer (or some other officer designated by the governing board for this purpose) shall file with the clerk a statement showing the following:

- (1) The gross debt of the unit, excluding therefrom debt incurred or to be incurred in anticipation of the collection of taxes or other revenues or in anticipation of the sale of bonds other than funding and refunding bonds. The gross debt (after exclusions) is the sum of (i) outstanding debt evidenced by bonds, (ii) bonds authorized by orders introduced but not yet adopted, (iii) unissued bonds authorized by adopted orders, and

- (iv) outstanding debt not evidenced by bonds. However, for purposes of the sworn statement of debt and the debt limitation, revenue bonds shall not be considered debt and such bonds shall not be included in gross debt nor deducted from gross debt.
- (2) The deductions to be made from gross debt in computing net debt. The following deductions are allowed:
- a. Funding and refunding bonds authorized by orders introduced but not yet adopted.
 - b. Funding and refunding bonds authorized but not yet issued.
 - c. The amount of money held in sinking funds or otherwise for the payment of any part of the principal of gross debt other than debt incurred for water, gas, electric light or power purposes, or sanitary sewer purposes (to the extent that the bonds are deductible under subsection (b) of this section), or two or more of these purposes.
 - d. The amount of bonded debt included in gross debt and incurred, or to be incurred, for water, gas, or electric light or power purposes, or any two or more of these purposes.
 - e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for sanitary sewer system purposes to the extent that the debt is made deductible by subsection (b) of this section.
 - f. The amount of uncollected special assessments theretofore levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the assessments will be applied, when collected, to the payment of any part of the gross debt.
 - g. The amount, as estimated by the governing board of the issuing unit or an officer designated by the board for this purpose, of special assessments to be levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the special assessments, when collected, will be applied to the payment of any part of the gross debt.
- (3) The net debt of the issuing unit, being the difference between the gross debt and deductions.
- (4) The appraised value of property subject to taxation by the issuing unit before the application of any assessment ratio. The appraised value of property subject to taxation by the issuing unit is the value from which the assessed value last fixed for taxation by the issuing unit was computed, as revealed by the county tax records and certified to the issuing unit by the county tax supervisor.
- (5) The percentage that the net debt bears to the appraised value of property subject to taxation by the issuing unit.
- (1973, c. 494, s. 7.)

Editor's Note. —

The 1973 amendment, in subdivision (1) of subsection (a), inserted "or other revenues" in the first sentence, deleted "or notes" following "bonds" in four places in the second sentence and deleted "or resolutions" following "orders"

in clause (ii) in the second sentence and added the third sentence. The amendment also inserted "(that is not otherwise deducted)" in paragraphs f and g of subdivision (2) of subsection (a).

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

§ 159-56. **Publication of bond order as introduced.** — After the introduction of the bond order, the clerk shall publish it once with the following statement appended:

“The foregoing order has been introduced and a sworn statement of debt has been filed under the Local Government Bond Act showing the appraised value of the [issuing unit] to be \$ and the net debt thereof, including the proposed bonds, to be \$ A tax will [may] be levied to pay the principal of and interest on the bonds if they are issued. Anyone who wishes to be heard on the questions of the validity of the bond order and the advisability of issuing the bonds may appear at a public hearing or an adjournment thereof to be held at

.....
Clerk”

(1927, c. 81, s. 16; 1971, c. 780, s. 1.)

Editor’s Note. —

This section is set out to correct an error in the replacement volume.

§ 159-56.1. **Certain proceedings ratified notwithstanding provisions of § 159-56.** — All proceedings heretofore taken by the governing boards of units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-56; provided that the issuance of said bonds, the indebtedness to be incurred by the issuance thereof and the levy of a tax for the payment thereof shall have been approved at an election by a majority of the qualified voters of the unit voting thereon. (1973, c. 1172.)

§ 159-60. **Petition for referendum on bond issue.** — A petition demanding that a bond order be submitted to the voters may be filed with the clerk within 30 days after the date of publication of the bond order as introduced. The petition shall be in writing, and shall be signed by a number of voters of the issuing unit equal to not less than ten percent (10%) of the total number of voters registered to vote in elections of the issuing unit according to the most recent figures certified by the State Board of Elections. 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, and need not be all on one sheet.

The clerk shall investigate the sufficiency of the petition and present it to the governing board, with a certificate stating the results of his investigation. The governing board, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and its determination shall be conclusive.

This section does not apply to bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5). (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; c. 178, s. 3 (21); C. S., s. 2947; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; c. 102, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 8.)

Editor’s Note. —

The 1973 amendment rewrote the third paragraph.

§ 159-61. Bond referenda; majority required; notice of referendum; form of ballot; canvass.

(b) The date of a bond referendum shall be fixed by the governing board, but shall not be more than one year after adoption of the bond order. The governing board may call a special referendum for the purpose of voting on a bond issue on any day, including the day of any regular or special election held for another purpose (unless the law under which the bond referendum or other election is held specifically prohibits submission of other questions at the same time). A special bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum, or within 30 days before or 10 days after any other primary, election, or referendum to be held in the same unit holding the bond referendum and already validly called or scheduled by law at the time the bond referendum is called. The clerk shall mail or deliver a certified copy of the resolution calling a special bond referendum to the board of elections that is to conduct it within three days after the resolution is adopted, but failure to observe this requirement shall not in any manner affect the validity of the referendum or bonds issued pursuant thereto. Bond referenda shall be conducted by the board of elections conducting regular elections of the county, city, or special district. In fixing the date of a bond referendum, the governing board shall consult the board of elections in order that the referendum shall not unduly interfere with other elections already scheduled or in process. Several bond orders or other matters may be voted upon at the same referendum.

(d) The form of the question as stated on the ballot shall be in substantially the following words:

“Shall the order authorizing \$ bonds for (briefly stating the purpose) be approved?

-] YES
-] NO”

(e) The board of elections shall canvass the referendum and certify the results to the governing board. The governing board shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended:

“Any action or proceeding challenging the regularity or validity of this bond referendum must be begun within 30 days after
(date of publication)
.....
(title of governing board)”

The statement of results shall be filed in the clerk’s office and inserted in the minutes of the board. (1917, c. 138, s. 22; 1919, c. 178, s. 3(22); c. 291; C. S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 22, 23, 25-27, 29; 1949, c. 497, ss. 2, 4; 1953, c. 1065, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 9.)

Editor’s Note. —

The 1973 amendment rewrote the third sentence of subsection (b), deleted “in” preceding “bonds” in the ballot question in

subsection (d) and added the line for “(title of governing board)” in the form in subsection (e). As subsections (a) and (c) were not changed by the amendment, they are not set out.

§ 159-64. Within what time bonds may be issued. — Bonds may be issued under a bond order at any time within seven years after the order takes effect. When the issuance of bonds under any bond order is prevented or prohibited by any order of any court, the period of time within which bonds may be issued under the bond order in litigation shall be extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. The General Assembly may at any time prior to the

expiration of the maximum time period herein provided extend the time for issuing bonds under bond orders.

When any such extension is granted, no further approval of the voters shall be required. (1917, c. 138, s. 24; 1919, c. 178, s. 3(24); C. S., s. 2950; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 32; 1939, c. 231, ss. 1, 2(d); 1947, c. 510, ss. 1, 2; 1949, c. 190, ss. 1, 2; 1951, c. 439, ss. 1, 2; 1953, c. 693, ss. 1, 3; 1955, c. 704, ss. 1, 2; 1969, c. 99; 1971, c. 780, s. 1; 1975, c. 545, s. 1.)

Editor's Note. — The 1975 amendment substituted "seven years" for "five years" in the first sentence. Section 2 of the 1975 amendatory act provides: "The provisions of this act shall apply to bonds authorized by bond orders which took effect from January 1, 1971, through the effective date of this act [June 11, 1975] or which take effect hereafter."

Session Laws 1973, c. 499, s. 2, amends this section by substituting "seven years" for "five years" in the first sentence. Session Laws 1973, c. 499, s. 3, provides that the act shall apply only to bonds authorized during the period July 1, 1968 through Dec. 31, 1969. The 1973 act makes a similar amendment, likewise limited in application, to § 160-389, which section was

repealed, effective July 1, 1973, by Session Laws 1971, c. 780.

Session Laws 1975, c. 26, s. 1, amends this section by substituting "seven years" for "five years" in the first sentence. Session Laws 1975, c. 26, s. 2, provides that the act shall apply only to bonds authorized during the period Jan. 1, 1970, through Dec. 31, 1970.

Session Laws 1975, c. 546, s. 1, amends this section by substituting "eight years" for "five years" in the first sentence. Session Laws 1975, c. 546, s. 2, provides that the act shall apply only to bonds authorized during the period commencing March 1, 1968, and ending Dec. 31, 1969.

§ 159-65. Resolution fixing the details of the bonds. — After the bond order has been adopted, the board shall adopt a resolution fixing the details of the bonds. In fixing details of the bonds, the board is subject to these restrictions and directions:

- (1) The maturity dates shall not exceed the maximum periods of usefulness prescribed by the Commission pursuant to G.S. 159-122.
- (2) Bonds authorized by two or more bond orders may be consolidated into a single issue.
- (3) Bonds of each issue shall mature in annual installments, the first of which shall be payable not more than three years after the date of the bonds, and the last within the maximum maturity period prescribed by regulation of the Commission under G.S. 159-122.
- (4) No installment of any issue may be more than four times as great in amount as the smallest prior installment of the same issue.
- (5) Bonds of each issue may be issued from time to time in series with different provisions for each series. Each series shall be deemed a separate issue for the purposes of this section.
- (6) No bonds may be made payable on demand, but any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated therein. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.
- (7) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be made payable in such kind of money and in such place or places within or without the State of North Carolina, as the board may determine.

Subdivisions (3) and (4) of this section shall not apply to bonds purchased by a State or federal agency. (1917, c. 138, s. 25; 1919, c. 178, s. 3(25); C. S., s. 2951;

1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3; 1969, c. 686; 1971, c. 780, s. 1; 1973, c. 494, s. 10; cc. 883, 995.)

Editor's Note. — The first 1973 amendment substituted "a resolution" for "an order" in the first sentence.

The second and third 1973 amendments both inserted "prior" in subdivision (4). The third 1973 amendatory act repealed the second.

§ 159-66. Validation of former proceedings and actions. — (a) All proceedings and actions heretofore taken by the governing boards of units of local government and by the Local Government Commission to fix the details of bonds and to provide for the advertisement and sale thereof are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-65(4).

(b) This section shall apply to all bonds sold by the Local Government Commission between July 1, 1973, and February 18, 1974. (1973, c. 872, ss. 1, 2.)

§ 159-67. Procedures if a county votes to relocate the county seat. — Whenever the citizens of a county, by referendum, decide that the county's county seat, along with the courthouse and other county buildings and agencies, should be relocated, the board of county commissioners of that county shall forthwith begin discussions with the Local Government Commission concerning financing of the relocation. If bonds are to be issued for the relocation, or a financing agreement entered into, the board of commissioners shall apply to the Local Government Commission no later than 10 months after the day of the referendum. If a bond election is necessary, it shall be held no later than 22 months after the day of the referendum. (1975, c. 324, s. 5.)

Editor's Note. — This section was enacted by Session Laws 1975, c. 324, s. 5. The 1975 act appeared from its title to be a local act applicable

only to Brunswick County and the provisions of the act other than s. 5 were expressly restricted to Brunswick County.

§§ 159-68 to 159-71: Reserved for future codification purposes.

Part 3. Funding and Refunding Bonds.

§ 159-72. Purposes for which funding and refunding bonds may be issued; when such bonds may be issued. — A unit of local government may issue funding or refunding bonds for the purposes listed in G.S. 159-48(a)(4), (5), (6), or (7). Funding or refunding bonds may be issued if the debt, judgment, or other obligation to be paid is payable at the time of the passage of the bond order or within one year thereafter, or if the debt or obligation to be refinanced is to be cancelled prior to its maturity and simultaneously with the issuance of the refunding bonds.

Except as expressly modified in this Part, funding and refunding bonds shall be issued under the limitations and procedures set out in Parts 1 and 2 of this Article. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C. S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 3; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 257, ss. 2-4; c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; c. 484; 1939, c. 231, ss. 1, 2(c), 4(b); 1941, c. 147; 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 11.)

Editor's Note. —

The 1973 amendment rewrote the first paragraph.

§ 159-75. Judgment validating issue; costs of the action. — A final decree of the General Court of Justice validating funding or refunding bonds or the financing or refinancing agreement shall be conclusive as to the validity of the bonds or the agreement.

The costs of any action brought under G.S. 159-74 shall be borne by the issuing unit, including a reasonable attorney's fee for the attorney assigned by the court to defend the interests of the citizens and taxpayers in general. (1931, c. 186, ss. 6, 7; 1935, c. 290, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 12.)

Editor's Note. — The 1973 amendment substituted "G.S. 159-74" for "G.S. 159-76" in the second paragraph.

§ 159-76. Validation of bonds and notes issued before March 26, 1931. — All bonds and notes issued before March 26, 1931, for which the issuing unit received an amount of money not less than the face amount of the bonds or notes and the proceeds of which have been spent for public purposes, and all bonds and notes subsequently issued to refund all or any portion of those bonds or notes, are hereby validated notwithstanding any lack of statutory authority or failure to observe any statutory provisions concerning the issuance of the bonds or notes. This section shall not validate any bonds or notes, the proceeds of which have been lost because of the failure of a bank. (1931, c. 186, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 13.)

Editor's Note. — The 1973 amendment inserted "or notes" following "those bonds" in the first sentence.

§ 159-77. Validation of all proceedings in connection with the authorization of bonds taken before April 28, 1975. — All proceedings heretofore taken by the governing boards of units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-61(c); provided that the issuance of said bonds shall have been approved at an election by a majority of the qualified voters of the unit voting thereon and that notice of said referendum shall have been published. (1975, c. 178.)

Editor's Note. — The act from which this section was codified was ratified April 28, 1975, and made effective on ratification.

§§ 159-78, 159-79: Reserved for future codification purposes.

ARTICLE 5.

Revenue Bonds.

§ 159-80. Short title; repeal of local acts. — (a) This Article may be cited as "The Local Government Revenue Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all municipalities in North Carolina of the power to finance revenue bond projects through the issuance of revenue bonds and notes. To this end, all provisions of special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured solely by the revenues of the projects

for which the bonds or notes are issued or prescribing procedures therefor are repealed. No special, local or private act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section of this Article. (1971, c. 780, s. 1; 1973, c. 494, s. 14.)

Editor's Note. —

The 1973 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

§ 159-81. Definitions. — The words and phrases defined in this section shall have the meanings indicated when used in this Article:

- (1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, water and sewer authority, hospital authority, hospital district, parking authority, and airport authority but not any other form of local government.
- (3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing unit:
 - a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
 - b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.
 - c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
 - d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
 - e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
 - f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
 - g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
 - h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
 - i. Hospitals and other health-related facilities.
 - j. Public auditoriums, gymnasiums, stadiums, and convention centers.
 - k. Recreational facilities.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises,

and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

(1973, c. 494, s. 15; 1975, c. 821, s. 2.)

Editor's Note. — The 1973 amendment substituted "sewerage" for "sewage" and inserted "metropolitan water district" in subdivision (1) and inserted "collection" in subdivision (3)d.

The 1975 amendment added the language beginning "where gas systems shall include" at the end of paragraph (3)c.

Session Laws 1975, c. 821, s. 6, contains a severability clause.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (1) and (3) are set out.

§ 159-82. Purpose. — The purpose of this Article is to establish a standard, uniform procedure for the financing by a municipality of revenue bond projects through the issuance of revenue bonds. Its provisions are intended to vest authority in and enable municipalities to secure and pay revenue bonds and the interest thereon solely out of revenues without pledging the faith and credit of the municipality. (1971, c. 780, s. 1; 1973, c. 494, s. 16.)

Editor's Note. — The 1973 amendment deleted "creating a debt or" following "without" in the second sentence.

§ 159-83. Powers. — (a) In addition to the powers it may now or hereafter have, each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

- (1) To acquire by gift, purchase, or exercise of the power of eminent domain, or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest.
- (2) To sell, exchange, transfer, assign, or otherwise dispose of any revenue bond project or portion thereof or interest therein determined by resolution of the governing board not to be required for any public purpose.
- (3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.
- (4) To enter into contracts with any person, firm, or corporation, public or private, on such terms as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities, or commodities thereof.
- (5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor in the name of the municipality, but no

encumbrance, mortgage, or other pledge of real property of the municipality may be created in any manner.

- (6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls, and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense of maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.
- (7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.
- (8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.
- (9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the cost of acquisition, construction, reconstruction, extension, or improvement of the revenue bond projects authorized in the bond order and to provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.
- (10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.
- (11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.
- (12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State

of North Carolina, or any agency thereof, with respect to any revenue bond project.

- (13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.
- (14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice.
- (15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions and for such term of years, not in excess of 40 years, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.
- (16) To execute such instruments and agreements and to do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of the covenants or duties of the municipality, or to secure the payment of its revenue bonds.

(b) Any contract, agreement, lease, deed, covenant, or other instrument or document evidencing an agreement or covenant between bondholders or any public agency and a municipality issuing revenue bonds with respect to any of the powers conferred in this section shall be approved by the Commission. (Ex. Sess. 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 17.)

Editor's Note. — The 1973 amendment deleted "acquire," preceding "construct" and "extend," preceding "improve" in subdivision (1), inserted "or bond anticipation notes" in the second sentence of subdivision (6), near the end

of subdivision (7) and near the beginning of subdivision (8) and substituted "municipality" for "unit" near the end of the second sentence of subdivision (6), all in subsection (a).

§ 159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application. — A municipality may not issue revenue bonds under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing municipality, or its duly authorized agent, shall file an application for Commission approval of the issue with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the issuing municipality and its utilities and enterprises as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed issue and the timing of the steps to be taken in issuing the bonds.

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the municipality in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the municipality has complied with this section. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 18.)

Editor's Note. — The 1973 amendment substituted "municipality" for "unit" in the second and third sentences of the first paragraph and in the first and second sentences of the third paragraph.

§ 159-88. Adoption of revenue bond order. — At any time after the Commission approves an application for the issuance of revenue bonds, the governing board of the issuing municipality may adopt a revenue bond order pursuant to this Article.

Notwithstanding the provisions of any city charter, general law, or local act, a revenue bond order may be introduced at any regular or special meeting of the governing board and adopted at such a meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article. Revenue bond orders are not subject to the provisions of any city charter or local act concerning initiative or referendum. (1971, c. 780, s. 1; 1973, c. 494, s. 19.)

Editor's Note. — The 1973 amendment substituted "municipality" for "unit" in the first paragraph and added the second paragraph.

§ 159-93. Agreement of the State. — The State of North Carolina does pledge to and agree with the holders of any revenue bonds or revenue bond anticipation notes heretofore or hereafter issued by any municipality in this State that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the municipality at the time of issuance of the bonds or notes to establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, and other charges for the use, services, facilities, and commodities of or furnished by the revenue bond project in connection with which the bonds or notes, or bonds or notes refunded by the bonds or notes, were issued as shall produce revenues at least sufficient with other available funds to meet the expense of maintenance and operation of and renewals and replacements to such project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) of the bonds or notes, and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged. (1971, c. 780, s. 1; 1973, c. 494, s. 20.)

Editor's Note. — The 1973 amendment inserted "or revenue bond anticipation notes" near the beginning of the section and inserted "or notes" following "bonds" and "or noteholders" following "bondholders" throughout the section.

§ 159-95. Approval of State agencies required in certain instances. — The general design and plan of any revenue bond project undertaken for water systems of facilities or sewage disposal systems or facilities shall be subject to the approval of the Commission for Health Services or the State Environmental Management Commission to the same extent that such projects would be if they were not financed by revenue bonds, and the provisions of the revenue bond order shall be consistent with any requirements imposed on the project by the Commission for Health Services, or the State Environmental Management Commission. No revenue bond project for the acquisition or construction of systems or facilities for the generation, production, or transmission of gas or

electric power may be undertaken by a municipality unless the municipality shall first obtain a certificate of convenience and necessity from the North Carolina Utilities Commission. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 476, s. 128; c. 494, s. 21; c. 1262, s. 23.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, substituted "Commission for Health Services" for "State Board of Health" in two places in the first sentence.

The second 1973 amendment corrected an error in Session Laws 1971, c. 780, by

eliminating, at the end of this section, provisions identical to the second half of the first sentence and the second sentence of § 159-96.

The third 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in two places.

§ 159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds. — Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own use and for users within its corporate limits, may be operated incidentally for users outside its corporate limits. Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems and aeronautical facilities and marine facilities, notwithstanding that such systems or facilities may be operated for users outside the corporate limits of a municipality where the municipality finds that the system or facilities so financed would benefit the municipality. (1971, c. 780, s. 1; 1973, c. 1325.)

Editor's Note. — The 1973 amendment added the last sentence.

§ 159-97. Taxes for supplementing revenue bond projects. — (a) For the purpose of supplementing the revenues of a revenue bond project, as defined in this section, any county or city may covenant with, or may enter into an agreement with a municipality for the benefit of the holders of revenue bonds of the issuing municipality issued pursuant to this Article, whereby such county or city agrees to:

- (1) Levy for the life of all revenue bonds issued in connection with the revenue bond project an annual property tax not in excess of the rate set forth in the question submitted to the voters as hereinafter provided, such levy to be based upon the operating supplement requirement, as defined in this section, or
- (2) Levy for the life of the revenue bonds in respect of which such tax is being levied an annual property tax not in excess of the rate required to pay the principal of and the interest on the aggregate principal amount of revenue bonds set forth in the question submitted to the voters as hereinafter provided, such levy to be based upon the debt service reserve supplement requirement, as defined in this section.

When any such covenant has been made or any such agreement has been entered into, the issuing municipality shall determine, and, in those instances in which the issuing municipality is not also the taxing county or city, the issuing municipality shall certify to the governing board of the taxing county or city, by not later than June 1 of each fiscal year the amount required, determined as hereinafter provided, to be raised by taxation by such county or city in the next fiscal year. The county or city is obligated to levy such tax only to the extent that an operating supplement requirement or a debt service reserve supplement

requirement shall occur during the fiscal year preceding the fiscal year in which the tax is to be levied. In no event shall the county or city be required to levy a tax in excess of the rate required to be levied in accordance with the approval of the voters as provided in subsection (c). When any such tax is to be levied, the county or city shall include in its budget ordinance an appropriation to the issuing municipality or the appropriate fund, as the case may be, equal to the estimated yield of the tax levy, and shall pay such appropriation to the issuing municipality or transfer moneys to the appropriate fund in equal monthly installments unless another mutually satisfactory schedule of payments is agreed upon.

(b) A covenant made, or the pledge of an agreement entered into, by a county or city pursuant to this section shall be effected by the provisions of the revenue bond order or the trust agreement securing revenue bonds of the issuing municipality and where the issuing municipality is not also the taxing county or city a resolution of the county or city approving the appropriate provisions of the bond order or trust agreement relating to the pledge of the tax. If the taxing county or city is not the issuing municipality, it shall file an application for approval of the resolution with the Secretary of the Commission in the manner provided in G.S. 159-149, and the Commission shall determine whether to approve the application as provided by G.S. 159-151 and G.S. 159-152; provided, however, that G.S. 159-148 and G.S. 159-150 shall have no application to this section.

(c) A covenant made, or agreement entered into, by a county or city pursuant to this section shall take effect only if approved by the affirmative vote of a majority of those who vote thereon in a referendum held in the taxing county or city. The referendum shall be called and held as provided in G.S. 159-61, except that

- (1) The ballot proposition shall be in substantially one of the following forms:

Operating Supplement Requirement:

“Shall the (order or agreement) binding the (taxing county or city) to levy annually a tax on property not in excess of cents on the one hundred dollars (\$100.00) value of property subject to taxation for the purpose of supplementing the revenues of (revenue bond project) in instances where the gross revenues of the project are estimated to be less than the estimated total costs of the (i) current operating expenses of the project, (ii) amount required to maintain the debt service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the project and (iii) debt service on all outstanding bonds issued in connection with the project, all as defined in such (order or agreement), the proceeds of such tax to be used for the payment of the current operating expenses of the project so long as any revenue bonds issued therefor remain outstanding and unpaid, be approved?

[] Yes

[] No”

Debt Service Reserve Supplement Requirement:

“Shall the (order or agreement) binding the (taxing county or city) to levy annually, without limitation as to rate or amount, a tax on property subject to taxation for the purpose of supplementing the revenues of (revenue bond project) for maintaining the debt service reserve required by said (order or agreement) in connection with the issuance of not in excess of \$ revenue bonds of (the issuing

municipality), so long as any of such revenue bonds remain outstanding and unpaid, be approved?

[] Yes

[] No”

and

(2) The published statement of result shall have the following statement appended:

“Any action or proceeding challenging the regularity or validity of this supplemental tax referendum must be begun within 30 days after (date of publication).

.....
(title of governing board).”

(d) Any action or proceeding in any court to set aside a supplemental tax referendum held under this section, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the result of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this subsection.

(e) An order or agreement submitted to and approved by the voters pursuant to this section may be repealed at any time before bonds are issued pursuant thereto.

(f) In instances where the taxing county or city is not the issuing municipality, such county or city may levy taxes as provided for in this section in respect of a revenue bond project located outside its corporate limits provided that such county or city is entitled by law to appoint one or more members of the governing body of such municipality.

(g) For the purposes of this section,

(1) A “revenue bond project” is limited, notwithstanding the provisions of G.S. 159-81, to (i) aeronautical facilities, including but not limited to airports, terminals and hangars, and (ii) hospitals and other health-related facilities within the meaning of said G.S. 159-81,

(2) An “operating supplement requirement” occurs when, as set forth in the budget prepared by the issuing municipality in respect of the revenue bond project, the estimated cost in the next succeeding fiscal year of the (i) current operating expenses of the revenue bond project, (ii) amount required to maintain the debt service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the revenue bond project, and (iii) debt service on all outstanding bonds issued in connection with the revenue bond project, are in excess of the pledged revenues of the revenue bond project for such fiscal year as estimated by the issuing municipality, excluding taxes levied pursuant to this section; provided, however, that the amount of the operating supplement requirement shall not exceed the total amount of the current operating expenses of the revenue bond project mentioned in clause (i) above, and

(3) A “debt service reserve supplement requirement” occurs when there have been withdrawn from the debt service reserve any moneys for the purpose of paying debt service on the bonds in respect of which the supplemental tax has been authorized by the voters; provided, however, that the amount of the debt service reserve supplement requirement shall not exceed the amount so withdrawn.

(h) Any covenant or agreement of a county or city made pursuant to this section, and the obligations assumed thereby, shall be excludable from the gross

debt of the county or city for purposes of the statement of debt mentioned in G.S. 159-55. (1973, c. 786, s. 1.)

Editor's Note. — Session Laws 1973, c. 786, s. 2, makes the act effective July 1, 1973.

ARTICLE 6.

§§ 159-98 to 159-119: Reserved for future codification purposes.

ARTICLE 7.

Issuance and Sale of Bonds.

§ 159-120. **“Unit” defined.** — As used in this Article, unless the context clearly requires another meaning, the words “unit” or “issuing unit” mean “unit of local government” as defined in G.S. 159-44 and “municipality” as defined in G.S. 159-81. (1973, c. 494, s. 30.)

§ 159-121. **Coupon or registered bonds to be issued.** — Bonds may be issued as (i) coupon bonds payable to bearer, (ii) coupon bonds registrable as to principal only or as to both principal and interest, or (iii) bonds without coupons registered as to both principal and interest. Each issuing unit may appoint or designate a bond registrar who shall be charged with the duty of attending to the registration and the registration of transfer of bonds. (1917, c. 138, s. 29; 1919, c. 178, s. 3(29); C. S., s. 2955; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 36; 1971, c. 780, s. 1; 1973, c. 494, s. 22.)

Editor's Note. — The 1973 amendment inserted “or as to both principal and interest” in clause (ii) and “without coupons” in clause (iii) and deleted “in the discretion of the issuing unit” at the end of the first sentence, deleted the former second, third and fourth sentences

relating to transfer of registered bonds and discharge of bonds from registry, and substituted “may” for “authorized to” and inserted “the registration of” in the present second sentence.

§ 159-122. **Maturities of bonds.** — (a) Except as provided in this subsection, the last installment of each bond issue shall mature not later than the date of expiration of the period of usefulness of the capital project to be financed by the bond issue, computed from the date of the bonds. The last installment of a refunding bond issue issued pursuant to G.S. 159-48(a)(4) or (5) shall mature not later than either (i) the shortest period, but not more than 40 years, in which the debt to be refunded can be finally paid without making it unduly burdensome on the taxpayers of the issuing unit, as determined by the Commission, computed from the date of the bonds, or (ii) the end of the unexpired period of usefulness of the capital project financed by the debt to be refunded. The last installment of bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), (6), or (7) shall mature not later than 10 years after the date of the bonds, as determined by the Commission. The last installment of bonds issued pursuant to G.S. 159-48(c)(5) shall mature not later than eight years after the date of the bonds, as determined by the Commission.

(1973, c. 494, s. 23.)

Editor's Note. — The 1973 amendment, in subsection (a), substituted “Except as provided in this subsection” for “Except for funding and refunding bonds” at the beginning of the first sentence, deleted “funding or” preceding “refunding” near the beginning of the second sentence and “funded or” preceding “refunded”

near the middle and again near the end of the second sentence, inserted “issued pursuant to G.S. 159-48(a)(4) or (5)” and “computed from the date of the bonds” in the second sentence and added the third and fourth sentences.

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

§ 159-129. Obligations of units certified by Commission. — Each bond or bond anticipation note shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the bond or note has been approved under the provisions of the Local Government Bond Act or the Local Government Revenue Bond Act. The certificate shall be conclusive evidence that the requirements of this Subchapter have been observed, and no bond or note without the Commission's certificate shall be valid. (1931, c. 60, s. 22; c. 296, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 24.)

Editor's Note. — The 1973 amendment inserted "or bond anticipation note" near the beginning of the first sentence and "or note" near the end of the first sentence and in the second sentence.

§ 159-130. Record of issues kept. — The secretary shall make a record of all bonds and notes issued under this Subchapter, showing the name of the issuing unit, the amount, date, the time fixed for payment of principal and interest, the rate of interest, the place at which the principal and interest will be payable, the denominations, the purpose of issuance, the name of the board in which is vested the authority and power to levy taxes or raise other revenues for the payment of the principal and interest thereof, and a reference to the law under which the bonds or notes were issued. The clerk of the issuing unit shall file with the secretary copies of all proceedings of the board in authorizing the bonds or notes, his certificate that they are correctly recorded in a bound book of the minutes and proceedings of the board, and a notation of the pages or other identification of the exact portion of the book in which the records appear. (1931, c. 60, s. 23; 1971, c. 780, s. 1; 1973, c. 494, s. 25.)

Editor's Note. — The 1973 amendment inserted "and notes" near the beginning of the first sentence and "or notes" near the end of the first sentence and near the middle of the second sentence.

§ 159-131. Contract for services to be approved by Commission. — Any contract or agreement made by any unit with any person, firm, or corporation for services to be rendered in drafting forms of proceedings for a proposed bond issue or a proposed issue of notes shall be void unless approved by the Commission. Before giving its certificate to bonds or notes, the Commission shall satisfy itself by such evidence as it may deem sufficient, that no unapproved contract is in effect. This section shall not apply to contracts and agreements with attorneys-at-law licensed to practice before the courts of the State within which they have their residence or regular place of business so long as the contracts or agreements involve only legal services. (1931, c. 60, s. 24; 1971, c. 780, s. 1; 1973, c. 494, s. 26.)

Editor's Note. — The 1973 amendment inserted "or a proposed issue of notes" in the first sentence and "or notes" in the second sentence.

§ 159-133. Suit to enforce contract of sale. — The Commission may enforce in any court of competent jurisdiction any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26; 1971, c. 780, s. 1; 1973, c. 494, s. 27.)

Editor's Note. — The 1973 amendment inserted "or notes" near the end of the section.

§ 159-135. Application of proceeds. — After payment of any notes issued in anticipation of the sale of the bonds and after payment of the cost of preparing, marketing, and issuing the bonds, the proceeds of the sale of a bond issue shall be applied only to the purposes for which the issue was authorized. Any excess amount which for any reason is not needed for any such purpose shall be applied either (i) toward the purchase and retirement of bonds of that issue at not more than their face value and accrued interest, or (ii) toward payment of the earliest maturing installments of that issue, or (iii) in accordance with any trust agreement or resolution securing the bonds. (1917, c. 138, s. 31; 1919, c. 178, s. 3(31); C. S., s. 2957; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 38; 1971, c. 780, s. 1; 1973, c. 494, s. 28.)

Editor's Note. —

The 1973 amendment inserted "of any notes issued in anticipation of the sale of the bonds and after payment" near the beginning of the first

sentence and deleted, at the end of the first sentence, "and to pay any notes issued in anticipation of the sale of the bonds."

§ 159-139. Destruction of cancelled bonds, notes, and coupons. — All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

- (1) Method 1. — The finance officer shall make an entry in a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes, and coupons, showing
 - a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.
 - b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After this entry has been made, the paid bonds, notes, and coupons shall be destroyed by either burning or shredding, in the presence of the mayor or chairman of the governing board, the finance officer, the unit's attorney, and the clerk to the governing board, or any three of them, each of whom shall certify under his hand in the book kept by the finance officer that he saw the bonds and coupons destroyed. Cancelled bonds, notes, or coupons shall not be destroyed until after one year from the date of payment.

- (2) Method 2. — The governing board may contract with the bank or trust company acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Cancelled bonds or coupons shall not be destroyed until one year from the date of payment.

The provisions of G.S. 121-5 and 132-3 shall not apply to paid bonds, notes, and coupons. (1941, cc. 203, 293; 1961, c. 663, ss. 1, 2; 1963, c. 1172, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 29.)

Editor's Note. — The 1973 amendment substituted "payment" for "maturity" at the end of subdivision (1) and added "Cancelled" at the beginning of the last sentence and

substituted "from the date of payment" for "after date of maturity" at the end of subdivision (2).

ARTICLE 8.

Financing Agreements.

§ 159-148. **Contracts subject to Article; exceptions.** — (a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b)), relating to the lease, acquisition, or construction of capital assets, which contract

- (1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, and
- (2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract, and
- (3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, to the extent of five hundred thousand dollars (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of the appraised value of property subject to taxation by the contracting unit (before the application of any assessment ratio), whichever is less, and
- (4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group.

(1973, c. 494, s. 31.)

Editor's Note. — The 1973 amendment added "or of general obligation bonds additionally secured by a pledge of revenues" in the first parentheses in the introductory paragraph of subsection (a) and substituted "(as defined by

G.S. 159-7(b))" for "in this State" in that paragraph.

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

§ 159-151. **Approval of application by Commission.** — (a) In determining whether a proposed contract shall be approved, the Commission may consider:

- (1) Whether the undertaking is necessary or expedient.
- (2) The nature and amount of the outstanding debt of the contracting unit.
- (3) The unit's debt management procedures and policies.
- (4) The unit's tax and special assessments collection record.
- (5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
- (6) Whether the unit is in default in any of its debt service obligations.
- (7) The unit's present tax rates, and the increase in tax rate, if any, necessary to raise the sums to fall due under the proposed contract.
- (8) The unit's appraised and assessed value of property subject to taxation.
- (9) The ability of the unit to sustain the additional taxes necessary to perform the contract.

(10) If the proposed contract is for utility or public service enterprise, the probable net revenues of the undertaking to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the undertaking to be financed, will be sufficient to meet the sums to fall due under the proposed contract.

(11) Whether the undertaking could be financed by a bond issue, and the reasons and justifications offered by the contracting unit for choosing this method of financing rather than a bond issue.

The Commission shall have authority to inquire into and to give consideration to any other matters that it may believe to have bearing on whether the contract should be approved.

(1973, c. 494, s. 32.)

Editor's Note. — The 1973 amendment inserted "to" following "subject" in subdivision (8) of subsection (a). As subsection (b) was not affected by the amendment, it is not set out.

§§ 159-153 to 159-159: Reserved for future codification purposes.

ARTICLE 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

Part 1. Bond Anticipation Notes.

§ 159-160. **"Unit" defined.** — As used in this Part, the words "unit" or "issuing unit" mean "unit of local government" as defined in G.S. 159-44 and "municipality" as defined in G.S. 159-81. (1973, c. 494, s. 36.)

§ 159-161. **Bond anticipation notes.** — At any time after a bond order has taken effect and with the approval of the Commission, the issuing unit 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. General obligation bond anticipation notes shall be payable not later than five years after the time the bond order takes effect and shall not be renewed or extended beyond such time, except that if the issuance of bonds under the bond order is prevented or prohibited by any order of any court, the bond anticipation notes may be renewed or extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. Any extension of the time for issuing bonds under a bond order granted by act of the General Assembly pursuant to G.S. 159-64 shall also extend the time for issuing and paying notes under this section for the same period of time. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C. S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 33.)

Editor's Note. — The 1973 amendment inserted "and with the approval of the Commission" in the first sentence, substituted "General obligation bond" for "Bond" at the beginning of the second sentence and inserted "and paying" near the end of the third sentence.

§ 159-164. Negotiable notes to be issued. — Bond anticipation loans shall be evidenced by negotiable notes which are hereby declared to be investment securities within the meaning of Article 8 of the Uniform Commercial Code as enacted in this State. Bond anticipation notes may be renewed or extended from time to time, but not beyond the time period allowed in G.S. 159-161. The governing board may authorize the issuance of bond anticipation notes by resolution which shall fix the maximum aggregate principal amount of the notes and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. The notes shall be signed with the manual or facsimile signatures of officers designated by the governing board for that purpose, but at least one manual signature must appear on each note (which may be the signature of the representative of the Commission to the Commission's certificate). The resolution shall specify the form and manner of execution of the notes. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C. S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 34.)

Editor's Note. —

The 1973 amendment rewrote the third sentence and added the fourth sentence.

§ 159-165. Sale and delivery of bond anticipation notes. — (a) Bond anticipation notes shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe.

(b) When the bond anticipation notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The net proceeds of revenue bond anticipation notes shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C. S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, s. 2; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 35.)

Editor's Note. — The 1973 amendment designated the former provisions of this section as subsection (a) and added subsection (b). In subsection (a) the amendment substituted "at

public or private sale" for "by public or private negotiations" and deleted "by regulation" preceding "prescribe."

§§ 159-166, 159-167: Reserved for future codification purposes.

Part 2. Tax, Revenue and Grant Anticipation Notes.

§ 159-168. "Unit" defined. — For purposes of this Part, "unit," "unit of local government," or "issuing unit" mean a "unit of local government" as defined by G.S. 159-7(b) and a "public authority" as defined by G.S. 159-7(b). (1973, c. 494, s. 40.)

Editor's Note. — Session Laws 1975, c. 674, s. 2, changed the heading of this Part from "Tax and Revenue Anticipation Notes" to "Tax, Revenue and Grant Anticipation Notes."

§ 159-169. Tax anticipation notes.

(b) No tax anticipation loan shall be made if the amount thereof, together with the amount of tax anticipation notes authorized or outstanding on the date the loan is authorized, would exceed fifty percent (50%) of the amount of taxes uncollected as of the date of the proposed loan authorization, as certified in writing to the governing board by the chief financial officer of the issuing unit. Each tax anticipation note shall bear on its face or reverse the following certificate signed by the finance officer: "This note and all other tax anticipation notes of (issuing unit) authorized or outstanding as of (date) amount to fifty percent (50%) or less of the amount of taxes for the current fiscal year uncollected as of the above date." No tax anticipation note shall be valid without this certificate.

(1973, c. 494, s. 37.)

Editor's Note. — The 1973 amendment substituted "fifty percent (50%) or less" for "less than fifty percent (50%)" in the form of certificate in the next-to-last sentence of subsection (b). The amendment also substituted

parentheses for brackets in two places in the form.

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

§ 159-170. Revenue anticipation notes.

(b) No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing unit, other than taxes, estimated in its budget to be realized in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit and that the faith and credit of the issuing unit are not pledged for the payment of the note, and on its face or reverse the following certificate signed by the finance officer: "This note and all other revenue anticipation notes of (issuing unit) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date." No revenue anticipation note shall be valid without this certificate.

(1973, c. 494, s. 38.)

Editor's Note. — The 1973 amendment substituted "eighty percent (80%) or less" for "less than eighty percent (80%)" in the form of certificate in the next-to-last sentence of subsection (b). The amendment also substituted

parentheses for brackets in two places in the form.

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

§ 159-171. Grant anticipation notes. — (a) A unit of local government is authorized to borrow money for the purpose of paying appropriations made for a capital project in anticipation of the receipt of moneys from grant commitments for such capital project from the State or the United States or any agencies of either, and to issue its negotiable notes in evidence thereof. Grant anticipation notes shall mature not later than 12 months after the estimated completion date of such capital project as determined by the governing body of the unit of local government and may be renewed from time to time, but no renewal shall mature later than 12 months after the estimated completion date of such capital project.

(b) No grant anticipation note may be issued if the amount thereof, together with the amount of all other notes authorized or issued in anticipation of the same grant commitment, shall exceed ninety percent (90%) of the unpaid amount of said grant commitment. Each note shall bear on its face a statement to the effect that it is payable solely from moneys received from a described grant and that the faith and credit of the issuing unit are not pledged for the payment thereof, and on its face or reverse the following certificate signed by the finance officer: "This note and all other grant anticipation notes of (issuing unit) authorized or outstanding as of (date) and issued or to be issued in anticipation of (describe grant commitment) amount to ninety percent (90%) or less of the unpaid amount of said grant commitment." No grant anticipation note shall be valid without this certificate.

(c) Grant anticipation notes issued under this section shall be special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of grant anticipation notes, and no holder of such notes shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. (1975, c. 674, s. 1.)

§ 159-172. Authorization and issuance of notes. — (a) Notes issued under this Part shall be authorized by resolution of the governing board of the issuing unit. The resolution shall fix the maximum aggregate principal amount of notes to be issued thereunder, and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. The notes shall be signed with the manual or facsimile signatures of officers designated by the governing board for that purpose, but at least one manual signature must appear on each note (which may be the signature of the representative of the Commission to the Commission's certificate). Several notes may be issued under one authorization so long as the aggregate principal amount of notes outstanding at any one time does not exceed the limits of the authorization.

(b) Before any notes may be issued pursuant to this Part, they must be approved by the Commission. In determining whether to approve the issuance of notes, the Commission may consider (i) the reasonableness of the budget estimates of the taxes or other revenues in anticipation of which the tax or revenue anticipation notes are to be issued, (ii) the firm and binding character of the grant commitment in anticipation of which the grant anticipation notes are to be issued, (iii) whether the amount of the notes, together with the amount of other authorized or outstanding notes issued or to be issued in anticipation of the same taxes or other revenues or grant commitments, exceeds the limitations prescribed in G.S. 159-169, 159-170 or 159-171 as the case may be, and (iv) any other matters that the Commission considers to have a bearing on whether the issue should be approved. The Commission shall approve the issuance of the notes if, upon the information and evidence it receives, it finds and determines that (i) the issue is necessary and expedient, (ii) the budget estimates of the taxes or other revenues are reasonable or the grant commitment is firm and binding, and (iii) the amount of the notes, together with the amounts of other authorized or outstanding notes issued or to be issued in

anticipation of the same taxes or other revenues or grant commitments do not exceed the appropriate limitations prescribed by this Part. An order approving an issue shall not be regarded as an approval of the legality of the notes in any respect.

(c) Notes issued under this Part shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Each such note shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the note has been approved under the provisions of the Local Government Finance Act. The certificate is conclusive evidence that the requirements of this Part have been observed, and no note without the Commission's certificate is valid.

(d) When the notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C. S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1931, c. 293; 1939, c. 231, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 39; 1975, c. 674, ss. 3-5.)

Editor's Note. —

The 1973 amendment rewrote this section.

The 1975 amendment substituted "this Part" for "G.S. 159-169 and 159-170" in the first

sentences of subsections (a) and (c) and rewrote subsection (b), inserting the provisions as to grant-anticipation notes and grant commitments.

ARTICLE 10.

Assistance for Defaulting Units in Refinancing Debt.

§ 159-176. Commission to aid defaulting units in developing refinancing plans. — If a unit of local government or municipality (as defined in G.S. 159-44 or G.S. 159-81) fails to pay any installment of principal or interest on its outstanding debt on or before the due date (whether the debt is evidenced by general obligation bonds, revenue bonds, bond anticipation notes, tax anticipation notes, or revenue anticipation notes) and remains in default for 90 days, the Commission may take such action as it deems advisable to investigate the unit's or municipality's fiscal affairs, consult with its governing board, and negotiate with its creditors in order to assist the unit or municipality in working out a plan for refinancing, adjusting, or compromising the debt. When a plan is developed that the Commission finds to be fair and equitable and reasonably within the ability of the unit or municipality to meet, the Commission shall enter an order finding that it is fair, equitable, and within the ability of the unit or municipality to meet. The Commission shall then advise the governing board to take the necessary steps to implement it. If the governing board declines or refuses to do so within 90 days after receiving the Commission's advice, the Commission may enter an order directing the governing board to implement the plan. When this order is entered, the members of the governing board and all officers and employees of the unit or municipality shall be under an affirmative duty to do all things necessary to implement the plan. The Commission may apply to the appropriate division of the General Court of Justice for a court order to the governing board and other officers and employees of the unit or municipality to enforce the Commission's order. (1935, c. 124, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 41.)

Editor's Note. — The 1973 amendment inserted "or municipality" in the first sentence, in two places in the second sentence, and in the

fifth and sixth sentences. The amendment also inserted "or municipality's" in the first sentence.

§ 159-177. Power to require reports and approve budgets. — When a refinancing plan has been put into effect pursuant to G.S. 159-176, the Commission shall have authority to require any periodic reports on the unit's or municipality's financial affairs (in addition to those otherwise required by law) that the secretary deems necessary, and to approve or reject the unit's or municipality's annual budget ordinance. The governing board of the unit or municipality shall obtain the approval of the secretary before adopting the annual budget ordinance. If the Commission recommends modifications in the budget, the governing board shall be under an affirmative duty to make the modifications before adopting the budget ordinance. (1935, c. 124, ss. 3, 4; 1971, c. 780, s. 1; 1973, c. 494, ss. 41, 42.)

Editor's Note. — The 1973 amendment inserted "or municipality" in the second sentence, inserted "municipality's" in two places

in the first sentence, and added "ordinance" at the end of the first, second and third sentences.

§ 159-178. Duration of Commission's powers. — The power and authority granted to the Commission in this Article shall continue with respect to a defaulting unit of local government or municipality until the Commission is satisfied that the unit or municipality has performed or will perform the duties required of it in the refinancing plan, and until agreements made with the unit's or municipality's creditors have been performed in accordance with the plan. (1935, c. 124, s. 5; 1971, c. 780, s. 1; 1973, c. 494, s. 41; 1975, c. 19, s. 62.)

Editor's Note. — The 1973 amendment inserted "or municipality" in two places and "or municipality's" in one place.

The 1975 amendment corrected an error in the 1973 amendatory act by inserting "or municipality" following "of local government."

ARTICLE 11.

Enforcement of Chapter.

§ 159-181. Enforcement of Chapter. — (a) If any finance officer, governing board member, or other officer or employee of any local government or public authority (as local government and public authority are defined in G.S. 159-7(b)) shall approve any claim or bill knowing it to be fraudulent, erroneous, or otherwise invalid, or make any written statement, give any certificate, issue any report, or utter any other document required by this Chapter, knowing that any portion of it is false, or shall willfully fail or refuse to perform any duty imposed upon him by this Chapter, he is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) and forfeits his office, and shall be personally liable in a civil action for all damages suffered thereby by the unit or authority or the holders of any of its obligations.

(b) If any person embezzles any funds belonging to any local government or public authority, or appropriates to his own use any personal property having a value of more than fifty dollars (\$50.00) belonging to any local government or public authority, in addition to the crimes and punishment otherwise provided by law, upon conviction he forfeits his office or position and is forever thereafter barred from holding any office or place of trust or profit under the State of

North Carolina or any political subdivisions thereof until the disability is removed in the manner provided for restoration of citizenship in Chapter 13 of the General Statutes.

(1973, c. 494, s. 43.)

Editor's Note. — The 1973 amendment inserted the clause in parentheses near the beginning of subsection (a), made certain minor changes in wording in subsection (a), deleted "unit of" preceding "local government" and "local" preceding "public authority" in two

places in subsection (b) and substituted "of" for "to" preceding "citizenship" near the end of subsection (b).

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

§ 159-182. Offending officers and employees removed from office. — If an officer or employee of a local government or public authority persists, after notice and warning from the Commission, in failing or refusing to comply with any provision of this Chapter, he forfeits his office or employment. The Commission may enter an order suspending the offender from further performance of his office or employment after first giving him notice and an opportunity to be heard in his own defense, pending the outcome of quo warranto proceedings. Upon suspending a local officer or employee under this section, the Commission shall report the circumstances to the Attorney General who shall initiate quo warranto proceedings against the officer or employee in the General Court of Justice. If an officer or employee persists in performing any official act in violation of an order of the Commission suspending him from performance of his duties, the Commission may apply to the General Court of Justice for a restraining order and injunction. (1931, c. 60, s. 45; 1971, c. 780, s. 1; 1973, c. 494, s. 44.)

Editor's Note. — The 1973 amendment rewrote the former first sentence as the present first and second sentences.

Chapter 159A.

Pollution Abatement and Industrial Facilities Financing Act.

Sec.

159A-3. Definitions.

159A-4. Creation of authorities.

Sec.

159A-12. Bonds.

159A-21. Approval of each bond issue.

Editor's Note. — This Chapter was held unconstitutional in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973). A new Chapter 159A, covering the same subject matter, was enacted by Session Laws 1975, c. 800, effective upon ratification of an enabling amendment to the State Constitution, and has been recodified as Chapter 159C. See the Editor's note following the analysis to Chapter 159C.

Session Laws 1975, c. 800, s. 5, provides: "This Chapter shall become effective upon the certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of

general laws dealing with the transactions of the type contemplated by this Chapter has been approved by the people of the State."

Session Laws 1975, c. 826, proposes to amend Article V of the Constitution of North Carolina by adding a new section authorizing the General Assembly to authorize the counties to create authorities to issue revenue bonds to finance industrial and pollution control projects for industry and pollution control projects for public utilities, subject to the approval of the electorate at the election to be held March 23, 1976.

Session Laws 1975, c. 800, s. 4, contains a severability clause.

§ 159A-1. Short title.

Chapter Held Unconstitutional. — The abatement of pollution created by a private industry may not constitutionally be accomplished by means of State aid to the industrial polluter in the form of a tax-free revenue bond financing. *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

The creation of county authorities for the purpose of financing pollution abatement and control facilities or industrial facilities for private industry by the issuance of tax-exempt revenue bonds is not for a public purpose, and this chapter, which purports to authorize such

financing, violates N.C. Const., Art. V, § 2. *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

This Chapter was designed to enable industrial polluters to finance, at the lowest interest rate obtainable, the pollution abatement and control facilities which the law is belatedly requiring of them. And if it be held that authorities created under § 159A-8 cannot constitutionally issue tax-free revenue bonds for that purpose, this Chapter fails, for it has no other objective. *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 159A-2. Legislative findings and purposes.

Cited in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 159A-3. Definitions. — The following terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (6a) "Distressed areas" shall mean any county meeting at least one of the following tests:
- a. During the immediately preceding calendar year with respect to which published reports are available, the estimated rate of unemployment among the labor force of the county was at least six percent (6%); or
 - b. During the immediately preceding calendar year with respect to which published reports are available, the estimated average manufacturing wage of factory production workers in the county was at least ten percent (10%) less than the State average for the same period; or
 - c. During the immediately preceding calendar year with respect to which published reports are available, the estimated average per capita personal income in the county was ten percent (10%) less than the State average for the same period; or
 - d. The county is one which has suffered a substantial loss of population due to lack of employment opportunities. Such a county shall be defined as one which suffered a one percent (1%) or more loss of population between 1960 and 1970 (or the immediately preceding 10-year period for which published reports are available); or
 - e. The county is one where the loss, removal, curtailment, or closing of a major source of employment has caused within three years prior to, or threatens to cause within three years after, the date of the application an unusual and abrupt rise in unemployment of such magnitude that the unemployment rate for such county at the time of the application exceeds the national average, or can reasonably be expected to exceed the national average, by fifty percent (50%) or more if no action is taken to alleviate the problem; or
 - f. The county becomes eligible for assistance under any of the tests and standards of section 401(a) of the Public Works and Economic Development Act of 1965 of the United States of America (Pub. L. 89-136, Title IV, 401) as amended.

For the purposes of this subdivision (6a), "published reports" shall include the reports and statistical indices published by the Department of Administration, the Department of Natural and Economic Resources, the Department of Labor, the Department of Human Resources, the Department of Revenue and the Employment Security Commission of the State, the U.S. Department of Commerce, the U.S. Department of Labor, and such other state and federal agencies, departments, commissions and bureaus as shall publish reports necessary to establish the existence of the aforementioned conditions.

(1973, c. 476, ss. 128, 193; c. 1262, s. 86; 1975, c. 19, s. 63.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, effective July 1, 1973, "Department of Human Resources" has been substituted for "Department of Public Health" in the last paragraph of subdivision (6a). Session Laws 1973, c. 476, s. 193, effective July 1, 1973, substituted "Department of Revenue" for "Department of Tax Research" in the same paragraph.

Session Laws 1973, c. 1262, s. 86, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the last paragraph of subdivision (6a).

The 1975 amendment corrected an error by substituting "an" for "on" preceding "unusual" in paragraph e of subdivision (6a).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivision (6a) are set out. Cited in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 159A-4. Creation of authorities. — (a) The governing body of any county is hereby authorized to create by resolution or ordinance a political subdivision and body corporate and politic of the State known as “The (the blank space to be filled in with the name of the county) County Pollution Abatement and Industrial Facilities Financing Authority,” which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution or ordinance creating such authority, or by subsequent resolution or ordinance. Such resolution or ordinance shall state whether the authority may issue its bonds for pollution control purposes or industrial facility financing purposes or both and a certified copy of such resolution shall be filed in the records of the authority. At least 30 days prior to the adoption of such resolution or ordinance, the governing body of such county shall file with the Department of Natural and Economic Resources of the State of North Carolina and the Local Government Commission of North Carolina, on forms to be furnished by said Department and Commission, notice of its intention to adopt a resolution or ordinance creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes. If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed.

(f) Within 120 days of the date of creation of the authority, the commissioners shall file a written application on behalf of the authority to the Department of Natural and Economic Resources of the State of North Carolina requesting that the Department of Natural and Economic Resources make a determination that the proposed operation of the authority is for a public purpose and stating the basis of such request. The Department of Natural and Economic Resources shall then make such independent investigations as it deems advisable in order to make its determination. The formal determination shall be made by the full Department of Natural and Economic Resources at its quarterly meeting, which meeting shall be public. At least one week prior to the date set for such meeting, the Department of Natural and Economic Resources shall cause to be published, for three consecutive days, in a newspaper of general circulation within the county for which the authority was created, notice that the application of the authority is to be considered at such meeting. The final action and findings of fact by the Department of Natural and Economic Resources shall be contained in a resolution containing the following:

- (1) A statement that the proposed operation of the authority is or is not for a public purpose, and, if it finds that the proposed authority is for a public purpose,
- (2) That the finding of a public purpose was based upon the determination that

- a. The county for which the authority was created is a distressed area (and further stating which test or tests for designation as a distressed area were met), and/or
- b. That substantial air, water or noise pollution now exists within said county or may be expected to exist within five years of the application if no effective preventive measures are taken and
- c. The facts upon which the Department's findings are based.

At any time subsequent to the initial proceeding under G.S. 159A-4(f) in respect to a particular authority, the Department of Natural and Economic Resources may, only upon application of the authority, revise its original findings due to a change in circumstances. The additional findings shall be set forth in a resolution in form similar to the resolution adopted at the original proceeding.

Any such findings shall be reviewable as provided in the General Statutes of North Carolina, Chapter 143, Article 33, only by action filed, by the authority or by any person, firm or corporation who objected at the hearing held pursuant to this section, within 30 days of the date of the resolution of the Department of Natural and Economic Resources, in the Superior Court of Wake County challenging such findings. Such Superior Court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, such findings shall become final and the basis therefor conclusively presumed, and no court shall have authority to inquire into such matters. The petition filed in such action shall name as defendants the Department of Natural and Economic Resources and the authority and such defendants and the Attorney General of the State of North Carolina shall each be served with a copy of the petition. (1971, c. 633, s. 1; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" near the middle of subsection (a), following "on behalf of the authority to the" in the first sentence of subsection (f) and near the beginning of the second sentence of subsection (f), and substituted "Department of Natural and

Economic Resources" for "Board of Conservation and Development" throughout the rest of subsection (f). The amendment also substituted "Department's" for "Board's" in subdivision (2)c in the first paragraph of subsection (f).

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

§ 159A-8. Tax exemption.

Chapter Held Unconstitutional. — See note to § 159A-1.

§ 159A-10. Conflict of interest.

Lease or Sublease of Property in Violation of Section. — Lease or sublease of property constructed by county pollution abatement and industrial facilities financing authority to a

corporation in which a county commissioner has a direct or indirect interest would be in violation of this statute. Opinion of Attorney General to Mr. Walter J. Cashwell, Jr., 42 N.C.A.G. 9 (1972).

§ 159A-12. Bonds. — (a) Each authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project or projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the lessee and within the limitation of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated and shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. No bonds may be issued by an authority unless the issuance thereof is approved by the Local Government Commission of North Carolina. The authority shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of bonds which shall include such information concerning the proposed financing and the prospective lessee as the Secretary may require.

In determining whether a proposed bond issue should be approved, the Local Government Commission shall consider, without limitation, the following:

- (1) The financial responsibility and the capability of the prospective lessee to fulfill its obligations under the agreement of lease. In determining such financial responsibility, consideration shall be given to the lessee's ratio of current assets to current liabilities, net worth, earnings trends, coverage of all fixed charges, the nature of the industry or business involved and its stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee, financially and otherwise, to fulfill its obligations consistently with the purpose of this Chapter.
- (2) The ability of the political subdivision in or near which the proposed project is to be located to cope satisfactorily with the impact of the project and to provide, or cause to be provided, the public facilities, including utilities, and public services that will be necessary for the construction, operation, repair and maintenance of the project and on account of any increases in population which are expected to result therefrom.
- (3) The making of adequate provision for the operation, repair and maintenance of the proposed project at the expense of the lessee and for the payment of the principal of and the interest on the bonds.

- (4) The effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of the bonds if, upon the information and evidence it receives, it finds and determines that the criteria set forth in the preceding paragraph of this section are satisfied and that the proposed financing will effectuate the purposes of this Chapter. Upon the filing with the Local Government Commission of a resolution of the authority requesting that its bonds be sold and the issuance of a formal certificate of approval by the Secretary of Natural and Economic Resources as provided for in G.S. 159A-21, such bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interests of the authority and effectuate best the purposes of this Chapter, provided that such sale shall be approved by the authority and the lessee, but no such sale shall be made at a price so low as to cause the net effective interest rate of an issue of bonds to exceed the interest limits set forth in G.S. 24-1.1, as amended, and successor provisions. For the purposes of this section, "net effective interest rate" shall be computed, without regard to (i) any optional or mandatory redemption prior to the designated maturity dates of the bonds, or (ii) any costs incident to the issuance and sale of the bonds including any reasonable legal fees, underwriter's or fiscal agent's fees, recording and issuance cost, by dividing the total amount of interest to accrue on the bonds from their date to their respective maturities, less the amount of any premium above par or plus the amount of any discount at which the bonds are being or have been sold, by the sum of the products derived by multiplying the principal amounts of such bonds maturing on each maturity date by the number of years from the date of such bonds to their respective maturities.

(1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "Director of Conservation and Development" in the second sentence of the last paragraph of subsection (a).

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

§ 159A-20. No power of eminent domain.

Cited in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 159A-21. Approval of each bond issue. — Prior to the issuance of any bonds under the provisions of this Chapter, an authority shall apply to the Department of Natural and Economic Resources for its approval of the issuance of said bonds. The Department will first make certain pertinent findings as follows:

- (1) That, insofar as the proposed project to be financed is concerned, there have been no material changes in the facts that were the basis of the determination of the Department of Natural and Economic Resources that the county qualified as a "distressed area" as said facts were set forth in the most recent pertinent resolution of the Department of Natural and Economic Resources pursuant to the proceedings conducted under G.S. 159A-4(f).
- (2) That, insofar as the proposed project to be financed is concerned, there have been no material changes in the facts that were the basis of the

determination of the Department of Natural and Economic Resources regarding pollution as said facts were set forth in the most recent pertinent resolution of the Department of Natural and Economic Resources pursuant to the proceedings under G.S. 159A-4(f).

- (3) That, insofar as can be determined from published reports and the information available, the authority has correctly determined that (i) the proposed project to be financed will alleviate those specific conditions which were the basis of the most recent pertinent finding by the Department of Natural and Economic Resources pursuant to the proceedings under G.S. 159A-4(f), and (ii) said conditions continue to exist.
- (4) The proposed project (i) will alleviate the aforementioned pollution conditions or (ii) will alleviate or tend to alleviate the conditions of below average manufacturing wages, below average per capita income or high unemployment previously stated in this Chapter, and will also make a significant contribution to the economic growth of the county in which it is to be located, will provide gainful employment to the residents of the county for which the authority was created, and will advance the economic prosperity and the public welfare of said county, the State and people thereof.
- (5) The proposed project will not cause the abandonment of an industrial or research facility existing elsewhere in the State.

After the Department has made these findings, and if the project is approved, the Secretary shall cause said findings and notice of such approval to be published in a newspaper of general circulation within the county for which the authority was created. Any such findings and approval shall be reviewable as provided in Article 33 of Chapter 143 of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County challenging such findings and approval, or the authority to issue the bonds, the legality thereof or the source of payment thereof. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the authority to issue bonds, the legality thereof shall be conclusively presumed, and no court shall have authority to inquire into such matters. The petition filed in such action shall name as defendants the Department of Natural and Economic Resources and the authority, and such defendants and the Attorney General of the State of North Carolina shall each be served with a copy of such petition. If the Department of Natural and Economic Resources makes the above such findings and gives such approval and no action has been filed to contest such findings and approval or the issuance of such bonds, the Secretary of Natural and Economic Resources shall issue a formal certificate of approval evidencing the making of such findings and the approval of the issuance of the bonds. (1971, c. 633, s. 1; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the introductory paragraph and in two places in the last paragraph of the section, substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" in subdivisions

(1), (2) and (3) and substituted "Secretary" for "Director" in the first sentence of the last paragraph and "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in the last sentence of the last paragraph.

Applied in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

Sec.	Sec.
159B-1. Short title.	159B-14. Bonds of a joint agency.
159B-2. Legislative findings and purposes.	159B-15. Issuance of bonds.
159B-3. Definitions.	159B-16. Resolution or trust agreement.
159B-4. Authority of municipalities to jointly cooperate.	159B-17. Revenues.
159B-5. Joint ownership of a project; provisions of the contract or agreement with respect thereto.	159B-18. Trust funds.
159B-6. Sale of capacity and output by a municipality.	159B-19. Remedies.
159B-7. Licenses, permits, certificates and approvals.	159B-20. Status of bonds under Uniform Commercial Code.
159B-8. Authority to contract with respect to exchange, interchange, wheeling, pooling and transmission.	159B-21. Bonds eligible for investment.
159B-9. Creation of a joint agency; board of commissioners.	159B-22. Agreement of the State.
159B-10. Executive committee; composition; powers and duties; terms.	159B-23. Limited liability.
159B-11. General powers of joint agencies; prerequisites to undertaking projects.	159B-24. Approval and sale of bonds.
159B-12. Sale of capacity and output by a joint agency.	159B-25. Refunding bonds.
159B-13. Sale of excess capacity and output by a joint agency.	159B-26. Tax exemption.
	159B-27. Taxes; payments in lieu of taxes.
	159B-28. Personnel.
	159B-29. Dissolution of joint agencies.
	159B-30. Annual reports.
	159B-31. Legislative consent to the application of laws of other states.
	159B-32. Government grants and loans.
	159B-33. Eminent domain.
	159B-34. Officers not liable.
	159B-35. Additional method.
	159B-36. Chapter liberally construed.

Editor's Note. — Session Laws 1975, c. 186, s. 2, contains a severability clause.

§ 159B-1. Short title. — This Chapter may be cited as the “Joint Municipal Electric Power and Energy Act.” (1975, c. 186, s. 1.)

§ 159B-2. Legislative findings and purposes. — The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers

in their respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

The joint planning, financing, development, ownership and operation of electric generation and transmission facilities by municipalities which own electric distribution systems and the issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and for public and municipal purposes and is a means of achieving economies, adequacy and reliability in the generation of electric power and energy and in the meeting of future needs of the State and its inhabitants. (1975, c. 186, s. 1.)

§ 159B-3. Definitions. — The following terms whenever used or referred to in this Chapter shall have the following respective meanings unless a different meaning clearly appears from the context:

- (1) "Bonds" shall mean electric revenue bonds, notes and other evidences of indebtedness of a joint agency or municipality issued under the provisions of this Chapter and shall include refunding bonds.
- (2) "Cost" or "cost of a project" shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency; establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation.
- (3) "Governing board" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged by law with governing the municipality or joint agency.
- (4) "Joint agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of this Chapter.
- (5) "Municipality" shall mean a city, town or other unit of municipal government created under the laws of the State, or any board, agency, or commission thereof, owning a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses.
- (6) "Project" shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and

energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site.

(7) "State" shall mean the State of North Carolina. (1975, c. 186, s. 1.)

§ 159B-4. Authority of municipalities to jointly cooperate. — In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the State, and in order to accomplish the purposes of this Chapter and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain an undivided interest as a tenant in common in a project situated within or without the State jointly with one or more other municipalities, or with a joint agency created pursuant to this Chapter, or with municipal corporations or political subdivisions of other states (to the extent permitted by the laws of such other states), and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this Chapter, as are necessary or appropriate.

Prior to acquiring any such undivided interest the governing board shall determine the needs of the municipality for power and energy based upon engineering studies and reports, and shall not acquire an undivided interest as a tenant in common in a project in excess of that amount of capacity and the energy associated therewith required to provide for its projected needs for power and energy from and after the date the project is estimated to be placed in normal continuous operation and for such reasonable period of time thereafter as shall be determined by the governing board and approved by the North Carolina Utilities Commission in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter. In determining the future power requirements of a municipality, there shall be taken into account the following:

- (1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy;
- (2) The municipality's needs for reserve and peaking capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;
- (3) The estimated useful life of such project;
- (4) The estimated time necessary for the planning, development, acquisition or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply; and
- (5) The reliability and availability of existing or alternative power supply sources and the cost of such existing or alternative power supply sources.

A determination by such governing board approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the quantity of the interest which a municipality may acquire in a project unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1.)

§ 159B-5. Joint ownership of a project; provisions of the contract or agreement with respect thereto. — Each municipality shall own an undivided interest in any project in proportion to the amount of the money furnished or the value of property or other consideration supplied by it for the planning, development, acquisition or construction thereof, and shall be entitled to a percentage share of the output and capacity therefrom equal to such undivided interest.

Each municipality shall be severally liable for its own acts and not jointly or severally liable for the acts, omissions or obligations of others, and no money or property or other consideration supplied by any municipality shall be credited or otherwise applied to the account of any other municipality, nor shall the undivided share of any municipality in a project be charged directly or indirectly with any debt or obligation of any other municipality or be subject to any lien as a result thereof. The acquisition of a project shall include, but shall not be limited to, the purchase or lease of an existing, completed project and the purchase of a project under construction. A municipality participating in the joint planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation or maintenance of any project under this Chapter may furnish money derived solely from the proceeds of bonds or from the ownership and operation of its electric system, or both, and provide property, both real and personal, services and other considerations.

Any contracts entered into by municipalities with respect to joint ownership in a project shall contain such terms, conditions and provisions, not inconsistent with the provisions hereof, as the governing boards of the municipalities shall deem to be in the interests of the municipalities. Any such contracts shall be ratified by resolution of the governing board of each municipality spread upon its minutes. Any such contracts shall include, but shall not be limited to, the following:

- (1) The purpose or purposes of the contract;
- (2) The duration of the contract;
- (3) The manner of appointing or employing the personnel necessary in connection with the project;
- (4) The method of financing the project, including the apportionment of costs and revenues;
- (5) Provisions specifying the ownership interests of the parties in real property used or useful in connection with the project, and the procedures for the disposition of such property when the contract expires, is terminated or when the project, for any reason, is abandoned, decommissioned or dismantled;
- (6) Provisions relating to alienation and prohibiting partition of a municipality's undivided interest in a project, which provisions shall not be subject to any provision of law restricting covenants against alienation or partition;
- (7) Provisions for the construction of a project, which may include the determination that one municipality jointly participating or any person, firm or corporation may construct the project as agent for all the parties;
- (8) Provisions for the operation and maintenance of a project, which may include the determination that one municipality jointly participating or any person, firm or corporation may operate and maintain the project as agent for all the parties;
- (9) Provisions for the creation of a committee of representatives of the municipalities jointly participating, with such powers of supervision of the construction and operation of the project as the contract, not inconsistent with the provisions of this Chapter, may provide;

- (10) Provisions that if one or more of the municipalities shall default in the performance or discharge of its or their obligations with respect to the project, the other party or parties may assume, pro rata or otherwise, the obligations of such defaulting party or parties and may succeed to such rights and interests of the defaulting party or parties in the project as may be agreed upon in the contract;
- (11) Methods for amending the contract;
- (12) Methods for terminating the contract; and
- (13) Any other necessary or proper matter.

For the purpose of paying its respective share of the cost of a project or projects, a municipality may issue its bonds as provided in this Chapter, and, notwithstanding the provisions of any other law to the contrary, may pledge to the payment of the principal of, premium, if any, and interest on such bonds the revenues, or any portion thereof, derived or to be derived from the ownership and operation of its system or facilities for the generation, transmission, or distribution of electric power or energy or its interest in any joint project or projects, or a combination of such revenues. Provided that all bonds issued under the provisions of this Chapter shall be authorized and issued by the governing board of a city, town, or other unit of municipal government created under the laws of the State. (1975, c. 186, s. 1.)

§ 159B-6. Sale of capacity and output by a municipality. — Capacity or output derived by a municipality from its ownership share of a project not then required by such municipality for its own use and for the use of its consumers may be sold or exchanged by such municipality, for such consideration and for such period and upon such other terms and conditions as may be determined by the parties, to any municipality owning electric distribution facilities in this State, to any electric membership corporation or public utility authorized to do business in this State, or to any state, federal or municipal agency which owns electric generation, transmission or distribution facilities. Provided, however, that the foregoing limitations shall not apply to the temporary sale of excess capacity and energy without the State in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements reasonably related to its needs for power and energy. Provided further, however, that sales of excess capacity or output of a project to electric membership corporations, public utilities, and other persons the interest on whose securities and other obligations is not exempt from taxation by the federal government shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. (1975, c. 186, s. 1.)

§ 159B-7. Licenses, permits, certificates and approvals. — Municipalities proposing to jointly plan, finance, develop, own and operate a project are hereby authorized, either jointly or separately, to apply to the appropriate agencies of the State, the United States, or any state thereof, and to any other proper agency for such licenses, permits, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other operating unit of any other person. (1975, c. 186, s. 1.)

§ 159B-8. Authority to contract with respect to exchange, interchange, wheeling, pooling and transmission. — Municipalities participating in a joint project or projects are hereby authorized to enter into contracts for the exchange, interchange, wheeling, pooling and transmission of electric power and energy produced by such project or projects with any municipality of this State or any other state owning electric distribution facilities, any electric membership corporation, or any public utility, or any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state. (1975, c. 186, s. 1.)

§ 159B-9. Creation of a joint agency; board of commissioners. — (a) The governing boards of two or more municipalities may by resolution or ordinance determine that it is in the best interests of the municipalities in accomplishing the purposes of this Chapter to create a joint agency as prescribed herein for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects to supply electric power and energy for their present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project.

In determining whether or not the creation of a joint agency for such purpose is in the best interests of the municipalities, the governing boards shall take into consideration, but shall not be limited to, the following:

- (1) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;
- (2) Whether or not better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;
- (3) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and
- (4) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

If each governing board shall determine that it is in the best interests of the municipality to create a joint agency to provide power and energy to the municipality as provided in this Chapter, each shall adopt a resolution or ordinance so finding (which need not prescribe in detail the basis for the determination), and which shall set forth the names of the municipalities which are proposed to be initial members of the joint agency, and shall cause notice of such determination to be given to the presiding officer of the governing board of the municipality who shall thereupon appoint in writing one commissioner of the joint agency.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud in the premises, shall be conclusively 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 conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the Secretary of State. If a commissioner of any such municipality has not signed the application to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint agency. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint agency.

(b) After the creation of a joint agency, any other municipality may become a member thereof upon application to such joint agency after the adoption of a resolution or ordinance by the governing board of the municipality setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159B-9, and authorizing said municipality to participate, and with the unanimous consent of the members of the joint agency evidenced by the resolutions of their respective governing bodies. Any municipality may withdraw from a joint agency, provided, however, that all contractual rights acquired and obligations incurred while a municipality was a member shall remain in full force and effect.

(c) The joint agency shall consist of a board of commissioners appointed by the respective governing boards of the municipalities which are members of the joint agency. Each municipality shall appoint one commissioner who may, at the discretion of the municipality, be an officer or employee of the municipality, the appointment to be made by resolution or ordinance. Each commissioner shall have not less than one vote and may have in addition thereto such additional votes as the members of the joint agency shall determine. Each commissioner shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes.

(d) The board of commissioners of the joint agency shall annually elect one of the commissioners as chairman, another as vice-chairman, and another person or persons, who may but need not be commissioners, as treasurer, secretary,

and, if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of commissioners may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that such copies are true copies, and all persons dealing with the joint agency may rely upon such certificates.

(e) A majority of the commissioners of a joint agency then in office shall constitute a quorum. A vacancy in the board of commissioners of the joint agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint agency. Any action taken by the joint agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. A majority of the votes which the commissioners present are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution, provided that such commissioners present are entitled to cast a majority of the votes of all commissioners of the board.

(f) No commissioner of a joint agency shall receive any compensation for the performance of his duties hereunder, provided, however, that each commissioner may be paid his necessary expenses incurred while engaged in the performance of such duties. (1975, c. 186, s. 1.)

§ 159B-10. Executive committee; composition; powers and duties; terms.

— The board of commissioners of a joint agency may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member municipalities. The executive committee shall administer the business of the board of commissioners during intervals between the board's meetings in accordance with its rules, motions or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the rules of the board of commissioners of the joint agency. (1975, c. 186, s. 1.)

§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects. — Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

- (1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places as it may determine;
- (4) To sue and be sued in its own name, and to plead and be impleaded;
- (5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
- (6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;
- (7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

- (8) To pledge or assign any money, rents, charges, or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards;
- (9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;
- (10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds made available to the joint agency;
- (11) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including political subdivisions and agencies of any state, or of the United States;
- (12) To acquire by lease, purchase or otherwise an existing project or a project under construction;
- (13) To sell or otherwise dispose of any project or projects;
- (14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project;
- (15) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;
- (16) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any municipality in this State or any other state owning electric distribution facilities, any electric membership corporation, any public utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;
- (17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, corporations and others;
- (18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit of any other person;
- (19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor; and
- (20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency herein.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity

for any such project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

- (1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy;
- (2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;
- (3) The estimated useful life of such project;
- (4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;
- (5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1.)

§ 159B-12. Sale of capacity and output by a joint agency. — Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

Notwithstanding the provisions of any other law to the contrary, any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality or

political subdivision thereof except as in this Chapter specifically required and provided.

Payments by a municipality under any contract for the purchase of capacity and output from a joint agency shall be made solely from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds heretofore or hereafter issued by the municipality for purposes related to its electric system.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency. (1975, c. 186, s. 1.)

§ 159B-13. Sale of excess capacity and output by a joint agency. — A joint agency may sell or exchange the excess capacity or output of a project not then required by any of its members for such consideration and for such period and upon such other terms and conditions as may be determined by the parties to any municipality owning electric distribution facilities in this State, to any electric membership corporation or public utility authorized to do business in this State, or to any state, federal or municipal agency which owns electric generation, transmission or distribution facilities. Provided, however, that the foregoing limitations shall not apply to the temporary sale of excess capacity and energy without the State in cases of emergency or when required to fulfill obligations under any pooling or reserve sharing agreements. Provided further, however, that sales of excess capacity or output of a project to electric membership corporations, public utilities, and other persons the interest on whose securities and other obligations is not exempt from taxation by the federal government shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. (1975, c. 186, s. 1.)

§ 159B-14. Bonds of a joint agency. — A joint agency may issue its bonds pledging to the payment thereof as to both principal and interest the revenues, or any portion thereof, derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or contributions or advances from its members. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes. (1975, c. 186, s. 1.)

§ 159B-15. Issuance of bonds. — (a) Each municipality and joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of, premium, if any, and the interest on such bonds shall be payable solely from the respective funds herein provided for such payment. The bonds of each issue shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the issuer. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding 50 years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer 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 bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the governing board of the issuer may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The municipality or joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The municipality or joint agency may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(c) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in G.S. 159B-24 of this Chapter, the consent of the State or of any political subdivision, or of any agency, commission or instrumentality of either thereof, and without any other approvals, proceedings or the happening of any conditions or things other than those approvals, proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same. (1975, c. 186, s. 1.)

§ 159B-16. Resolution or trust agreement. — In the discretion of the governing board of the issuer, any bonds issued under the provisions of this Chapter may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or

the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

- (1) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities of a municipality or a joint agency.
- (2) The rents, rates, fees and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the municipality or joint agency.
- (3) The setting aside of reserves and the investment, regulation and disposition thereof.
- (4) The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds.
- (5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.
- (6) Limitations or restrictions on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; or the refunding of outstanding or other bonds.
- (7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.
- (8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this Chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.
- (9) The preparation and maintenance of a budget.
- (10) The retention or employment of consulting engineers, independent auditors, and other technical consultants.
- (11) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.
- (12) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such trust agreement or resolution.
- (13) Provisions for insurance and for accounting reports and the inspection and audit thereof.
- (14) The continuing operation and maintenance of the project. (1975, c. 186, s. 1.)

§ 159B-17. Revenues. — (a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its electric system or its interest in any joint project. For so long as any bonds of a municipality are outstanding and unpaid, the rents, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its electric system, and its interest in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, to pay when due the principal of, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued to finance additions, improvements and betterments to its electric system, and to pay any and all amounts which the municipality may be obligated to pay from said revenues by law or contract.

(b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and charges for electric power and energy and other services, facilities and

commodities sold, furnished or supplied through the facilities of its projects. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

(c) Any pledge made by a municipality or joint agency pursuant to this Chapter shall be valid and binding from the date the pledge is made. The revenues, securities, and other moneys so pledged and then held or thereafter received by the municipality or joint agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality or joint agency without regard to whether such parties have notice thereof. The resolution or trust agreement or any financing statement, continuation statement or other instrument by which a pledge is created need not be filed or recorded in any manner. (1975, c. 186, s. 1.)

§ 159B-18. Trust funds. — Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested pending the disbursements thereof in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulation as this Chapter and such resolution or trust agreement may provide. (1975, c. 186, s. 1.)

§ 159B-19. Remedies. — Any holder of bonds issued under the provisions of this Chapter or any of the coupons appertaining thereto, and the trustee under any trust agreements, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the municipality or joint agency pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by any joint agency or municipality or by any officer thereof, including the fixing, charging and collecting of rents, rates, fees and charges. (1975, c. 186, s. 1.)

§ 159B-20. Status of bonds under Uniform Commercial Code. — Whether or not the bonds and interest coupons appertaining thereto are of such form and character as to be investment securities under Article 8 of the Uniform Commercial Code as enacted in this State, all bonds and interest coupons appertaining thereto issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, subject only to the provisions of the bonds pertaining to registration. (1975, c. 186, s. 1.)

§ 159B-21. Bonds eligible for investment. — Bonds issued by a municipality or joint agency under the provisions of this Chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or any political subdivision for any purpose for which the deposit of bonds or obligations of the State or any political subdivision is now or may hereafter be authorized by law. (1975, c. 186, s. 1.)

§ 159B-22. Agreement of the State. — The State does hereby covenant and agree with the holders of any bonds that so long as any bonds of a municipality or joint agency are outstanding and unpaid the State will not limit or alter the rights vested in such municipality or joint agency to acquire, construct, reconstruct, improve, enlarge, better, extend, own, operate and maintain its electric system or any project or interest therein, as the case may be, or to establish, maintain, revise, charge, and collect the rents, rates, fees and charges referred to in this Chapter and to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, interest on any unpaid installment of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully paid, met and discharged. (1975, c. 186, s. 1.)

§ 159B-23. Limited liability. — The bonds shall be special obligations of the municipality or joint agency issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the municipality or joint agency, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the resolution authorizing the bonds or the trust agreement securing the bonds. Neither the faith and credit nor the taxing power of a municipality or of the State are, or may be, pledged for the payment of the principal of or interest on the bonds, and no holder of the bonds shall have the right to compel the exercise of the taxing power by the State or a municipality or the forfeiture of any of its property in connection with any default thereon. Every bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the municipality or joint agency is not obligated to pay the principal or interest except from such revenues. (1975, c. 186, s. 1.)

§ 159B-24. Approval and sale of bonds. — Prior to the acquisition or the commencement of construction of any project to be financed by the issuance of bonds under the provisions of this Chapter, the participating municipalities or joint agency, as the case may be, shall first obtain a certificate of public convenience and necessity and, in the same proceeding, the approval required by G.S. 159B-4 hereof, in the case of the participating municipalities, or the approval required by G.S. 159B-11 hereof, in the case of a joint agency, from the North Carolina Utilities Commission under such rules, regulations and procedures as the Commission may prescribe.

No municipality or joint agency shall issue any bonds pursuant to this Chapter unless and until, and only to the extent that, the issuance of such bonds is approved by the Local Government Commission. A participating municipality or joint agency shall file with the secretary of the Local Government Commission an application for Commission approval of the issuance of the bonds upon such form as the said Commission may prescribe, which form shall provide for the submission of such information as the secretary may require concerning the proposed bond issue, the details thereof and the security therefor. Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the details of the proposed issue and the security therefor.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the municipality or joint agency in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the municipality or joint agency, as the case may be, has complied with the requirements of this section with respect to the filing of an application for approval by the said Local Government Commission.

In determining whether a proposed bond issue shall be approved, the Commission may consider:

- (1) The municipality's or joint agency's debt management procedures and policies.
- (2) Whether the municipality or joint agency is in default with respect to any of its debt service obligations.
- (3) Whether, based upon feasibility reports submitted to it, the probable revenues of the project to be financed or the revenues of the municipality's electric system, as the case may be, will be sufficient to service the proposed bonds.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved except matters which are expressly required by the provisions of this Chapter to be determined by the North Carolina Utilities Commission.

The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

- (1) That, based upon engineering studies and feasibility reports submitted to it, the principal amount of the proposed bonds will be adequate and not excessive for the proposed purpose of the issue.
- (2) That the municipality's or joint agency's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
- (3) That the requirements of this Chapter with respect to the issuance of the bonds and the details thereof and security therefor have been, or will be, satisfied.
- (4) That the issuance of the proposed bonds will effectuate the purposes and policies of this Chapter.

After considering an application, the Local Government Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

If the Commission enters an order denying the application, the proceedings under this section shall be at an end.

At any time after the Commission approves an application for the issuance of bonds, the governing board of the issuer may adopt a bond resolution or enter into a trust agreement in accordance with the provisions of this Chapter, and may thereafter at one time, or from time to time, issue the bonds as provided herein.

Upon the filing with the Local Government Commission of a resolution of the issuer requesting that its bonds be sold, such bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interest of the issuer and effectuate best the purposes of this Chapter, provided that such sale shall be approved by the issuer.

Except as herein expressly provided, bonds may be issued and sold under the provisions of this Chapter without obtaining the approval or consent of any other department, division, commission, board, bureau or agency of the State, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this Chapter. (1975, c. 186, s. 1.)

§ 159B-25. Refunding bonds. — A municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor. (1975, c. 186, s. 1.)

§ 159B-26. Tax exemption. — Bonds, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any political subdivision or any agency of either thereof, excepting inheritance or gift taxes. (1975, c. 186, s. 1.)

§ 159B-27. Taxes; payments in lieu of taxes. — A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the State Board of Assessment. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. Power and energy derived from a municipality's ownership share in a project and power and energy sold by a joint agency shall be subject to taxes; provided, however, that the tax on power and energy derived from a municipality's ownership share in a project shall be based on the cost of production and transmission thereof.

Except as herein expressly provided with respect to jointly owned projects or projects owned by a joint agency no other property of a municipality used or

useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes. (1975, c. 186, s. 1.)

§ 159B-28. Personnel. — Personnel employed or appointed by a municipality to work on a joint project or for a joint agency shall have the same authority, rights, privileges and immunities (including coverage under the workmen's compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

Personnel employed or appointed directly by a joint agency or by a nonprofit operating agency of the participating municipalities or of the joint agency, shall be qualified for participation in the North Carolina Local Government Employees Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality. (1975, c. 186, s. 1.)

§ 159B-29. Dissolution of joint agencies. — Whenever the board of commissioners of a joint agency and the governing boards of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the joint agency have been fully paid or satisfied, such board of commissioners and governing boards may declare the joint agency to be dissolved. On the effective date of such resolution or ordinance, the title to all funds and other property owned by the joint agency at the time of such dissolution shall vest in the member municipalities of the joint agency as provided in this Chapter and the bylaws of the joint agency. (1975, c. 186, s. 1.)

§ 159B-30. Annual reports. — Each joint agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing boards of its member municipalities and to the North Carolina Utilities Commission. Each such report shall set forth in a form prescribed by the North Carolina Utilities Commission a complete operating and financial statement covering the operations of the joint agency during such year. The joint agency shall cause an audit of its books of record and accounts to be made at least once in each year by certified public accountant(s) and the cost thereof may be treated as a part of the cost of construction of a project or projects, or otherwise as part of the expense of administration of a project covered by such audit.

The municipalities possessing ownership interests in a project shall, following the closing of each fiscal year, submit a consolidated or combined annual report of their activities with respect to such project for the preceding year to the respective governing board of such municipalities and to the North Carolina Utilities Commission. Each such report shall set forth in a form prescribed by the North Carolina Utilities Commission a complete operating and financial statement covering the operations of the jointly owned project during such year. The municipalities possessing ownership interests in a project shall cause an audit of the books of record and accounts relating to such project to be made at least once in each year by certified public accountant(s) and the cost thereof may be treated as a cost of construction of the project, or otherwise as part of the expenses of the administration of the project covered by such audit. (1975, c. 186, s. 1.)

§ 159B-31. Legislative consent to the application of laws of other states.

— Legislative consent is hereby given

- (1) To the application of the laws of other states with respect to taxation, payments in lieu of taxes, and the assessment thereof, to any municipality or joint agency created pursuant to this Chapter, which has acquired or has an interest in a project, real or personal, situated without the State, or which owns or operates a project without the State pursuant to this Chapter, and
- (2) To the application of regulatory and other laws of other states and of the United States to any municipality or joint agency which owns or operates a project without the State. (1975, c. 186, s. 1.)

§ 159B-32. Government grants and loans. — The governing board of any municipality or joint agency is hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility, or participating in any research or development program, or performing any function which such municipality or joint agency may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the governing board of any municipality or joint agency may:

- (1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency or institution grants financial or other assistance to the municipality or joint agency;
- (2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;
- (3) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans;
- (4) Make expenditures from any funds so granted. (1975, c. 186, s. 1.)

§ 159B-33. Eminent domain. — Municipalities participating in a joint project and joint agencies shall possess the power of eminent domain to the extent and in the same manner and under the same laws as municipalities pursuant to Article 11 of Chapter 160A of the General Statutes of North Carolina; provided, however, that a municipality or joint agency exercising the power of eminent domain for a purpose authorized by this Chapter shall have no power to condemn an existing facility used for the generation, transmission or distribution of electric power and energy; provided, further, that the North Carolina Utilities Commission shall have the power and authority to order that the lines and rights-of-way of any public utility or electric membership corporation, municipalities participating in a joint project or any joint agency may be crossed by any municipalities participating in a joint project or any joint agency or that the lines of any municipalities participating in a joint project or any joint agency may be crossed by any public utility or electric membership corporation pursuant to the provisions of G.S. 62-39; provided, further, when any municipalities participating in a joint project, or any joint agency, proposes to condemn the lands or rights-of-way of any public utility, electric membership corporation, municipalities participating in a joint project or any joint agency, or any public utility or electric membership corporation proposes to condemn the lands or rights-of-way of any municipalities participating in a joint project or any joint agency, not then used for the generation, transmission or distribution of electric power and energy but held for future use or development, the party desiring to condemn shall file a petition with the North Carolina Utilities Commission requesting authority to condemn such lands or rights-of-way. Upon such petition, the North Carolina Utilities Commission shall have the power and authority, after notice and

hearing, to order that such lands or rights-of-way, or parts thereof, may be condemned, and its order shall be final, subject to appeal as provided in this section. In all such cases in which the Commission permits condemnation and when the parties affected cannot agree upon the damages to be paid for the lands or rights-of-way to be condemned, it shall be the duty of the Commission to fix the damages, if any, to be paid in such amounts as may be just and equitable. Any party shall have the right of appeal from any final order or decision or determination of the North Carolina Utilities Commission as to matters of crossings and condemnation of property held for future use or development pursuant to the provisions of Article 5 of Chapter 62 of the General Statutes of North Carolina. (1975, c. 186, s. 1.)

§ 159B-34. Officers not liable. — No commissioner of any joint agency or officer of any municipality or person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Chapter. (1975, c. 186, s. 1.)

§ 159B-35. Additional method. — The foregoing sections of this Chapter shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that insofar as the provisions of this Chapter are inconsistent with the provisions of any other general, special or local law, the provisions of this Chapter shall be controlling. Nothing in this Chapter shall be construed to authorize the issuance of bonds for the purpose of financing facilities to be owned by any private corporation. (1975, c. 186, s. 1.)

§ 159B-36. Chapter liberally construed. — In order to effectuate the purposes and policies prescribed in this Chapter the provisions hereof shall be liberally construed. (1975, c. 186, s. 3.)

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

Sec.	Sec.
159C-1. Short title.	159C-14. Tax exemption.
159C-2. Legislative findings and purposes.	159C-15. Construction contracts.
159C-3. Definitions.	159C-16. Conflict of interest.
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159C-9. Sale of bonds.	159C-22. Annual reports.
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159C-13. Trust funds.	159C-26. Inconsistent laws inapplicable.

Editor's Note. — This Chapter is Chapter 159A as enacted by Session Laws 1975, c. 800, and recodified. It replaces the original Chapter 159A, which was held unconstitutional in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

Session Laws 1975, c. 800, s. 5, provides: "This Chapter shall become effective upon the certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with the transactions of the type contemplated by this Chapter has been approved by the people of the State."

Session Laws 1975, c. 826, proposes to amend Article V of the Constitution of North Carolina by adding a new section authorizing the General Assembly to authorize the counties to create authorities to issue revenue bonds to finance industrial and pollution control projects for industry and pollution control projects for public utilities, subject to the approval of the electorate at the election to be held March 23, 1976.

Session Laws 1975, c. 800, s. 4, contains a severability clause.

§ 159C-1. Short title. — This Chapter may be referred to as the "Industrial and Pollution Control Facilities Financing Act." (1975, c. 800, s. 1.)

§ 159C-2. Legislative findings and purposes. — (a) The General Assembly finds and determines that there exists in the State a critical condition of unemployment and a scarcity of employment opportunities; that the economic insecurity which results from such unemployment and scarcity of employment opportunities constitutes a serious menace to the safety, morals and general welfare of the entire State; that such unemployment and scarcity of employment opportunities have caused many workers and their families, including young adults upon whom future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such emigration has resulted in a reduced rate of growth in the tax base of the counties and other local governmental units of the State which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and to pay unemployment compensation; that the aforesaid conditions can best be remedied by the attraction, stimulation, expansion and rehabilitation and revitalization of industrial and manufacturing facilities for industry in the State; and that there is a need to stimulate a larger flow of private investment funds into industrial building programs into the State.

(b) The General Assembly further finds and determines that the development and expansion of industry within the State, and the generation of electric power and the supply of other services by public utilities, which are essential to the

economic growth of the State and to the full employment and prosperity of its people, are accompanied by the increased production and discharge of gaseous, liquid, and solid pollution and wastes which threaten and endanger the health, welfare and safety of the inhabitants of the State by polluting the air, land and waters of the State; that in order to reduce, control, and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require the provision of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such pollution and wastes; that the assistance provided in this Chapter, especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the inhabitants of the State not only physically by collecting, reducing, treating and preventing environmental pollution but also economically by securing and retaining private industry thereby maintaining a higher level of employment and economic activity and stability.

(c) It is therefore declared to be the policy of the State to promote the right to gainful employment opportunity, private industry, the prevention and control of the pollution of the air, land and waters of the State, and the safety, morals and health of the people of the State, and thereby promote general welfare of the people of the State, by authorizing counties to create county authorities which shall be political subdivisions and bodies corporate and politic of the State. These bodies are to be formed (i) to aid in the financing of industrial and manufacturing facilities for the purpose of alleviating unemployment or raising below average manufacturing wages by financing industrial and manufacturing facilities which provide job opportunities or pay better wages than those prevalent in the area and (ii) to aid in financing pollution control facilities for industry in connection with manufacturing and industrial facilities and for public utilities; provided, however, that it is the policy of the State to finance only those facilities where there is a direct or indirect favorable impact on employment or an improvement in the degree of prevention or control of pollution commensurate with the size and cost of the facilities. (1975, c. 800, s. 1.)

§ 159C-3. Definitions. — The following terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (1) "Agency" shall include any agency, bureau, commission, department or instrumentality.
- (2) "Air pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing or stabilizing plants and equipment and their appurtenances, which shall have been certified by the agency having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.
- (3) "Bonds" shall mean revenue bonds of an authority issued under the provisions of this Chapter.
- (4) "Cost" as applied to any project shall embrace all capital costs thereof, including the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, installation, start-up expenses, financing charges, interest prior to, during and for a period not exceeding one year after completion of construction, the cost of engineering and architectural surveys, plans

and specifications, the cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of such project, administrative and other expenses necessary or incident to the acquisition or construction of such project and the financing of the acquisition and construction thereof.

- (5) "Governing body" shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.
- (6) "Lease agreement" shall mean a written instrument establishing the rights and responsibilities of the authority and the operator with respect to a project financed by the issue of bonds. A lease agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, or a lease purchase and may involve property in addition to the property financed by the bonds.
- (7) "Obligor" shall mean collectively the operator and any others who shall be obligated under a lease agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.
- (8) "Operator" shall mean the person entitled to the use or occupancy of a project.
- (9) "Political subdivision" shall mean any county, city, town, other unit of local government or any other governmental corporation, agency, authority or instrumentality of the State now or hereafter existing.
- (10) "Pollution" and "pollutants" shall mean any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render such air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.
- (11) "Project" shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or (ii) any pollution control project for industry or for public utilities which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill or plant described in clause (i) of this subdivision or in connection with a public utility plant, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.
- (12) "Revenues" shall mean, with respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom or from the lease agreement or security document in connection therewith.

- (13) "Security document" shall mean a written instrument or instruments establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, and may provide for, or be in the form of an agreement with, a trustee for the benefit of such bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a lease agreement and may bear any appropriate title. A lease agreement and a security document may be combined as one instrument.
- (14) "Solid waste" shall mean solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.
- (15) "Solid waste disposal facility" shall mean a facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.
- (16) "Water pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which shall have been certified by the agency exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1975, c. 800, s. 1.)

§ 159C-4. Creation of authorities. — (a) The governing body of any county is hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The (the blank space to be filled in with the name of the county) County Industrial Facilities and Pollution Control Financing Authority," which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution creating such authority, or by subsequent resolution. At least 30 days prior to the adoption of such resolution, the governing body of such county shall file with the Department of Natural and Economic Resources and the Local Government Commission of the State notice of its intention to adopt a resolution creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes. All authority commissioners will serve at the pleasure of the governing body of the county. If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed and qualified.

(b) Each commissioner of an authority shall be a qualified elector and resident of the county for which the authority is created, and no commissioner shall be an officer or employee of the State or any political subdivision or any agency of either of them. Any commissioner of an authority may be removed, with or without cause, by the governing body of the county.

(c) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(d) A majority of the commissioners of an authority then in office shall constitute a quorum. The affirmative vote of a majority of the commissioners of an authority then in office shall be necessary for any action taken by the authority. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county.

(e) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.

(f) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Natural and Economic Resources and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Natural and Economic Resources and the Local Government Commission of changes in commissioners and officers and of new projects under consideration by the authority. (1975, c. 800, s. 1.)

§ 159C-5. General powers. — Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places within the boundaries of the county for which it was created as it may determine;
- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
- (6) To make and execute lease agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the authority under this Chapter;
- (7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than

- the fee thereof, for the construction, operation or maintenance of any project;
- (8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
 - (9) To pledge or assign revenues of the authority;
 - (10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any contribution, gift or donation or other funds made available to the authority for such purpose;
 - (11) To fix, charge and collect revenues with respect to any project;
 - (12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor; and
 - (13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers herein granted. (1975, c. 800, s. 1.)

§ 159C-6. Bonds. — Each authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the lease agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency. The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either thereof, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the lease agreement and security document authorizing the issuance of such bonds and securing the same. (1975, c. 800, s. 1.)

§ 159C-7. Approval of project. — No bonds may be issued by an authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of the Department of Natural and Economic Resources. The authority shall file an application for approval of its proposed project with the Secretary of the Department of Natural and Economic Resources, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

- (1) In the case of a proposed industrial project,
 - a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average manufacturing wage which is above the average manufacturing wage paid in the county, and
 - b. That the proposed project will not have a materially adverse effect on the environment;
- (2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and
- (3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,
 - a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
 - b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and
 - c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

In any case where the Secretary shall make all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average manufacturing wage above the average manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to

be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150A of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such Superior Court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. (1975, c. 800, s. 1.)

§ 159C-8. Approval of bonds. — No bonds may be issued by an authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of the Department of Natural and Economic Resources of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

- (1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the lease agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged to secure such bonds.
- (2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.
- (3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed lease agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem

reasonably necessary to implement the provisions of this section. (1975, c. 800, s. 1.)

§ 159C-9. Sale of bonds. — Bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interests of the authority and effectuate best the purposes of this Chapter irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions, provided that such sale shall be approved by the authority and the obligor. (1975, c. 800, s. 1.)

§ 159C-10. Location of projects. — Any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. (1975, c. 800, s. 1.)

§ 159C-11. Lease agreements. — Every lease agreement shall provide that:

- (1) The authority shall not operate the project.
- (2) The amounts payable under the lease agreement shall be sufficient to pay all of the principal of and interest and redemption premium, if any, on the bonds that shall be issued by the authority to pay the cost of the project as the same shall respectively become due;
- (3) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the lease agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;
- (4) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and
- (5) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement until such payment of the bonds or provision therefor shall be made.

The lease agreement shall either provide that the obligor shall have an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the lease agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision therefor, shall have been made.

The lease agreement may provide the authority with rights and remedies in the event of a default by the obligor thereunder including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the lease agreement;
- (2) Reentry and repossession of the project;
- (3) Termination of the lease agreement;
- (4) Leasing the project to others; and
- (5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the lease agreement.

The authority may assign all or any of its rights and remedies under the lease agreement to the trustee or bondholders under the security document.

Any such lease agreement may contain such additional provisions as in the determination of the authority are necessary or convenient to effectuate the purposes of this Chapter. (1975, c. 800, s. 1.)

§ 159C-12. Security documents. — Bonds issued under the provisions of this Chapter may be secured by a security document which may be a trust instrument between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except such part thereof as may be necessary to provide reserves therefor, if any, shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the security document;
- (2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;
- (3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and
- (4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues or other funds provided under this Chapter to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project. (1975, c. 800, s. 1.)

§ 159C-13. Trust funds. — Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The security document may provide that any of such moneys may be temporarily invested and reinvested pending the disbursement thereof in such securities and other investments as shall be provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purpose hereof, subject to such regulations as this Chapter and such security document may provide. (1975, c. 800, s. 1.)

§ 159C-14. Tax exemption. — The authority shall not be required to pay any taxes on any project or any other property owned by the authority under the provisions of this Chapter or upon the income therefrom, and the bonds issued under the provisions of this Chapter and the income therefrom shall at all times be free from taxation by the State or political subdivision or any agency of either thereof.

Every capital project financed through this Chapter shall be subject to taxation paid by the operator of the project. Taxes shall be assessed and paid as though no public body had any interest therein. (1975, c. 800, s. 1.)

§ 159C-15. Construction contracts. — Contracts for the construction of the project may be awarded by the authority in such manner as in its judgment will best promote free and open competition, including advertisement for competitive bids in a newspaper of general circulation in the county in which the project is to be located; provided, however, that if the authority shall determine that the purposes of the Chapter will thereby be more effectively served, the authority in its discretion may award contracts for the construction of any project, or any part thereof, upon a negotiated basis as determined by the authority. The authority shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest.

The authority may in the lease agreement engage the services of the prospective operator of any project in the construction of such project and may provide in such contract that such operator shall act as an independent contractor for and agent of the authority for the performance of the functions described therein, subject to such conditions and requirements, consistent with the provisions of this Chapter as shall be prescribed in such document. Contracts for the construction of the project may be awarded on a competitive or negotiated basis as may be provided in the lease document with the approval of the authority. Any such contract may provide that the authority may, out of proceeds of bonds, make advances to or reimburse the operator for its costs incurred in the performance of such functions. (1975, c. 800, s. 1.)

§ 159C-16. Conflict of interest. — No officer, member, agent or employee of the authority or the State or any political subdivision or any agency of either the State or any political subdivision shall be interested either directly or indirectly in any contract with an authority; provided, however, that this section shall not apply to the ownership of less than one per centum (1%) of the stock of any operator or obligor. (1975, c. 800, s. 1.)

§ 159C-17. Credit of State not pledged. — Bonds issued under the provisions of this Chapter shall not be deemed to constitute a debt of the State or any political subdivision or any agency thereof or a pledge of the faith and credit of the State or any political subdivision or any such agency, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this Chapter shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same or the interest thereon except from the revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or any political subdivision or any agency thereof is pledged to the payment of the principal of or the interest on such bonds. (1975, c. 800, s. 1.)

§ 159C-18. Bonds eligible for investment. — Bonds issued by an authority under the provisions of this Chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. (1975, c. 800, s. 1.)

§ 159C-19. Revenue refunding bonds. — (a) Each authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

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

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

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds; provided, however, that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 shall not be required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, in the determination of the authority, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1975, c. 800, s. 1.)

§ 159C-20. No power of eminent domain. — No authority shall have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain. (1975, c. 800, s. 1.)

§ 159C-21. Dissolution of authorities. — Whenever the board of commissioners of an authority and the governing body of the county for which such authority was created shall by joint resolution determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and governing body may declare the authority to be dissolved. On the effective date of such joint resolution, the title to all funds and other property owned by the authority at the time of such dissolution shall vest in the county or in such other political subdivisions as the county shall direct, and possession of such funds and other property shall forthwith be delivered to the county or to such other political subdivisions in accordance with the direction of the county. (1975, c. 800, s. 1.)

§ 159C-22. Annual reports. — Each authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing body of the county for which the authority was created. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction of a project, to the extent such audit covers the construction of the project, or otherwise as part of the expense of administration of the project covered by such audit. (1975, c. 800, s. 1.)

§ 159C-23. Officers not liable. — No commissioner of any authority shall be subject to any personal liability or accountability by reason of his execution of any bonds or the issuance thereof. (1975, c. 800, s. 1.)

§ 159C-24. Additional method. — The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or refunding bonds under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1975, c. 800, s. 1.)

§ 159C-25. Liberal construction. — This Chapter, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof. (1975, c. 800, s. 2.)

§ 159C-26. Inconsistent laws inapplicable. — Insofar as the provisions of this Chapter are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this Chapter shall be controlling. (1975, c. 800, s. 3.)

Chapter 160.

Municipal Corporations.

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

Article 28.

Permanent Financing.

Sec. 160-377 to 160-398. [Repealed.]

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

Article 36.

Extension of Corporate Limits.

Part 1. In General.

160-445 to 160-453. [Transferred.]

Part 2. Municipalities of Less than 5,000.

Sec. 160-453.1 to 160-453.12. [Transferred.]

Part 3. Municipalities of 5,000 or More.

160-453.13 to 160-453.24. [Transferred.]

SUBCHAPTER VII. URBAN REDEVELOPMENT.

Article 37.

Urban Redevelopment Law.

160-454 to 160-474.2. [Transferred.]

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

ARTICLE 28.

Permanent Financing.

§§ 160-377 to 160-398: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Editor's Note. — Session Laws 1973, c. 499, s. 1, amends repealed § 160-389, relating to the time within which bonds must be issued, by extending the time from five years to seven years after a bond ordinance takes effect. Session Laws 1973, c. 499, s. 3, provides that the

act shall apply only to the bonds authorized during the period July 1, 1968, through Dec. 31, 1969. Session Laws 1973, c. 499, s. 2, makes a similar amendment, likewise limited in application, to § 159-64.

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

ARTICLE 36.

Extension of Corporate Limits.

Part 1. In General.

§§ 160-445 to 160-453: Transferred to §§ 160A-24 to 160A-32 by Session Laws 1973, c. 426, s. 7.

Part 2. Municipalities of Less than 5,000.

§§ 160-453.1 to 160-453.12: Transferred to §§ 160A-33 to 160A-44 by Session Laws 1973, c. 426, s. 74.

Part 3. Municipalities of 5,000 or More.

§§ 160-453.13 to 160-453.24: Transferred to §§ 160A-45 to 160A-56 by Session Laws 1973, c. 426, s. 74.

SUBCHAPTER VII. URBAN REDEVELOPMENT.

ARTICLE 37.

Urban Redevelopment Law.

§§ 160-454 to 160-474.2: Transferred to §§ 160A-500 to 160A-526 by Session Laws 1973, c. 426, s. 75.

Chapter 160A.
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ARTICLE 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms. — Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Chapter.

- (1) “Charter” means the entire body of local acts currently in force applicable to a particular city, including articles of incorporation issued to a city by an administrative agency of the State, and any amendments thereto adopted pursuant to 1917 Public Laws, c. 136, Subchapter 16, Part VIII, sections 1 and 2, or Article 5, Part 4, of this Chapter. (1973, c. 426, s. 3.)

Editor’s Note. — The 1973 amendment substituted “Article 5” for “Article 6” near the end of subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (1) are set out.

“Local Act”. — Session Laws 1967, c. 506, relating to municipal eminent domain procedures, is a legislative act which applies specifically to Durham by name, and is, therefore, a “local act” as that term is defined in subdivision (5) of this section, and as such it

is subject to the applicable provisions of this Chapter. *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

This Chapter expressly provides that Chapter 506 of Session Laws 1967, which permits the City of Durham to employ the “quick-take” condemnation procedure provided by Article 9 of Chapter 136 of the General Statutes, is a local act and that it is a part of the charter of the City of Durham. *City of Durham v. Manson*, 285 N.C. 741, 208 S.E.2d 662 (1974).

§ 160A-2. Effect upon prior laws.

This section manifests the legislative concern that certain prior laws should be preserved. *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

This section is made more meaningful by reference to § 160A-1, wherein the definitions of “charter” and “local act” are contained. *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

It was the express intent of the legislature to retain local acts unless otherwise specifically indicated. *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

The specific legislative intent of Chapter 160A was not to repeal local acts by implication, but to save them. *City of Durham v. Manson*, 285 N.C. 741, 208 S.E.2d 662 (1974).

Chapter 506 of Session Laws 1967, which became a part of the charter of the City of Durham, was not repealed by Chapter 160A. *City of Durham v. Manson*, 285 N.C. 741, 208 S.E.2d 662 (1974).

Quoted in *Town of Mount Olive v. Price*, 20 N.C. App. 302, 201 S.E.2d 362 (1973).

§ 160A-4. Broad construction.

Quoted in *Smith v. Keator*, 285 N.C. 530, 206 S.E.2d 203 (1974).

§ 160A-5. Statutory references deemed amended to conform to Chapter.

— Whenever a reference is made in another portion of the General Statutes or any local act, or any city ordinance, resolution, or order, to a portion of Chapter 160 of the General Statutes that is repealed or superseded by this Chapter, the reference shall be deemed amended to refer to that portion of this Chapter which most nearly corresponds to the repealed or superseded portion of Chapter 160. (1971, c. 698, s. 1; 1973, c. 426, s. 2.)

Editor's Note. — The 1973 amendment inserted "or any city ordinance, resolution, or order" and substituted "nearly" for "clearly." The amendatory act directed that the changes be

made in lines three and five of the section; lines two and four were plainly intended.

Applied in *City of Durham v. Manson*, 285 N.C. 741, 208 S.E.2d 662 (1974).

ARTICLE 1A.*Municipal Board of Control.*

§ 160A-7. Petition; number of signatures; contents. — Any 25 or more qualified voters residing within an area proposed for incorporation as a city may petition the Municipal Board of Control for incorporation of the area. The petition shall contain

- (1) A description of the proposed corporate boundaries,
- (2) A proposed name for the city,
- (3) Recommendations as to the composition and mode of election of the city governing body within the optional forms set out in G.S. 160A-101, and
- (4) The names of three persons to act as the interim governing body until the regular governing body is elected and qualified.

The Board may prescribe the form of the petition and methods for determining whether it is sufficient, or that incorporation of the area will not adversely affect the normal growth and development of the existing city or town. (1971, c. 896, s. 9; c. 921, s. 2; 1973, c. 426, s. 4.)

Editor's Note. — The 1973 amendment substituted "G.S. 160A-101" for "G.S. 160-291" in subdivision (3).

§ 160A-9.2. Necessary findings by the Board. — The Board shall enter an order incorporating the area if, upon the information and evidence it receives, it finds:

- (1) That incorporation of the area is necessary or expedient and in the public interest.
- (2) That the area has a permanent resident population of at least 500 or a seasonal population of at least 1,000.
- (3) That the appraised value of property subject to taxation by the city will be sufficient to enable it to provide appropriate municipal services to its citizens.
- (4) That no portion of the area lies within one mile of the corporate limits of any other city having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or within three miles of the corporate limits of any other city having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or within four miles of the corporate limits of any other city having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or within five miles of the corporate limits of any other city having a population of 50,000 or more according to

the most recent decennial census of population taken by order of Congress.

- (5) That at least sixty percent (60%) of the area within the proposed city is already developed for residential, commercial, industrial, institutional, or governmental uses, and that the remaining area is not separated from the developed area by natural barriers to urban growth.

In making the findings required by this section, the Board may call upon the division of community planning of the Department of Natural and Economic Resources for technical assistance.

If the area does not meet all of the criteria set out in this section, the Board may not incorporate it as a city. (1971, c. 896, s. 9; c. 921, s. 6; 1973, c. 426, s. 5; c. 1262, s. 51; 1975, c. 664, s. 4.)

Editor's Note. — The first 1973 amendment rewrote subdivision (4) and added the last paragraph of the section.

The second 1973 amendment substituted "Department of Natural and Economic

Resources" for "Department of Local Affairs" in the next-to-last paragraph.

The 1975 amendment inserted in subdivision (4) the language relating to areas within four miles of corporate limits.

§ 160A-9.4. Board to prepare charters. — Upon approving an order of incorporation, the Board shall prepare and issue a charter for the city. The charter shall specify

- (1) The corporate limits,
- (2) The name of the city,
- (3) The composition and mode of election of the governing body within the optional forms set out in G.S. 160A-101,
- (4) The names of three qualified voters of the area who shall serve as the city governing body until their successors are elected and qualified in accordance with the charter, and
- (5) The date of the first regular municipal election, which may be held, in conjunction with the incorporation referendum if one is held.

In issuing the charter, the Board shall consider but shall not be bound by recommendations set out in the incorporation petition and testimony received at the public hearing. The charter shall be filed in the office of the Secretary of State on or before its effective date.

In fixing the date of the first regular municipal election, the Board is not bound by G.S. 163-279, but all subsequent elections in the newly incorporated city shall be conducted in accordance with Subchapter IX of Chapter 163 of the General Statutes. (1971, c. 896, s. 9; c. 921, s. 8; 1973, c. 426, s. 6.)

Editor's Note. — The 1973 amendment substituted "G.S. 160A-101" for "G.S. 160-291" at the end of subdivision (3) and added the last paragraph of the section.

ARTICLE 2.

General Corporate Powers.

§ 160A-11. Corporate powers. — The inhabitants of each city heretofore or hereafter incorporated by act of the General Assembly or by the Municipal Board of Control shall be and remain a municipal corporation by the name specified in the city charter. Under that name they shall be vested with all of the property and rights in property belonging to the corporation; shall have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a

common seal and alter and renew the same at will; and shall have and may exercise in conformity with the city charter and the general laws of this State all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

All documents required or permitted by law to be executed by municipal corporations will be legally valid and binding in this respect when a legible corporate stamp, which is a facsimile of its seal, is used in lieu of an imprinted or embossed corporate or common seal. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1973, c. 170; c. 426, s. 7.)

Editor's Note. —

The first 1973 amendment added the second paragraph.

The second 1973 amendment deleted "former" preceding "Municipal Board of Control" near the beginning of the first paragraph.

Applied in North Carolina Consumers Power, Inc. v. Duke Power Co., 21 N.C. App. 237, 204 S.E.2d 399 (1974).

ARTICLE 3.

Contracts.

§ 160A-17.1. Grants from other governments. — The governing body of any city or county is hereby authorized to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

In order to exercise the authority granted by this section, the governing body of any city or county may:

- (1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the city or county;
- (2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;
- (3) Agree to and comply with any lawful and reasonable conditions which are imposed upon such grants or loans;
- (4) Make expenditures from any funds so granted. (1971, c. 896, s. 10; c. 937, ss. 1, 1.5; 1973, c. 426, s. 8.)

Editor's Note. —

The 1973 amendment substituted "city or county" for "municipality" throughout the section, substituted "general law or local act" for "general or local law" in the first paragraph and deleted the former last paragraph, which defined "municipality."

Municipality Has Authority to Make Relocation Assistance Payments Which Are Required by the Federal Grants for the Code Enforcement Program. — See opinion of Attorney General to Mr. Roddey M. Ligon, Jr., 41 N.C.A.G. 896 (1972).

§ 160A-19. **Leases.** — A city is authorized to lease as lessee, with or without option to purchase, any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Article 8 of Chapter 143 of the General Statutes. (1973, c. 426, s. 9.)

§ 160A-20: Reserved for future codification purposes.

ARTICLE 4.

Corporate Limits.

Part 1. General Provisions.

§ 160A-22. **Map of corporate limits.** — The current city boundaries shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This delineation shall be retained permanently in the office of the city clerk. Alterations in these established boundaries shall be indicated by appropriate entries upon or additions to the map or description made by or under the direction of the officer charged with that duty by the city charter or by the council. Copies of the map or description reproduced by any method of reproduction that gives legible and permanent copies, when certified by the city clerk, shall be admissible in evidence in all courts and shall have the same force and effect as would the original map or description. The council may provide for revisions in any map or other description of the city boundaries. A revised map or description shall supersede for all purposes the earlier map or description that it is designated to replace. (1971, c. 698, s. 1; 1973, c. 426, s. 10.)

Editor's Note. — The 1973 amendment inserted "or" following "map," in the first sentence and rewrote the last two sentences.

ARTICLE 4A.

Extension of Corporate Limits.

Part 1. Extension by Referendum or Petition.

§ 160A-24. **Procedure for adoption of ordinance extending limits; effect of adoption when no election required; public hearing and notice thereof.** — After public notice has been given by publication once a week for four successive weeks in a newspaper in the county with a general circulation in the municipality, or if there be no such paper, by posting notice in five or more public places within the municipality, describing by metes and bounds the territory to be annexed, thus notifying the owner or owners of the property located in such territory, that a session of the municipal legislative body will meet for the purpose of considering the annexation of such territory to the municipality, the governing body of any municipality is authorized and empowered to adopt an ordinance extending its corporate limits by annexing thereto any contiguous tract or tracts of land not embraced within the corporate limits of some other municipality. Provided, that it shall be essential and necessary to the validity of any ordinance extending the corporate limits of any municipality by annexation, pursuant to this section, to actually hold a public hearing pursuant to the notice herein required, and that a statement by or on behalf of the municipal governing body, of the purpose or reasons for the proposed extension of the corporate limits be made at the beginning of the public hearing, and that reasonable opportunity to be heard be given any who attend such public hearing with regard thereto. The public notice shall (i) fix the date, hour and place of the public hearing, and

(ii) describe clearly the boundaries of the area under consideration. Then from and after the date of the adoption of such ordinance, unless an election is required as herein provided, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. If territory is annexed its liability for municipal taxes for the fiscal year in which it is annexed shall be determined by applying the following ratio against the total taxes that would be due on the property if it had been annexed prior to the beginning of the fiscal year: The numerator shall be the number 365 minus the total number of days after the preceding July 1 and immediately prior to the effective date of the annexation, and the denominator shall be the number 365. However, the due date of such municipal taxes shall be the effective date of annexation of said territory and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. (1947, c. 725, s. 1; 1967, c. 929; 1973, c. 426, s. 74; 1975, c. 576, s. 1.)

Editor's Note. — Sections 160A-24 through 160A-32 were originally codified as §§ 160-445 through 160-453. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

The 1975 amendment, effective Jan. 1, 1976, substituted the present fifth, sixth, seventh and eighth sentences for the former last sentence, which read "The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation."

Session Laws 1973, c. 335, provides that the Town of Scotland Neck is authorized to annex property under the procedures of both Part 1 and Part 2 of this Article.

Session Laws 1973, c. 983, provides that all municipalities in Dare County are authorized to extend their corporate limits by any procedure contained in Part 1, Part 2 or Part 3 of this Article.

Alternative Procedures Authorized. — The

General Assembly has the authority to authorize the governing bodies of municipalities to annex territory upon meeting the requirements of Part 3 of this Article, which is equally applicable to annexation by a special act of the legislature. The only discretion given to the governing boards of such municipalities is the permissive or discretionary right to use this new method of annexation provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. *Plemmer v. Matthewson*, 281 N.C. 722, 190 S.E.2d 204 (1972).

Since defendants proceeded to annex territory under the special act, Session Laws 1971, c. 801, they did not comply with §§ 160A-24 through 160A-32, nor were they required to do so. *Plemmer v. Matthewson*, 281 N.C. 722, 190 S.E.2d 204 (1972).

Applied in *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

§ 160A-25. Referendum on question of extension. — If, at the meeting held for such purpose, a petition is filed and signed by at least fifteen percent (15%) of the qualified voters resident in the area proposed to be annexed requesting a referendum on the question, the governing body shall, before passing said ordinance, annexing the territory, submit the question as to whether said territory shall be annexed to a vote of the qualified voters of the area proposed to be annexed, and the governing body may or may not cause the question to be submitted to the residents of the municipality voting separately. The governing body may, without receipt of a petition, call for a referendum on the question: Provided, however, the governing body of the municipality shall be required to call for a referendum within the municipality if a petition is filed and signed by at least fifteen percent (15%) of the qualified voters

residing in the municipality, who actively participated in the last gubernatorial election. (1947, c. 725, s. 2; 1973, c. 426, s. 74.)

Stated in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-26. Extent of participation in referendum; call of election. — Upon receipt of a sufficient petition, or if the board, on its own motion, determines that a referendum shall be held, the local governing body shall determine whether or not the election will be conducted solely in the area to be annexed or simultaneously with the qualified voters of the municipality, and shall order the board of elections of the county in which the municipality is located to call an election to determine whether or not the proposed territory shall be annexed to the city or town. Within 60 days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question. (1947, c. 725, s. 3; 1973, c. 426, s. 74.)

Cited in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-27. Action required by county board of elections; publication of resolution as to election; costs of election. — Such election shall be called by a resolution or resolutions of said county board of elections which shall:

- (1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;
- (2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed, and if ordered by the local governing body, the qualified voters of said city or town voting separately;
- (3) Provide for a special registration of voters in the territory proposed to be annexed for said election;
- (4) Designate the precincts and voting places for such election;
- (5) Name the registrars and judges of such election;
- (6) And make all other necessary provisions for the holding and conducting of such election, the canvassing of the returns and the declaration of the results of such election.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the opening of the registration books. All cost of holding such election shall be paid by the city or town. Except as herein provided, said election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged. (1947, c. 725, s. 4; 1973, c. 426, s. 74.)

Cited in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-28. Ballots; effect of majority vote for extension. — At such election those qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension." If at such election a majority of the votes cast from the area proposed for annexation shall be "For Extension," and, in the event an election is held in the municipality, the majority of the votes cast in the municipality shall also be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all the debts, laws,

ordinances, and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. The newly elected territory shall be subject to city taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 5; 1973, c. 426, s. 74.)

Stated in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds. — Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this Article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1947, c. 725, s. 6; 1973, c. 426, c. 74.)

§ 160A-30. Surveys of proposed new areas. — The governing bodies of the cities and towns after five days' written notice to the owner of record or persons in possession of the premises are hereby authorized to enter upon any lands to make surveys or examinations as may be necessary in carrying out the mapping requirements of proposed annexations under any provision of Article 4A of Chapter 160A; provided, the city or town authorizing such entry shall make reimbursement for any damage resulting from such activity. (1947, c. 725, s. 7; 1973, c. 426, s. 74; 1975, c. 312.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section, which formerly authorized local governing

bodies to make surveys, but did not provide for a right of entry or for examinations in connection with proposed annexation.

§ 160A-31. Annexation by petition. — (a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.

(b) The petition shall be prepared in substantially the following form:

DATE:

To the (name of governing board) of the (City or Town) of

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of

2. The area to be annexed is contiguous to the (City or Town) of and the boundaries of such territory are as follows:

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of his investigation. Upon receipt of the certification, the municipal governing board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least 10 days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within

the area to be annexed and the three or more public places within the municipality.

(d) At the public hearing all persons owning property in the area to be annexed who allege an error in the petition shall be given an opportunity to be heard, as well as residents of the municipality who question the necessity for annexation. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on any specified date within six months from the date of passage of the ordinance.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. If territory is annexed its liability for municipal taxes for the fiscal year in which it is annexed shall be determined by applying the following ratio against the total taxes that would be due on the property if it had been annexed prior to the beginning of the fiscal year: The numerator shall be the number 365 minus the number of days after the preceding July 1 and immediately prior to the effective date of the annexation, and the denominator shall be the number 365. However, the due date of such municipal taxes shall be the effective date of annexation of said territory and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation. (1947, c. 725, s. 8; 1959, c. 713; 1973, c. 426, s. 74; 1975, c. 576, s. 2.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, substituted the present second, third, fourth and fifth sentences of subsection (e) for the former second sentence, which read "The newly annexed territory shall

be subject to municipal taxes levied for the fiscal year following the date of annexation."

Stated in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-32. Powers granted supplemental. — The powers granted by this Article shall be supplemental and additional to powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing: Provided, that this Article shall not apply to any town or municipality in Dare County. (1947, c. 725, s. 9; 1951, c. 824; 1959, c. 427; 1973, c. 426, s. 74.)

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-33. Declaration of policy. — It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina;
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development;
- (3) That municipal boundaries should be extended, in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare; and
- (4) That new urban development in and around municipalities having a population of less than 5,000 persons tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for larger municipalities and still attain the objectives set forth in this section;
- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation. (1959, c. 1010, s. 1; 1973, c. 426, s. 74.)

Editor's Note. — Sections 160A-33 through 160A-44 were originally codified as §§ 160-453.1 through 160-453.12. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

Constitutionality. — The legislature may without violating the State or federal Constitution delegate to a municipality the authority to implement a plan of annexation. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

This Part does not constitute an unlawful delegation of legislative power in violation of N.C. Const., Art. VIII. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

The guidelines established by this Part are as stringent as those in § 160A-45 et seq., and the discretion conferred upon the municipalities of population less than 5,000 is no greater than that conferred upon municipalities of population of 5,000 or greater. Therefore, the contention that the annexation statute is unconstitutional is untenable. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Policy Supports Statutory Scheme. — Given the State policy, it is not difficult to conceive of a rational basis supportive of the patchwork statutory scheme governing annexation in North Carolina. *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

Objectives Sufficient to Justify Annexation. — Three avowed objectives were stated by a town's governing board: (1) Essentially all of the town's desirable building sites were exhausted. (2) The tax base was unable to provide the kind of services people need. (3) Many interested people were unable to participate in town government. These objectives are sufficient to qualify the annexation under this Part. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Applied in *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

Cited in *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974).

§ 160A-34. Authority to annex. — The governing board of any municipality having a population of less than 5,000 persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part. (1959, c. 1010, s. 2; 1973, c. 426, s. 74.)

Burden of Showing Failure to Meet Statutory Requirements. — Where the record of annexation proceedings under this section on its face showed substantial compliance with every essential element of the applicable statutes, the burden was upon petitioners, who appealed from the annexation ordinance, to

show by competent evidence that the city in fact failed to meet the statutory requirements or that there was irregularity in the proceedings which materially prejudiced their substantive rights. *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974).

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans. — A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
 - a. Provide for extending police protection, fire protection, garbage collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines.
 - b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.
 - c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed. (1959, c. 1010, s. 3; 1973, c. 426, s. 74.)

Local Modification. — Session Laws 1973, c. 278, repealed Session Laws 1969, c. 1232, applicable to Franklin County and treated as a

local modification under § 160-453.3 in the bound volume.

This section does not make it incumbent upon the municipality to justify annexation other than to the extent of its ability to serve the areas to be annexed. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Police Protection. — Evidence supporting the plans set out in the report, and no evidence that the service would not be adequate, was sufficient, to support the conclusion that the police protection requirement of this section would be met. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Extent to Which Area Needs Municipal Service. — While the extent to which an area

needs municipal services is among the factors to be considered in a decision to annex, the statute requires only that a city demonstrate an ability to serve the area to be annexed. *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856 (1975).

Annexation ordinance and annexation report met the requirements of this section and § 160A-37. *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

Applied in *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

§ 160A-36. Character of area to be annexed. — (a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality developed land on both sides of the street. (1959, c. 1010, s. 4; 1973, c. 426, s. 74.)

Criteria in subsection (c) are known as the "use" test and the "subdivision" test. *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856 (1975).

Golf course, open to the public and operated for profit, is used for a commercial purpose within the meaning of subsection (c). *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856 (1975).

Splitting of Tracts. — The statutory requirement contained in subsection (d) that a municipality use natural topographic features

wherever practical in setting an annexation boundary does not demonstrate a legislative intent to prevent splitting of tracts. *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

Use of Street as Reference. — No provision in subsection (d) prevents a municipality from using a street as a reference in setting the boundary lines of an area to be annexed. *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

§ 160A-37. Procedure for annexation. — (a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration.
- (3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 14 days prior to the date of the public hearing.

Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least four successive weeks prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than 22 days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.

(c) Action prior to Hearing. — At least 14 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the seventh day following the public hearing and not later than 60 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that

on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

- (4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. If territory is annexed its liability for municipal taxes for the fiscal year in which it is annexed shall be determined by applying the following ratio against the total taxes that would be due on the property if it had been annexed prior to the beginning of the fiscal year: The numerator shall be the number 365 minus the number of days after the preceding July 1 and immediately prior to the effective date of the annexation, and the denominator of which is the number 365. However, the due date of such municipal taxes shall be the effective date of annexation of said territory and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(g) Simultaneous Annexation Proceedings. — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and 160A-37(e), such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being

provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

- (1) If the plans submitted under the provisions of G.S. 160A-35(3)c require the construction of major trunk water mains and sewer outfall lines and
- (2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1; 1973, c. 426, s. 74; 1975, c. 576, s. 3.)

Local Modification. — Town of Grifton: 1975, c. 479.

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, substituted the present second, third, fourth and fifth sentences of subsection (f) for the former second sentence, which read "The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation."

Article 40, Chapter 1, referred to in the first sentence of subsection (h), was repealed by Session Laws 1967, c. 954, s. 4.

Newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation under subsection (f) of this section. A taxpayer's right to recover taxes paid under protest for a fiscal year depends upon the date the annexation ordinance became effective under § 160A-38(i). *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972), decided under this section as it stood before the 1975 amendment.

Subsection (e) contains no provision requiring a second public hearing before the annexation report may be amended. *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

To hold that a public hearing is always necessary when an annexation report is

amended would result in a proliferation of unnecessary hearings. *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

Annexation ordinance and annexation report met the requirements of § 160A-35 and this section. *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

Appeal Postpones Effective Date of Annexation. — Where an appeal from an annexation ordinance was pending in the Court of Appeals on the effective date of annexation specified in the ordinance, May 15, 1969, and the decision of the Court of Appeals was filed and certified in September 1969, property within the area being annexed was not subject to municipal ad valorem taxes for the fiscal year beginning July 1, 1969, since (1) newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation, under subsection (f) of this section, and (2) under § 160A-38(i), the appeal postponed the effective date of the ordinance until the date of the final judgment of the appellate court. *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972), decided under this section as it stood before the 1975 amendment.

Applied in *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974); *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

§ 160A-38. Appeal. — (a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed or
- (2) That the provisions of G.S. 160A-35 were not met, or
- (3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, 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 in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to

the court's instructions in the event of remand. (1959, c. 1010, s. 6; 1973, c. 426, s. 74.)

Court of Appeals Jurisdiction. — An appeal from an order of the superior court affirming an annexation ordinance was properly taken to the Court of Appeals, notwithstanding that by clear legislative oversight subsections (h) and (i) of this section were not amended to include the Court of Appeals as one of the appellate courts, since § 7A-27 gives initial appellate jurisdiction of such cause to the Court of Appeals, and the Court of Appeals, therefore, is deemed to be included in subsections (h) and (i). *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972).

Who May Appeal. — Subsection (a) allows persons owning property in the area to be annexed to appeal if such property owner believes that he will suffer material injury. *Taylor v. City of Raleigh*, 22 N.C. App. 259, 206 S.E.2d 401 (1974).

Although the city was proceeding under a local act which did not set forth the persons who could appeal, rather than under this Chapter, this did not extend the right to challenge the annexation to persons outside the annexed area who did not own property within it. *Taylor v. City of Raleigh*, 22 N.C. App. 259, 206 S.E.2d 401 (1974).

Appeal Postpones Effective Date of Annexation. — Where an appeal from an annexation ordinance was pending in the Court of Appeals on the effective date of annexation specified in the ordinance, May 15, 1969, and the

decision of the Court of Appeals was filed and certified in September 1969, property within the area being annexed was not subject to municipal ad valorem taxes for the fiscal year beginning July 1, 1969, since (1) newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation, § 160A-37(f), and (2) under subsection (i) of this section the appeal postponed the effective date of the ordinance until the date of the final judgment of the appellate court. *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972).

The consolidation of two or more petitions for review in a single hearing referred to in subsection (d) refers to the consolidation of two or more petitions which involve a single annexation area and ordinance. *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974).

Public Hearing on Remand. — Neither subdivision (g)(2) nor any other provision of the annexation statute requires the municipal governing board upon remand to hold a second public hearing unless it adds area not included in the original notice of public hearing and not provided for in the plans for service. *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

Stated in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

Cited in *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

§ 160A-39. Annexation recorded. — Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1959, c. 1010, s. 7; 1973, c. 426, s. 74.)

§ 160A-40. Authorized expenditures. — Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1010, s. 8; 1973, c. 426, s. 74.)

§ 160A-41. Definitions. — The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

- (1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.
- (2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1010, s. 9; 1973, c. 426, s. 74.)

§ 160A-42. Land estimates. — In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the municipality:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more. (1959, c. 1010, s. 10; 1973, c. 426, s. 74.)

Applied in *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856 (1975).

Cited in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-43. Effect of Part on other laws. — From and after July 1, 1959, this Part shall be in full force and effect with respect to all municipalities having a population of less than 5,000 persons according to the last preceding federal decennial census. The provisions of Part 1 of Article 36 of Chapter 160 [Part 1 of Article 4A of Chapter 160A] of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of Part 1 of Article 36 of Chapter 160 of the General Statutes of North Carolina, with the exception of G.S. 160-452 [G.S. 160A-31] as it exists at the time of the passage of this Part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this Part are inconsistent with the provisions of any other law, the provisions of this Part shall be controlling. (1959, c. 1010, s. 11; 1961, c. 655, s. 1; 1967, c. 1226, s. 2; 1973, c. 426, s. 74.)

Cited in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-44. Counties excepted from Part; Part 1 continued for such counties. — The provisions of this Part shall not apply to the following counties: Alleghany, Edgecombe, Halifax, Iredell, Nash, except for the towns of Nashville, Spring Hope, Castalia and Middlesex, Pender, Perquimans and Person, provided the provisions of this Part shall apply to the towns of Whitakers, Sharpsburg, and Battleboro in Edgecombe and Nash Counties. This Part shall not apply to the town of King in Stokes County, nor to the town of Pilot Mountain in Surry County. No territory located in Brunswick County may be annexed under the provisions of this Part by any city with a population, according to the most recent federal census, of less than 2,000.

Notwithstanding any other provisions of this Part, Part 1 of Article 36 of Chapter 160 [Part 1 of Article 4A of Chapter 160A] of the General Statutes of North Carolina and specifically G.S. 160A-31 as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1010, s. 12; 1961, c. 1081; 1965, cc. 782, 875; 1967, c. 156, s. 1; 1969, c. 438, s. 1; c. 1232; 1971, c. 28; 1973, c. 426, s. 74; 1975, c. 290, s. 1.)

Editor's Note. — The 1975 amendment added the last sentence of the first paragraph.

Session Laws 1973, c. 335, provides that the Town of Scotland Neck is authorized to annex property under the procedures of both Part 1 and Part 2 of this Article.

Session Laws 1973, c. 983, provides that all municipalities in Dare County are authorized to extend their corporate limits by any procedure contained in Part 1, Part 2 or Part 3 of this Article.

Session Laws 1975, c. 290, s. 3, provides that territory in Brunswick County may be annexed pursuant to the provisions of Chapter 160A, Article 4A, Part 1.

Alternative Procedures Authorized. — The General Assembly has the authority to authorize the governing bodies of municipalities to annex territory upon meeting the requirements of Part 3 of this Article, which is equally applicable to annexation by a special act of the legislature. The only discretion given to the governing boards of such municipalities is the permissive or discretionary right to use this new method of annexation provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. *Plemmer v. Matthewson*, 281 N.C. 722, 190 S.E.2d 204 (1972).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy. — It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina;
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;
- (3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare;
- (4) That new urban development in and around municipalities having a population of 5,000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained;
- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the

annexing municipality as soon as possible following annexation. (1959, c. 1009, s. 1; 1973, c. 426, s. 74.)

Editor's Note. — Sections 160A-45 through 160A-56 were originally codified as §§ 160-453.13 through 160-453.24. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

Policy Supports Statutory Scheme. — Given

the State policy, it is not difficult to conceive of a rational basis supportive of the patchwork statutory scheme governing annexation in North Carolina. *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

§ 160A-46. Authority to annex. — The governing board of any municipality having a population of 5,000 or more persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part. (1959, c. 1009, s. 2; 1973, c. 426, s. 74.)

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans. — A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section.
 - c. The general land use pattern in the area to be annexed.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
 - a. Provide for extending police protection, fire protection, garbage collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines.
 - b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.
 - c. If extension of major trunk water mains and sewer outfall lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains and outfalls as soon as possible following the effective date of annexation. In any event, the plans shall call for contracts to be let and construction to begin within 12 months following the effective date of annexation.

- d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed. (1959, c. 1009, s. 3; 1973, c. 426, s. 74.)

Use of Federal Funds to Finance Extension of Services. — Although a city's proposals with reference to the financing of the extension of services into the area to be annexed contemplated the use of certain federal funds in

connection with such financing, the method set forth in plans to finance extension of the services into the areas to be annexed constituted compliance with subdivision (3)d. *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974).

§ 160A-48. Character of area to be annexed. — (a) A municipal governing board may extend the municipal corporate limits to include any area

- (1) Which meets the general standards of subsection (b), and
- (2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty percent (60%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or
- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land

connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than 200 feet beyond the right-of-way of the street. (1959, c. 1009, s. 4; 1973, c. 426, s. 74.)

Tests as to Urban Development Must Be Applied to Whole Annexation Area. — Not only must the entire annexation area meet the requirements of subsection (c)(1), but even more importantly, the tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

A city's decision to follow the "study area" formula with respect to population credits was

an unreasonable departure from the statutory standards. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

The city acted under a misapprehension of the law, and misapplied the statutory standard in subsection (c)(1), in deciding that population credits should be applied only in the "study area" in which such credits were accumulated rather than applied uniformly to the whole "area to be annexed." In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

§ 160A-49. Procedure for annexation. — (a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 14 days prior to the date of the public hearing.

Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least four successive weeks prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than 22 days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.

(c) Action prior to Hearing. — At least 14 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet

the requirements of G.S. 160A-47. At any regular or special meeting held no sooner than the seventh day following the public hearing and no later than 60 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. If territory is annexed its liability for municipal taxes for the fiscal year in which it is annexed shall be determined by applying the following ratio against the total taxes that would be due on the property if it had been annexed prior to the beginning of the fiscal year: The numerator shall be the number 365 minus the total number of days after the preceding July 1 and immediately prior to the effective date of the annexation, and the denominator shall be the number 365. However, the due date of such municipal taxes shall be the effective date of annexation of said territory and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective

date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(g) Simultaneous Annexation Proceedings. — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

- (1) If the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and
- (2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, substituted the present second, third, fourth and fifth sentences of subsection (f) for the former second sentence, which read "The newly annexed territory shall

be subject to municipal taxes levied for the fiscal year following the effective date of annexation."

Article 40, Chapter 1, referred to in the first sentence of subsection (h), was repealed by Session Laws 1967, c. 954, s. 4.

§ 160A-50. Appeal. — (a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and
- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed or
- (2) That the provisions of G.S. 160A-47 were not met, or
- (3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, 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 in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior or Supreme Court on the

effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 1009, s. 6; 1973, c. 426, s. 74.)

This section specifies the inquiries to which the courts are limited. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

Subsection (f) Not Superseded by Rules of Civil Procedure. — The provisions of subsection

(f) authorizing review of annexation proceedings by the court without a jury have not been superseded by the North Carolina Rules of Civil Procedure. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

§ 160A-51. Annexation recorded. — Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1959, c. 1009, s. 7; 1973, c. 426, s. 74.)

§ 160A-52. Authorized expenditures. — Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1009, s. 8; 1973, c. 426, s. 74.)

§ 160A-53. Definitions. — The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

- (1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of North Carolina.
- (2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1009, s. 9; 1973, c. 426, s. 74.)

§ 160A-54. Population and land estimates. — In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-48, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the reviewing court shall accept the estimates of the municipality:

- (1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such

estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.

- (2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more. (1959, c. 1009, s. 10; 1973, c. 426, s. 74.)

§ 160A-55. Effect of Part on other laws. — From and after July 1, 1959, this Part shall be in full force and effect with respect to all municipalities having a population of 5,000 or more persons according to the last preceding federal decennial census. The provisions of Part 1 of Article 36 of Chapter 160 [Part 1 of Article 4A of Chapter 160A] of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of Part 1 of Article 36 of Chapter 160 of the General Statutes of North Carolina, with the exception of G.S. 160-452 [G.S. 160A-31] as it exists at the time of the passage of this Part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this Part are inconsistent with the provisions of any other law, the provisions of this Part shall be controlling. (1959, c. 1009, s. 11; 1961, c. 655, s. 2; 1967, c. 1226, s. 3; 1973, c. 426, s. 74.)

§ 160A-56. Counties excepted from Part; Part 1 continued for such counties. — The provisions of this Part shall not apply to the following counties: Columbus, Halifax, Pender and Perquimans. No territory located in Brunswick County may be annexed under the provisions of this Part.

Notwithstanding any other provisions of this Part, Part 1 of Article 36 of Chapter 160 [Part 1 of Article 4A of Chapter 160A] of the General Statutes of North Carolina and specifically G.S. 160A-31, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1009, s. 12; 1961, cc. 468, 787; 1963, c. 728; 1967, c. 156, s. 2; 1969, c. 438, s. 2; c. 1058, s. 1; c. 1232; 1973, c. 426, s. 74; 1975, c. 290, s. 2.)

Editor's Note. — The 1975 amendment added the last sentence of the first paragraph.

Session Laws 1973, c. 983, provides that all municipalities in Dare County are authorized to extend their corporate limits by any procedure contained in Part 1, Part 2 or Part 3 of this Article.

Session Laws 1975, c. 290, s. 3, provides that territory in Brunswick County may be annexed pursuant to the provisions of Chapter 160A, Article 4A, Part 1.

§ 160A-57: Reserved for future codification purposes.

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58. Definitions. — The words and phrases defined in this section have the meanings indicated when used in this Part unless the context clearly requires another meaning:

- (1) "City" means any city, town, or village without regard to population, except cities not qualified to receive gasoline tax allocations under G.S. 136-41.2.

- (2) "Primary corporate limits" means the corporate limits of a city as defined in its charter, enlarged or diminished by subsequent annexations or exclusions of contiguous territory pursuant to Parts 1, 2, and 3 of this Article or local acts of the General Assembly.
- (3) "Satellite corporate limits" means the corporate limits of a noncontiguous area annexed pursuant to this Part or a local act authorizing or effecting noncontiguous annexations. (1973, c. 1173, s. 2.)

Editor's Note. — Session Laws 1973, c. 1173, Session Laws 1973, c. 1173, s. 4, contains a severability clause.
s. 6, makes the act effective July 1, 1974.

§ 160A-58.1. Petition for annexation; standards. — (a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

(b) A noncontiguous area proposed for annexation must meet all of the following standards:

- (1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
- (2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
- (3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- (4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition. (1973, c. 1173, s. 2.)

§ 160A-58.2. Public hearing. — Upon receipt of a petition for annexation under this Part, the city council shall cause the city clerk to investigate the petition, and to certify the results of his investigation. If the clerk certifies that upon investigation the petition appears to be valid, the council shall fix a date for a public hearing on the annexation. Notice of the hearing shall be published once at least 10 days before the date of hearing.

At the hearing, any person residing in or owning property in the area proposed for annexation and any resident of the annexing city may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If the council then finds and determines that (i) the area described in the petition meets all of the standards set out in G.S. 160A-58.1(b), (ii) the petition bears the signatures of all of the owners of real property within the area proposed for annexation (except those not required to sign by G.S. 160A-58.1(a)), (iii) the petition is otherwise valid, and (iv) the public health, safety and welfare of the inhabitants of the city and of the area proposed for annexation will be best served by the annexation, the council may adopt an ordinance annexing the area described in the petition. The ordinance may be made effective immediately or on any specified date within six months from the date of passage. (1973, c. 1173, s. 2.)

§ 160A-58.3. Annexed area subject to city taxes and debts. — From and after the effective date of the annexation ordinance, the annexed area and its citizens and property are subject to all debts, laws, ordinances and regulations of the annexing city, and are entitled to the same privileges and benefits as other parts of the city. If territory is annexed its liability for municipal taxes for the fiscal year in which it is annexed shall be determined by applying the following ratio against the total taxes that would be due on the property if it had been annexed prior to the beginning of the fiscal year: The numerator shall be the number 365 minus the total number of days after the preceding July 1 and immediately prior to the effective date of the annexation, and the denominator shall be the number 365. However, the due date of such municipal taxes shall be the effective date of annexation of said territory and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. If the effective date of annexation falls between January 1 and June 30, the city shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of January 1. If the effective date of annexation falls between June 1 and June 30, and the privilege licenses of the annexing city are due on June 1, then businesses in the annexed area are liable for privilege license taxes at the full-year rate. (1973, c. 1173, s. 2; 1975, c. 576, s. 5.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, substituted the present second, third, fourth and fifth sentences for the former second sentence, which read "The newly

annexed area is subject to city taxes levied for the fiscal year following the date of annexation."

§ 160A-58.4. Extraterritorial powers. — Satellite corporate limits shall not be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360, or abatement of public health nuisances pursuant to G.S. 160A-193. However, a city's power to regulate land use pursuant to Chapter 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A-193, shall be the same within satellite corporate limits as within its primary corporate limits. (1973, c. 1173, s. 2.)

§ 160A-58.5. **Special rates for water, sewer and other enterprises.** — For the purposes of G.S. 160A-314, provision of public enterprise services within satellite corporate limits shall be considered provision of service for special classes of service distinct from the classes of service provided within the primary corporate limits of the city, and the city may fix and enforce schedules of rents, rates, fees, charges and penalties in excess of those fixed and enforced within the primary corporate limits. A city providing enterprise services within satellite corporate limits shall annually review the cost thereof, and shall take such steps as may be necessary to insure that the current operating costs of such services, excluding debt service on bonds issued to finance services within satellite corporate limits, does not exceed revenues realized therefrom. (1973, c. 1173, s. 2.)

§ 160A-58.6. **Transition from satellite to primary corporate limits.** — An area annexed pursuant to this Part ceases to constitute satellite corporate limits and becomes a part of the primary corporate limits of a city when, through annexation of intervening territory, the two boundaries touch. (1973, c. 1173, s. 2.)

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-59. **Qualifications for elective office.** — All city officers elected by the people shall possess the qualifications set out in Article VI of the Constitution. In addition, when the city is divided into electoral districts for the purpose of electing members of the council, council members shall reside in the district they represent. When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant. (1973, c. 609.)

§ 160A-63. **Vacancies.** — All vacancies that occur in any elective office of a city shall be filled by appointment of the city council for the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party. (R. C., c. 111, ss. 9, 10; Code, ss. 3793, 3794; Rev., ss. 2921, 2931; C. S., ss. 2629, 2631; 1971, c. 698, s. 1; 1973, c. 426, s. 11.)

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

§ 160A-64. Compensation of mayor and council. — (a) The council may fix its own compensation and the compensation of the mayor and any other elected officers of the city by publication in and adoption of the annual budget ordinance, but the salary of an elected officer other than a member of the council may not be reduced during the then-current term of office unless he agrees thereto. The mayor, councilmen, and other elected officers are entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other city officers and employees, or to a fixed allowance, the amount of which shall be established by the council, for travel and other personal expenses of office; provided, any fixed allowance so established during a term of office shall not be increased during such term of office.

(1973, c. 426, s. 12; c. 1145.)

Editor's Note. — The first 1973 amendment rewrote subsection (a).

The second 1973 amendment added the language beginning "or to a fixed allowance" at the end of the second sentence of subsection (a).

As subsection (b) was not changed by the amendments, it is not set out.

§ 160A-65: Repealed by Session Laws 1975, c. 514, s. 17, effective July 1, 1975.

Part 3. Organization and Procedures of the Council.

§ 160A-68. Organizational meeting of council. — The organizational meeting of the council shall be held on the date and at the time of the first regular meeting in December after the results of the election have been certified pursuant to Subchapter IX of Chapter 163 of the General Statutes. At the organizational meeting, the newly elected mayor and councilmen shall qualify by taking the oath of office prescribed in Article VI, Sec. 7 of the Constitution. The organization of the council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. (1971, c. 698, s. 1; 1973, c. 426, s. 13; c. 607.)

Editor's Note. — The first 1973 amendment inserted "held on the date and at the time of" in the first sentence.

The second 1973 amendment substituted, at

the end of the first sentence, the language beginning "in December" for "after the regular city election."

§ 160A-71. Regular and special meetings; procedure. — (a) The council shall fix the time and place for its regular meetings. If no action has been taken fixing the time and place for regular meetings, a regular meeting shall be held at least once a month at 10:00 A.M. on the first Monday of the month.

(1973, c. 426, s. 14.)

Editor's Note. — The 1973 amendment added the second sentence of subsection (a).

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

§ 160A-72. Minutes to be kept; ayes and noes. — Full and accurate minutes of the council proceedings shall be kept, and shall be open to the inspection of the public. The results of each vote shall be recorded in the minutes, and upon the request of any member of the council, the ayes and noes upon any question shall be taken. (1917, c. 136, subch. 13, s. 1; C. S., s. 2822; 1971, c. 698, s. 1; 1973, c. 426, s. 15.)

Editor's Note. — The 1973 amendment rewrote the second sentence.

§ 160A-74. Quorum. — A majority of the actual membership of the council, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2821; 1971, c. 698, s. 1; 1975, c. 664, s. 5.)

Editor's Note. — The 1975 amendment substituted the present first sentence for the former first two sentences, which read "A majority of the membership of the council shall constitute a quorum. The number required for a quorum shall not be affected by vacancies."

§ 160A-75. Voting. — No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue (including the mayor's vote in case of an equal division) shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the members of the council (not including the mayor unless he has the right to vote on all questions before the council). (1917, c. 136, subch. 13, s. 1; C. S., s. 2821; 1971, c. 698, s. 1; 1973, c. 426, s. 16.)

Editor's Note. — The 1973 amendment added the last sentence of the first paragraph.

§ 160A-76. Franchises; technical ordinances.

(b) Any published technical code or any standards or regulations promulgated by any public agency may be adopted in an ordinance by reference subject to G.S. 143-138(e). A technical code or set of standards or regulations adopted by reference in a city ordinance shall have the force of law within the city. Official copies of all technical codes, standards, and regulations adopted by reference shall be maintained for public inspection in the office of the city clerk. (1917, c. 136, subch. 13; C. S., s. 2823; 1963, c. 790; 1971, c. 698, s. 1; 1973, c. 426, s. 17.)

Editor's Note. — The 1973 amendment divided the former first sentence of subsection (b) into the present first and second sentences.

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

§ 160A-77. Code of ordinances.

Local Modification. — City of Williamston: 1975, c. 420.

§ 160A-78. Ordinance book.

Stated in *Lewis v. White*, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 160A-79. Pleading and proving city ordinances. — (a) In all civil and criminal cases a city ordinance that has been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by both section number and caption. In all civil and criminal cases a city ordinance that has not been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by its caption. In both instances, it is not necessary to plead or allege the substance or effect of the ordinance unless the ordinance has no caption and has not been codified.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

- (1) A city code adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council.
 - (2) Copies of any part of an official map book maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).
 - (3) A copy of an ordinance as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).
- (1973, c. 426, s. 18.)

Cross Reference. — As to application of this section to county ordinances, see § 153A-50.

the amendment, only subsections (a) and (b) are set out.

Editor's Note. —

The 1973 amendment rewrote subsection (a) and deleted "pursuant to G.S. 160-77" at the end of subdivision (1) to subsection (b).

Warrant or Indictment Must Set Out, etc. — In accord with original. See *State v. W.N.C. Pallet & Forest Prod. Co.*, 283 N.C. 705, 198 S.E.2d 433 (1973).

As the rest of the section was not changed by

§ 160A-80. Power of investigation; subpoena power.

Radio and Television Coverage. — Though radio and television coverage may not be necessary to the conduct of investigative hearings by municipalities, it does not follow that it is unreasonable to permit such coverage; conversely, radio and television coverage is

reasonably consistent with the concept of a fully informed public, a concept which is receiving ever increasing support as the public becomes more fully informed. *Leak v. High Point City Council*, 25 N.C. App. 394, 213 S.E.2d 386 (1975).

§ 160A-81. Conduct of public hearings.

Radio and Television Coverage. — Though radio and television coverage may not be necessary to the conduct of investigative hearings by municipalities, it does not follow that it is unreasonable to permit such coverage; conversely, radio and television coverage is

reasonably consistent with the concept of a fully informed public, a concept which is receiving ever increasing support as the public becomes more fully informed. *Leak v. High Point City Council*, 25 N.C. App. 394, 213 S.E.2d 386 (1975).

Part 4. Modification of Form of Government.

§ 160A-101. Optional forms. — Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

(4) Terms of office of members of the council:

Members of the council shall serve terms of office of either two or four years. All of the terms need not be of the same length, and all of the terms need not expire in the same year.

(6) Mode of election of the council:

a. All candidates shall be nominated and elected by all the qualified voters of the city.

b. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.

c. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into "ward seats" and "at-large seats," one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the "ward seats"; candidates for the "at-large seats" shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for "at-large" seats shall be nominated and elected by all the qualified voters of the city.

e. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; in a nonpartisan primary, the qualified voters of each district shall nominate two candidates who reside in the district, and the qualified voters of the entire city shall nominate two candidates for each seat apportioned to the city at large, if any; and all candidates shall be elected by all the qualified voters of the city.

If either of options b, c, d or e is adopted, the council shall divide the city into the requisite number of single-member electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of single-member electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

(8) Selection of mayor:

- a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.
- b. The mayor shall be selected by the council from among its membership to serve at its pleasure.

Under option a, the mayor may be given the right to vote on all matters before the council, or he may be limited to voting only to break a tie. Under option b, the mayor has the right to vote on all matters before the council. In both cases the mayor has no right to break a tie vote in which he participated.

(1973, c. 426, s. 19; c. 1001, ss. 1, 2; 1975, c. 19, s. 64; c. 664, s. 6.)

Editor's Note. — The first 1973 amendment substituted "either two or four years" for "not less than two nor more than four years" at the end of the first sentence in subdivision (4) and added the last paragraph of subdivision (8).

The second 1973 amendment added paragraph d to subdivision (6) and inserted "or d" in the last paragraph of subdivision (6).

The first 1975 amendment corrected an error in the first 1973 amendatory act by inserting "single-member" preceding "electoral districts" throughout subdivision (6).

The second 1975 amendment added option e in

subdivision (6) and substituted "b, c, d, or e" for "b or c or d" near the beginning of the first sentence of the last paragraph of that subdivision.

Session Laws 1975, c. 664, s. 6(c) provides: "Nothing contained in this section shall be construed to alter any existing form of government of any municipality."

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (4), (6) and (8) are set out.

§ 160A-102. Amendment by ordinance. — By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of

submitting the ordinance to a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election not less than 30 days before the last day on which voters may register to vote in the special election, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-104 and the date of any election called pursuant to such petition. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 20.)

Editor's Note. — The 1973 amendment substituted "30" for "20" in the third paragraph and substituted "G.S. 160A-104" for "G.S. 160A-128" in the last paragraph.

§ 160A-104. Initiative petitions for charter amendments. — The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein, and shall give public notice thereof not less than 30 days before the last day on which voters may register to vote in the special election. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceedings under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 21.)

Editor's Note. — The 1973 amendment added notice thereof" at the end of the fifth sentence the language beginning "and shall give public in the first paragraph.

ARTICLE 7.

Administrative Offices.

Part 1. Organization and Reorganization of City Government.

§ 160A-146. Council to organize city government.

Local Modification. — City of Charlotte:
1973, cc. 228, 330.

Part 2. Administration of Council-Manager Cities.

§ 160A-148. **Powers and duties of manager.** — The manager shall be the chief administrator of the city. He shall be responsible to the council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

- (1) He shall appoint and suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.

(1973, c. 426, s. 22.)

Editor's Note. — The 1973 amendment substituted "city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law" for "city employees" in subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (1) are set out.

Part 4. Personnel.

§ 160A-163. Retirement benefits.

Local Modification. — City of Lincolnton:
1973, c. 978.

§ 160A-167. **Defense of employees and officers.** — Upon request made by or in behalf of any employee or officer, or former employee or officer, any city, county or county alcoholic beverage control board may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city, county or county alcoholic beverage control board. The defense may be provided by the city, county or county alcoholic beverage control board by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any city, county or county alcoholic beverage control board to provide for the defense of any action or proceeding of any nature. (1967, c. 1093; 1971, c. 698, s. 1; 1973, c. 426, s. 23; c. 1450.)

Editor's Note. — The first 1973 amendment inserted "or county" following "city" throughout the section.

The second 1973 amendment substituted "county or county alcoholic beverage control board" for "or county" in four places.

§ 160A-168. **Privacy of employee personnel records.** — (a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files maintained by a city are subject to inspection and may be disclosed only as provided by this section.

(b) The following information with respect to each city employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

- (1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability.

(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) Any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by this section, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined

in the discretion of the court but not in excess of five hundred dollars (\$500.00). (1975, c. 701, s. 2.)

Editor's Note. — Session Laws 1975, c. 701, s. 3, makes the act effective Jan. 1, 1976.

§§ 160A-169, 160A-170: Reserved for future codification purposes.

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ 150A-174. General ordinance-making power.

General Laws Prevail over Ordinances. —

In accord with original. See *State v. Williams*, 283 N.C. 550, 196 S.E.2d 756 (1973).

Although the majority of cases dealing with a conflict between a municipal ordinance and a state statute have arisen in criminal actions, the same principles apply in civil causes. *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

Legislation Classifications Must Bear Reasonable Relation to Purpose. — The equal protection clauses of the United States and North Carolina Constitutions impose upon law-making bodies the requirement that any legislative classification be based on differences that are reasonably related to the purposes of the act in which it is found. *State v. Greenwood*, 280 N.C. 651, 187 S.E.2d 8 (1972).

Sunday Ordinances. —

The validity of a Sunday closing statute or ordinance depends upon its reasonable relation to the accomplishment of the State's legitimate objective, which, in this instance, is the promotion of the public health, safety, morals and welfare by the establishment of a day of rest and relaxation. Legislation for this purpose, like other legislation, may not discriminate arbitrarily either between persons, or groups of persons, or between activities which are prohibited and those which are permitted. *State v. Greenwood*, 280 N.C. 651, 187 S.E.2d 8 (1972).

The general rule is that the enactment of Sunday regulations is a legitimate exercise of the police power, and that the classification on which a Sunday law is based is within the discretion of the legislative branch of the government or within the discretion of the governing body of a municipality clothed with power to enact and enforce ordinances for the observance of Sunday, and will be upheld, provided the classification is founded upon

reasonable distinctions, affects all persons similarly situated or engaged in the same business without discrimination, and has some reasonable relation to the public peace, welfare and safety. *State v. Greenwood*, 280 N.C. 651, 187 S.E.2d 8 (1972).

City May Proscribe Obscenity Not Forbidden by State Law. — Under subsection (b) of this section, notwithstanding the existence of a general statewide law relating to obscene displays and publications, a city may enact an ordinance prohibiting and punishing conduct not forbidden by such statewide law. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

Nothing in §§ 14-190.1 to 14-190.9, statewide laws relating to obscene literature and exhibitions and to indecent exposure, expresses or indicates an intent by the General Assembly to preclude cities and towns under this section and § 160A-181 from enacting and enforcing ordinances requiring a higher standard of conduct or condition within their respective jurisdictions. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

Conflict with State Building Code. — An interpretation of § 160A-174 to allow a city ordinance requiring sprinkler systems, thus empowering a city to ignore explicit statewide legislative enactments, would, in effect, permit a city to amend the North Carolina Building Code by the simple expedient of codifying a contested ordinance as a part of its fire prevention code and thereby to evade the clear requirements of § 143-138(e). *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

Applied in *State v. Underwood*, 283 N.C. 154, 195 S.E.2d 489 (1973); *Smith v. Keator*, 21 N.C. App. 102, 203 S.E.2d 411 (1974).

Quoted in *Smith v. Keator*, 285 N.C. 530, 206 S.E.2d 203 (1974).

§ 160A-176. Ordinances effective on city property outside limits. — Any city ordinance may be made effective on and to property and rights-of-way belonging to the city and located outside the corporate limits. (1917, c. 136, subch. 5, s. 2; C. S., s. 2790; 1971, c. 698, s. 1; 1973, c. 426, s. 24.)

Editor's Note. — The 1973 amendment substituted "Any city ordinance may be made effective on and" for "Unless otherwise

provided in the ordinance, all city ordinances shall apply" at the beginning of the section.

§ 160A-181. Regulation of places of amusement.

Sunday Closing Ordinances. — The constitutionality of a Sunday closing ordinance depends upon whether the absolute prohibition on Sunday of the one business of operating billiard halls by licensed operators in a lawful manner denies the equal protection of the laws guaranteed by N.C. Const., Art. I, § 19, and by the Fourteenth Amendment to the Constitution of the United States. *State v. Greenwood*, 280 N.C. 651, 187 S.E.2d 8 (1972).

In determining whether a Sunday ban on the operation of billiard halls, but on no other businesses which provide facilities and opportunities for recreation, amusements and sports, denies equal protection to the operators of billiard halls, consideration must be given to the purpose of the ordinance and to the classification involved. *State v. Greenwood*, 280 N.C. 651, 187 S.E.2d 8 (1972).

A Sunday closing ordinance which singles out and bans the operation of billiard halls on

Sunday but permits other businesses which provide facilities for recreation, sports and amusements, which are potentially as equally disruptive, violates the equal protection clauses of the North Carolina and United States Constitutions. *State v. Greenwood*, 280 N.C. 651, 187 S.E.2d 8 (1972).

Regulation of Obscenity. — Nothing in §§ 14-190.1 to 14-190.9, statewide laws relating to obscene literature and exhibitions and to indecent exposure, expresses or indicates an intent by the General Assembly to preclude cities and towns under § 160A-174 and this section from enacting and enforcing ordinances requiring a higher standard of conduct or condition within their respective jurisdictions. *State v. Tenore*, 280 N.C. 238, 185 S.E.2d 644 (1972).

Applied in *State v. Underwood*, 283 N.C. 154, 195 S.E.2d 489 (1973).

§ 160A-184. Noise regulation. — A city may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens. (1971, c. 698, s. 1; 1973, c. 426, s. 25.)

Editor's Note. — The 1973 amendment deleted "loud" preceding "noises" near the middle of the section.

§ 160A-185. Emission of pollutants or contaminants. — A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1949, c. 594, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 26.)

Editor's Note. — The 1973 amendment rewrote the first sentence.

Cited in *Stanley v. Department of*

Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 160A-189. Firearms.

Quoted in *State v. Tanner*, 25 N.C. App. 251, 212 S.E.2d 695 (1975).

§ 160A-191. Limitations on enactment of Sunday-closing ordinances. — No ordinance regulating or prohibiting business activity on Sundays shall be enacted unless the council shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once each week for four successive weeks before the date of the hearing. The notice shall fix the date, hour and place of the public hearing, and shall contain a statement of the council's intent to consider a Sunday-closing ordinance, the purpose for such an ordinance, and one or more reasons for its enactment. No ordinance shall be held invalid for failure to observe the procedural requirements for enactment imposed by this section unless the issue is joined in an appropriate proceeding initiated within 90 days after the date of final enactment. This section shall not apply to ordinances enacted pursuant to G.S. 18A-33(b). (1967, c. 1156, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 27.)

Editor's Note. —

The 1973 amendment substituted "G.S. 18A-33(b)" for "G.S. 18-107" at the end of the section.

Applied in *State v. Underwood*, 283 N.C. 154, 195 S.E.2d 489 (1973).

§ 160A-192. Regulation of trash and garbage.

Garbage removal by the municipality, etc. —

The collection, removal and disposition of garbage by a municipality within its territorial limits constitutes a governmental function, and there can be no recovery for wrongful death or personal injury against a municipality for negligent acts of omission or commission of its agents or servants while engaged in this governmental function. *Koontz v. City of Winston-Salem*, 280 N.C. 513, 186 S.E.2d 897 (1972).

Collection and Disposal of Waste Varies between Municipalities and Counties. — The problem of the collection and disposal of waste of every sort, kind and description within the congested confines of our municipalities obviously varies considerably from that in our more rural and less congested counties. *Lafayette Transp. Serv., Inc. v. County of Robeson*, 17 N.C. App. 210, 193 S.E.2d 464 (1972).

The legislature has recognized this difference by authorizing municipalities to enact ordinances for the collection and disposal of "solid wastes," while it has authorized counties to regulate only the collection and disposal of "garbage." *Lafayette Transp. Serv., Inc. v. County of Robeson*, 17 N.C. App. 210, 193 S.E.2d 464 (1972).

Landfill Operation Is Governmental Function. — A landfill operation by a municipality for the purpose of disposing of

garbage collected within its territorial limits is a governmental function. *Koontz v. City of Winston-Salem*, 280 N.C. 513, 186 S.E.2d 897 (1972).

But Operation of Landfill Pursuant to Contract Was Proprietary Function. — A city was engaged in a proprietary function in operating a landfill for the disposal of garbage where the city had contracted with the county to dispose of county garbage for a fee, since (1) the city received special corporate benefit by use of the contract rather than the provisions of § 160A-193 for protection against accumulated garbage and refuse within a mile of its corporate limits, and (2) the revenues received by the city under its contract with the county amounted to more than incidental income; consequently, the city was not protected by the doctrine of governmental immunity in actions for wrongful death and personal injuries allegedly resulting from an explosion of accumulated methane gas which had been generated in and released from the city's landfill operation. *Koontz v. City of Winston-Salem*, 280 N.C. 513, 186 S.E.2d 897 (1972).

A municipality is liable for a taking or damaging of property resulting from the creation or maintenance of a nuisance growing out of the disposal of garbage. *Koontz v. City of Winston-Salem*, 280 N.C. 513, 186 S.E.2d 897 (1972).

§ 160A-193. Abatement of public health nuisances.

Contract May Extend Limits of Protection. — By use of a contract between a county and a city, rather than the provisions of this section, a city can extend its protection against accumulated garbage and refuse for more than one mile from its territorial limits. *Koontz v. City*

of Winston-Salem, 280 N.C. 513, 186 S.E.2d 897 (1972).

Cited in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 160A-194. Regulating and licensing businesses, trades, etc.

Quoted in *Smith v. Keator*, 285 N.C. 530, 206 S.E.2d 203 (1974).

§ 160A-195. Regulating speed of trains. — A city may by ordinance regulate the speed at which railroad trains may be operated within the corporate limits. (1973, c. 426, s. 28.)

§§ 160A-196 to 160A-205: Reserved for future codification purposes.

ARTICLE 9.

Taxation.

§ 160A-207. Remedies for collecting taxes. — In addition to any other remedies provided by law, the remedies of levy, garnishment, and attachment shall be available for collecting any city tax under the rules and procedures prescribed by the Machinery Act for the enforcement of tax liability against personal property, except that:

- (1) The remedies shall become available on the due date of the tax and not before that time;
- (2) Rules dependent on the existence of a lien against real property for the same tax shall not apply; and
- (3) The lien acquired by levy, garnishment, or attachment shall be inferior to any prior or simultaneous lien for property taxes acquired under the Machinery Act. (1971, c. 698, s. 1; 1973, c. 426, s. 29.)

Editor's Note. — The 1973 amendment "Machinery Act" in the introductory paragraph deleted "(G.S. 105-271 to 105-395)" following and in subdivision (3).

§ 160A-208. Continuing taxes. — Except for taxes levied on property under the Machinery Act, a city may impose an authorized tax by a permanent ordinance that shall stand from year to year until amended or repealed, and it shall not be necessary to reimpose the tax in each annual budget ordinance. (1971, c. 698, s. 1; 1973, c. 426, s. 30.)

Editor's Note. — The 1973 amendment "Machinery Act" near the beginning of the section deleted "(G.S. 105-271 to 105-395)" following

§ 160A-209. **Property taxes.** — (a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each city in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the city under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each city may levy property taxes without restriction as to rate or amount for the following purposes:

- (1) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the city.
- (2) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of any of the enterprises listed in G.S. 160A-311), when revenues actually collected or received fall below revenue estimates made in good faith in accordance with the Local Government Budget and Fiscal Control Act.
- (3) Civil Disorders. — To meet the cost of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city.

(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

- (1) Administration. — To provide for the general administration of the city through the city council, the office of the city manager, the office of the city budget officer, the office of the city finance officer, the office of the city tax collector, the city purchasing agent, the city attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity.
- (2) Air Pollution. — To maintain and administer air pollution control programs.
- (3) Airports. — To establish and maintain airports and related aeronautical facilities.
- (4) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.
- (5) Animal Protection and Control. — To provide animal protection and control programs.
- (6) Auditoriums, Coliseums, and Convention Centers. — To provide public auditoriums, coliseums, and convention centers.
- (7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control and flood and hurricane protection.
- (8) Cemeteries. — To provide for cemeteries.
- (9) Civil Defense. — To provide for civil defense programs.
- (10) Debts and Judgments. — To pay and discharge any valid debt of the city or any judgment lodged against it, other than debts or judgments evidenced by or based on bonds or notes.
- (11) Elections. — To provide for all city elections and referendums.
- (12) Electric Power. — To provide electric power generation, transmission, and distribution services.
- (13) Fire Protection. — To provide fire protection services and fire prevention programs.
- (14) Gas. — To provide natural gas transmission and distribution services.
- (15) Historic Preservation. — To undertake historic preservation programs and projects.
- (16) Human Relations. — To undertake human relations programs.
- (17) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, and to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.

- (18) Jails. — To provide for the operation of a jail and other local confinement facilities.
- (19) Joint Undertakings. — To cooperate with any other county, city, or political subdivision of the State in providing any of the functions, services, or activities listed in this subsection.
- (20) Libraries. — To establish and maintain public libraries.
- (21) Mosquito Control.
- (22) Off-Street Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
- (23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, of this Chapter.
- (24) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
- (25) Planning. — To provide for a program of planning and regulation of development in accordance with Article 19 of this Chapter.
- (26) Police. — To provide for law enforcement.
- (27) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.
- (28) Sewage. — To provide sewage collection and treatment services.
- (29) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
- (30) Streets. — To provide for the public streets, sidewalks, and bridges of the city.
- (31) Traffic Control and On-Street Parking. — To provide for the regulation of vehicular and pedestrian traffic within the city, and for the parking of motor vehicles on the public streets.
- (32) Water. — To provide water supply and distribution services.
- (33) Water Resources. — To participate in federal water resources development projects.
- (34) Watershed Improvement. — To undertake watershed improvement projects.

(d) Property taxes may be levied for one or more of the purposes listed in subsection (c) up to a combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars' (\$100.00) appraised value of property subject to taxation.

(e) With an approving vote of the people, any city may levy property taxes for any purpose for which the city is authorized by its charter or general law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (d).

The city council may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other city referendum or city election, but may not be otherwise held (i) on the day of any federal, State, district, or county election already validly called or scheduled by law at the time the tax referendum is called, or (ii) within the period of time beginning 30 days before and ending 10 days after the day of any other city referendum or city election already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the same board of elections that conducts regular city elections. The city clerk shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

- (1) Shall the City/Town of be authorized to levy annually a property tax at an effective rate not in excess of cents on the one hundred dollars (\$100.00) value of property subject to taxation for the purpose of?
- (2) Shall the City/Town of be authorized to levy annually a property tax at a rate not in excess of that which will produce \$ for the purpose of?
- (3) Shall the City/Town of be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of?

If a majority of those participating in the referendum approve the proposition, the city council may proceed to levy annually a property tax within the limitations (if any) described in the proposition. Unless otherwise provided in the proposition submitted to the voters, a vote on a property tax levy not to exceed a specified rate per one hundred dollars (\$100.00) value of property subject to taxation is a vote on an effective rate per one hundred dollars (\$100.00) of appraised value of property before the application of any assessment ratio.

The board of elections shall canvass the referendum and certify the results to the city council. The council shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the council.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Cities in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitations set out in subsection (d) at any appropriate level and are not subject to the former voted rate limitation.

(f) With an approving vote of the people, any city may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other city referendum or election, but may not be otherwise held (i) on the day of any federal, State, district, or county election, or (ii) within the period of time beginning 30 days before and ending 30 days after the day of any other city referendum or city election. The election shall be conducted by the same board of elections that conducts regular city elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the effective property tax rate limitation applicable to the City/Town of be increased from on the one hundred dollars (\$100.00) value of property subject to taxation to on the one hundred dollars (\$100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the city.

(g) With respect to any of the categories listed in subsections (b) and (c) of this section, the city may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(h) This section does not authorize any city to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 37; 1919, c. 178, s. 3(37); C. S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3; 1971, c. 698, s. 1; 1973, c. 426, s. 31; c. 803, s. 2; 1975, c. 664, s. 7.)

Editor's Note. — The first 1973 amendment deleted "(G.S. 105-271 to 105-395)" following "Machinery Act" in the first sentence of subsection (a) as it stood before the 1973 amendments.

The second 1973 amendment, effective July 1, 1973, rewrote the section.

The 1975 amendment deleted "effective" following "up to a combined" in the first sentence of subsection (d) and deleted the second sentence of that subsection, which read "To find the actual rate limit for a particular city, divide the effective rate limit of one dollar and fifty cents (\$1.50) by the county assessment ratio."

§ 160A-214. Cable television franchise tax. — A city may impose an annual franchise tax on cable television companies franchised under G.S. 160A-319 to operate within the city. (1971, c. 698, s. 1; 1973, c. 426, s. 32.)

Editor's Note. — The 1973 amendment substituted "G.S. 160A-319" for "G.S. 160A-320."

ARTICLE 10.

Special Assessments.

§ 160A-216. Authority to make special assessments. — Any city is authorized to make special assessments against benefited property within its corporate limits for:

- (3) Constructing, reconstructing, extending, and otherwise building or improving water systems;
- (4) Constructing, reconstructing, extending, and otherwise building or improving sewage disposal systems; and

(1975, c. 664, s. 8.)

Editor's Note. —

The 1975 amendment substituted "water systems" for "waterlines" in subdivision (3) and "sewage disposal systems" for "sanitary sewer lines" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (3) and (4) are set out.

§ 160A-217. Petition for street or sidewalk improvements. — (a) A city shall have no power to levy special assessments for street or sidewalk improvements unless it receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. Unless the petition specifies another percentage, not more than fifty percent (50%) of the cost of the improvement may be assessed (not including the cost of improvements made at street intersections).

(1973, c. 426, s. 33.)

Editor's Note. — The 1973 amendment substituted "street or sidewalk" for "street and sidewalk" in the first sentence of subsection (a).

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

§ 160A-221. Assessments against lands owned by the State. — When any city proposes to make local improvements that would benefit lands owned by the State of North Carolina or any board, agency, commission, or institution thereof, the council may request the Council of State to consent to special assessments against the property. The Council of State may authorize the Secretary of Administration to give consent for special assessments against State property, but the city may appeal to the Council of State if the Secretary of Administration refuses to give consent. When consent is given for special assessments against State lands, the Council of State may direct that the assessment be paid from the Contingency and Emergency Fund of the State of North Carolina or from any other available funds. If consent to the assessment is refused, the state-owned property shall be exempt from assessment. (1971, c. 698, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of

Administration" for "Director of Administration" in two places.

§ 160A-226. Determination of costs.

Local Modification. — City of Durham: 1973, c. 413; city of Salisbury: 1973, c. 190.

§ 160A-228. Hearing on preliminary assessment roll; revision; confirmation; lien. — At the public hearing, which may be adjourned from time to time until all persons have had an opportunity to be heard, the council shall hear objections to the preliminary assessment roll from all interested persons who appear. Then or thereafter, the council shall annul, modify, or confirm the assessments, in whole or in part, 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 them as may be proper in compliance with the basis of assessment. If any property is omitted from the preliminary assessment roll, the council may place it on the roll and levy the proper assessment. Whenever the council confirms assessments for any project, the city clerk shall enter in the minutes of the council the date, hour, and minute of confirmation. From and after the time of confirmation, the assessments shall be a lien on the property assessed of the same nature and to the same extent as the lien for county and city property taxes, according to the priorities set out in G.S. 160A-233(c). After the assessment roll is confirmed, a copy of it shall be delivered to the city tax collector for collection in the same manner as property taxes, except as herein provided. (1915, c. 56, s. 9; C. S., s. 2713; 1971, c. 698, s. 1; 1973, c. 426, s. 34.)

Editor's Note. — The 1973 amendment substituted "according to the priorities set out in G.S. 160A-233(c)" for "and shall be superior

to all other liens and encumbrances of whatsoever nature" at the end of the fifth sentence.

§ 160A-237. Authority to hold water and sewer assessments in abeyance.

— The assessment resolution may provide that assessments levied under this Article for water or sewer improvements be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system for which the assessment was levied, or a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event first occurs. Upon termination of the period of abeyance, the assessment shall be paid in accordance with the terms set out in the assessment resolution. If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system, or other relevant factors, and shall provide that the period of abeyance shall be the same for all assessed property in the same class.

All statutes of limitations are suspended during the time that any assessment is held in abeyance without interest. (1973, c. 426, s. 35.)

§ 160A-238. Authority to make assessments for beach erosion control and flood and hurricane protection works. — A city make make special assessments, according to the procedures of this Article, against benefited property within the city for all or part of the costs of acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works. Assessments for these projects may be made on the basis of:

- (1) The frontage abutting on the project, at an equal rate per foot of frontage; or
- (2) The frontage abutting on a beach or shoreline protected or benefited by the project, at an equal rate per foot of frontage; or
- (3) The area of land benefited by the project, at an equal rate per unit of area; or
- (4) The valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or
- (5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either area or valuation, the council shall provide for the laying out of one or more benefit zones according to the distance from the shoreline, the distance from the project, the elevation of the land, or other relevant factors. If more than one benefit zone is established, the council shall establish differing rates of assessment to apply uniformly throughout each benefit zone. (1973, c. 822, s. 7.)

Editor's Note. — Session Laws 1973, c. 822, s. 15, provides that the act shall take effect Feb. 1, 1974. Session Laws 1973, c. 822, s. 13, contains a severability clause.

§ 160A-239: Reserved for future codification purposes.

ARTICLE 11.

*Eminent Domain.***§ 160A-240. Definitions.**

Cross References. — As to application of this Article to condemnation by counties, see § 153A-159. As to proration of the tax liability of the owner of condemned land, see § 136-121.1.

Applicability of Article. — The provisions for

condemnation by municipal corporations enacted by this Article are not applicable to proceedings pending on January 1, 1972. *City of Kings Mountain v. Goforth*, 283 N.C. 316, 196 S.E.2d 231 (1973).

§ 160A-241. Power of eminent domain conferred. — In addition to powers conferred by any other general law, charter, or local act, each city shall possess the power of eminent domain and may acquire by purchase or condemnation any property, either inside or outside the corporate limits, for the following purposes:

- (1) Opening, widening, extending, or improving streets, alleys, sidewalks, and public wharves.
- (2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311.
- (3) Establishing or enlarging parks, playgrounds, and other recreational facilities.
- (4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works.
- (5) Establishing, enlarging, or improving cemeteries.
- (6) Constructing, enlarging, or improving city halls, fire stations, office buildings, and other buildings for use by any city department.

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by grant or purchase, nor shall the power to negotiate for the grant or purchase of property be impaired by initiation of condemnation proceedings for acquisition of the same property.

In exercising the power of eminent domain, a city may in its discretion use the procedures of Article 2 of Chapter 40 of the General Statutes, or the procedures of this Article, or the procedures of any other general law, charter, or local act applicable to the city. (1917, c. 136, subch. 4, s. 1; 1919, c. 262; C. S., ss. 2791, 2792; 1923, c. 181; 1961, c. 982; 1971, c. 698, s. 1; 1973, c. 426, s. 36.)

Local Modification. — City of Concord: 1975, c. 20; city of Kinston: 1975, c. 203; city of Statesville: 1975, c. 146; town of Bayboro: 1975, c. 20; town of Southern Pines: 1975, c. 498.

Editor's Note. —

The 1973 amendment substituted "either inside or outside the corporate limits" for "necessary or useful" in the introductory paragraph.

This section clearly corresponds to former § 160-205 in that both statutes enable municipalities to condemn land for public purposes. *City of Durham v. Manson*, 285 N.C. 741, 208 S.E.2d 662 (1974).

This section exemplifies the express legislative intent to provide alternative condemnation procedures for cities and, in close conjunction with this concept, to continue the existence of the "quick take" condemnation

proceeding authorized by Session Laws 1967, c. 506. *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

Session Laws 1967, c. 506 Attached to Section. — If it is necessary for Session Laws 1967, c. 506, a local act which amended the now repealed § 160-205, to attach to one of the sections of this Chapter in order to perpetuate the existence of the local act, this is accomplished by attaching the local act to this section. *City of Durham v. Manson*, 21 N.C. App. 161, 204 S.E.2d 41 (1974).

And Was Not Repealed by This Chapter. — Chapter 506 of Session Laws 1967, which became a part of the charter of the City of Durham, was not repealed by this Chapter. *City of Durham v. Manson*, 285 N.C. 741, 208 S.E.2d 662 (1974).

§ 160A-243. Limitations upon power of eminent domain. — (a) A city shall not possess the power of eminent domain with respect to property owned by the State of North Carolina unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to him. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property by the city. Therefore, the preliminary condemnation resolution shall not be required, but all other procedures prescribed by this Article shall be followed.
(1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of Administration" in the second sentence of subsection (a).

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

§ 160A-243.1. Costs in unsuccessful condemnation actions and in inverse condemnation actions. — If a city or an agency, board, or commission of a city institutes an action to acquire by condemnation any interest in real property and (i) if the final judgment in the action is that the city or the agency, board, or commission is not authorized to condemn the property, or (ii) if the city or agency, board, or commission abandons the action, the court with jurisdiction over the action shall award each owner of the property sought to be condemned a sum that, in the opinion of the court, will reimburse the owner for his reasonable costs, disbursements, and expenses (including reasonable attorney, appraisal, and engineering fees) incurred because of the action.

If an action is brought against a city or an agency, board or commission of a city seeking compensation for the taking of any interest in property by the city or agency, board or commission and judgment is for the plaintiff, the court shall award to the plaintiff as a part of the judgment a sum that, in the opinion of the court, will reimburse the plaintiff for his reasonable costs, disbursements, and expenses (including reasonable attorney, appraisal, and engineering fees) incurred because of the action. (1971, c. 896, s. 13; c. 1137; 1973, c. 426, s. 37.)

Editor's Note. —

The 1973 amendment rewrote this section.

Word "Plaintiff" Used in Natural, Ordinary

Meaning. — The General Assembly used the word "plaintiff" in this section in its natural, ordinary meaning. *Housing Auth. v. Farabee*, 284 N.C. 242, 200 S.E.2d 12 (1973).

When Court May Award Counsel Fees to

Landowner. — The second paragraph of this section authorizes and directs the court to award counsel fees to the landowner when, and only when, the city, agency, board or commission takes possession of private property for a public purpose without first instituting a condemnation proceeding and the landowner, as plaintiff or petitioner, institutes an inverse condemnation proceeding against the condemning authority and recovers just compensation for the taking. *Housing Auth. v. Farabee*, 284 N.C. 242, 200 S.E.2d 12 (1973).

An award of counsel fees to the landowner is

not authorized when judgment is entered awarding title to the condemnor and compensation to the landowner in a proceeding instituted by the condemnor. *Housing Auth. v. Farabee*, 284 N.C. 242, 200 S.E.2d 12 (1973).

Using Provisions of Article 22 of Chapter to Draw Inference as to Such Award Is Improper.

— The legislature has provided for the payment of reasonable attorney fees when the power of eminent domain is exercised by urban redevelopment commissions under Article 22 of this Chapter, regardless of which party is plaintiff. This, however, has no legal significance to other condemnations and may not be used by the courts to infer a similar intention in condemnation proceedings instituted by housing authorities under other statutes which contain no language definitely indicating such legislative intent. *Housing Auth. v. Farabee*, 284 N.C. 242, 200 S.E.2d 12 (1973).

§ 160A-245. Rules of Civil Procedure applicable. — All notices required to be served by this Article shall be served in the manner prescribed for service of summons in a civil action by Rule 4(k) of the Rules of Civil Procedure (G.S. 1A-1). Appointment of and service of notice on guardians ad litem shall be done in the manner prescribed by Rule 17 of the Rules of Civil Procedure (G.S. 1A-1). In all other respects, the procedure to be followed in exercise of the power of eminent domain by a city shall be that prescribed in this Article supplemented when necessary or appropriate by the procedures prescribed by the Rules of Civil Procedure in general and in particular by those portions of the Rules of Civil Procedure governing proceedings in which jurisdiction is derived primarily from the presence of property in the State of North Carolina.

All notices and resolutions required to be served by this Article may be presented to the sheriff of the county in which the condemning city is located; if the condemning city is located in more than one county, the city council shall select the sheriff of the county in which the majority of the land to be condemned is located for service of notices. The sheriff shall serve the notices and resolutions as and when requested by the city council, provided that the party to be served can be found within the county, and shall receive such fees as by general law provided for the service of civil process. The selection shall be communicated to the sheriff by letter of the city council, signed either by the city council's presiding officer or the city clerk or the city attorney. All notices and resolutions required to be served by this Article shall be issued by the city council in the form of summons provided for by the Rules of Civil Procedure in cases of condemnation of land. (1971, c. 698, s. 1; 1975, c. 67.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, added the second paragraph.

§ 160A-247. Preliminary condemnation resolution served on owners and recorded. — A copy of the preliminary condemnation resolution, and any amendments thereto, shall be served on all persons named as owners or parties therein. The original resolution, and any amendments to the description of the land or easement to be acquired or adding, deleting, substituting, or correcting the names of the owners of the property, shall be recorded in the office of the register of deeds of the county or counties in which the land affected thereby lies. The register of deeds shall record and index the resolution (and any amendments thereto required to be recorded) in the same manner as a deed of trust affecting the property, with the owners named therein treated as the grantor under a deed of trust. If the city abandons condemnation proceedings after the resolution has been recorded, the register of deeds shall cancel it in the same manner as a deed of trust is canceled upon presentation to him of a certified copy of the resolution of the city council abandoning the proceedings. (1971, c. 698, s. 1; 1973, c. 426, s. 38.)

Editor's Note. — The 1973 amendment inserted "and any amendments thereto" in the first sentence and added all of the remainder of the section.

§ 160A-248. Board of appraisers. — (a) The property described in the preliminary condemnation resolution shall be appraised by a board of appraisers composed of one person appointed by the city (who shall be named in the preliminary condemnation resolution), one person appointed by the owner, and one person appointed jointly by the other two appraisers. Each appraiser shall be a freeholder of the city or a county wherein the property being condemned lies who has no right, title, or interest in or to the property being condemned, is not related by blood or marriage to any of the owners, is not an officer, employee, or agent of the city, and is disinterested in the rights of the parties in every way. Either the city or the owner may reject an appraiser appointed by the other or by the city's and owner's appraiser if the person so appointed is not disinterested. Notice of rejection of an appraiser shall be given within 48 hours of his appointment or else the right to object shall be deemed to have been waived. If an appointment is rejected, the city or owner shall immediately appoint another appraiser and shall give notice of this action to the other parties. (1973, c. 1212.)

Editor's Note. — The 1973 amendment inserted "or a county wherein the property being condemned lies" near the beginning of the second sentence of subsection (a).

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

§ 160A-252. Final resolution of condemnation. — If the council decides to proceed with the condemnation and acquire the property described in the preliminary condemnation resolution after considering the report of the board of appraisers, it shall adopt a final condemnation resolution containing substantially the following provisions:

- (9) A statement that the owner has 30 days within which to give notice of appeal to the General Court of Justice. (1971, c. 698, s. 1; 1973, c. 426, s. 39.)

Editor's Note. — The 1973 amendment substituted "30 days" for "45 days" in subdivision (9).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (9) are set out.

§ 160A-255. Appeal to General Court of Justice. — Any party to a condemnation proceeding, including the city, may appeal the proceeding to the appropriate division of the General Court of Justice, but the city may appeal only as to the issue of compensation. Notice of appeal shall be given within 30 days from the date that the final resolution of condemnation is adopted, and shall be served on all parties to the proceeding by registered mail to their last known address. An appeal shall not delay the vesting in the city of title to the property or hinder the city in any way from proceeding with the project or improvement for which the property was acquired, except that if the appeal is by a party described in G.S. 160A-243(b) or (c), vesting of title in the city shall be suspended until the court has rendered final judgment on the power of the city to acquire the property and the amount of compensation to be paid. In an appeal by a party described in G.S. 160A-243(b), the court may, in its discretion, reduce the amount of property that may be acquired by the city. (1971, c. 698, s. 1; 1973, c. 426, s. 40.)

Editor's Note. — The 1973 amendment substituted "30 days" for "10 days" in the second sentence.

§ 160A-256. Record on appeal.

Cited in In re Proceedings by City of Greensboro, 21 N.C. App. 124, 203 S.E.2d 325 (1974).

§ 160A-258. Deposit of award. — At any time following an appeal, the city may deposit with the clerk of superior court a sum of money equal to the compensation determined by the board of appraisers if the appealing party is the owner, or a sum estimated by the city to be just compensation for the taking if the city is an appealing party. The owners may apply to the clerk for disbursement of the money deposited in court, or any portion thereof, as full compensation, or as a credit against just compensation, without prejudice to further proceedings in the cause. Upon such application, the clerk shall order that the money deposited be paid to the persons entitled thereto in accordance with the application. The clerk shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. (1971, c. 698, s. 1; 1973, c. 426, s. 41.)

Editor's Note. — The 1973 amendment "compensation" the second time the word inserted a comma following the word appears in the second sentence.

§ 160A-262: Repealed by Session Laws 1973, c. 426, s. 42.

§ 160A-263. Right of entry prior to condemnation. — Any city, without having adopted a preliminary condemnation resolution, depositing any sum, or taking any other action provided for in this Article, is authorized to enter upon any lands, but not structures, to make surveys, borings, examinations, and appraisals as may be necessary or expedient in carrying out and performing its rights or duties under this Article, and such entry shall not be deemed a trespass, or taking within the meaning of this Article; provided, however, that said city shall make reimbursement for any damage resulting from such activities, and the owner, if necessary, shall be entitled to proceed to recover for such damage. Provided further, that said city shall give 30 days notice of the intended entry authorized by this section; such notice shall be deemed given when served on the owner of the land and on all persons who hold a recorded lien or lease against the land by the sheriff of the county in which the condemning city is located or by mailing the notice by certified mail, return receipt requested, postage prepaid, addressed to the owner of the land and to all persons who hold a recorded lien or lease against the land at his last known address or last known principal place of business. (1975, c. 102, s. 1.)

Editor's Note. — Session Laws 1975, c. 102, s. 2, provides that the act shall not affect pending litigation. Session Laws 1975, c. 102, s. 3, makes the act effective Oct. 1, 1975.

§§ 160A-264, 160A-265: Reserved for future codification purposes.

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-266. Methods of sale; limitation. — (a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

- (1) Private negotiation and sale;
- (2) Advertisement for sealed bids;
- (3) Negotiated offer, advertisement, and upset bid;
- (4) Public auction; or
- (5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than five thousand dollars (\$5,000) for any one item or group of similar items. Real property and personal property valued at five thousand dollars (\$5,000) or more for any one item or group of similar items may be sold by any method permitted by this Article other than private negotiation and sale, or may be exchanged as permitted by G.S. 160A-271. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1.)

Editor's Note. —

The 1973 amendment deleted "any" preceding "real or personal" in the introductory paragraph and added subdivision (5) in subsection (a). In subsection (b) the amendment deleted "(j)" preceding "with respect to" in the first sentence

and deleted, at the end of the first sentence, a clause (ii), relating to exchange of facilities of a city-owned enterprise for like facilities. The amendment also substituted "G.S. 160A-271" for "this subsection" at the end of subsection (b).

§ 160A-270. Public auction. — (a) **Real Property.** — When it is proposed to sell real property at public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require the highest bidder at the sale to make a bid deposit in a specified amount. The council shall then publish a notice of the sale at least once and not less than 30 days before the sale. The notice shall contain a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be reported to the council, and the council shall accept or reject it within 30 days thereafter. If the bid is rejected, the council may readvertise the property for sale.

(b) **Personal Property.** — When it is proposed to sell personal property at public auction, the council shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property at public auction. The resolution or order shall identify the property to be sold and set out the date, time, place, and terms of the sale. The resolution or order (or a notice summarizing its contents) shall be published at least once and not less than 10 days before the date of the auction. (1971, c. 698, s. 1; 1973, c. 426, s. 43.)

Editor's Note. —

The 1973 amendment designated the former provisions of this section as subsection (a) and added subsection (b). In subsection (a) the amendment added the catchline "Real Property," deleted "or personal" preceding

"property" in the first sentence, substituted "a specified amount" for "an amount specified in the resolution" and made other minor changes in wording in the second sentence, and inserted "at least" and "and not less than" in the third sentence.

§ 160A-271. Exchange of property. — A city may exchange any real or personal property belonging to the city for other real or personal property by private negotiation if the city receives a full and fair consideration in exchange for its property. A city may also exchange facilities of a city-owned enterprise for like facilities located within or outside the corporate limits. Property shall be exchanged only pursuant to a resolution authorizing the exchange adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the properties to be exchanged, stating the value of the properties and other consideration changing hands, and announcing the council's intent to authorize the exchange at its next regular meeting. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1.)

Editor's Note. — The 1973 amendment inserted "or personal" in two places in the first sentence and added the second sentence.

§ 160A-274. Sale, lease, exchange, and joint use of governmental property. — (a) For the purposes of this section, "governmental unit" means a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.

(b) Any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, purchase from, or enter into agreements regarding the joint use by any other governmental unit of any interest in real or personal property that it may own.

(c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the Board of Transportation, shall be taken only after approval by the Department of Administration. Action with regard to State property under the control of the Board of Transportation shall be taken by the Board of Transportation or its duly authorized delegate. Provided, any county board of education or board of education for any city administrative unit may, upon such terms and conditions as it deems wise, lease to another governmental unit for one dollar (\$1.00) per year any real property owned or held by the board which has been determined by the board to be unnecessary or undesirable for public school purposes. (1969, c. 806; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1975, c. 455; c. 664, s. 9; c. 879, s. 46.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" and for "Commission" in subsection (c).

The first 1975 amendment added the last sentence of subsection (c).

The second 1975 amendment inserted "with or

without consideration" near the beginning of subsection (b).

The third 1975 amendment, effective July 1, 1975, deleted "the Division of Property Control of" preceding "the Department of Administration" in the second sentence of subsection (c).

§ 160A-276. Sale of stocks, bonds, and other securities. — A city may sell through a broker without complying with the preceding sections of this Article shares of common and preferred stock, bonds, options, and warrants or other rights with respect to stocks and bonds, and other securities, when the stock, bond, or other right or security has an established market and is traded in the usual course of business on a national stock exchange or over-the-counter by reputable brokers and securities dealers. The city may pay the usual fees and taxes incident to such transactions. Nothing in this section authorizes a city to deal in its own bonds in any manner inconsistent with Chapter 159 of the General

Statutes, nor to invest in any securities not authorized by G.S. 159-30. (1973, c. 426, s. 44.)

§§ 160A-277 to 160A-280: Reserved for future codification purposes.

ARTICLE 13.

Law Enforcement.

§ 160A-281. **Policemen appointed.** — A city is authorized to appoint a chief of police and to employ other police officers who may reside outside the corporate limits of the city unless the council provides otherwise. (R. C., c. 111, s. 16; Code, c. 3803; Rev., s. 2926; C. S., s. 2641; 1969, c. 23, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 45.)

Editor's Note. — The 1973 amendment substituted "unless the council provides otherwise" for "if the council shall permit."

§ 160A-282. **Auxiliary law-enforcement personnel; workmen's compensation benefits.** — (a) A city, by enactment of an ordinance, may provide that, while undergoing official training and while performing duties on behalf of the city pursuant to orders or instructions of the chief of police of the city, auxiliary law-enforcement personnel shall be entitled to benefits under the North Carolina Workmen's Compensation Act and to any fringe benefits for which such volunteer personnel qualify.

(b) The board of commissioners of any county may provide that persons who are deputized by the sheriff of the county as special deputy sheriffs or persons who are serving as volunteer law-enforcement officers at the request of the sheriff and under his authority, while undergoing official training and while performing duties on behalf of the county pursuant to orders or instructions of the sheriff, shall be entitled to benefits under the North Carolina Workmen's Compensation Act and to any fringe benefits for which such persons qualify. (1969, c. 206, s. 1; 1971, c. 698, s. 1; 1973, c. 1263, s. 1.)

Local Modification. — Columbus: 1973, c. 1263, s. 2.

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

§ 160A-283. **Joint county and auxiliary police.**

Cross Reference. — As to authority of counties under this section, see also § 153A-212.

§ 160A-284. **Oath of office; holding other offices.** — Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk. The offices of policeman, chief of police, and auxiliary policeman are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution. The office of auxiliary policeman is hereby declared to be an office that may be held concurrently with any elective office pursuant to Article VI, Sec. 9, of the Constitution. (1971, c. 698, s. 1; c. 896, s. 4; 1975, c. 664, s. 10.)

Editor's Note. —

The 1975 amendment added the last sentence.

§ 160A-285. Powers and duties of policemen.

Policemen Have the Duty to Serve Summons and Petitions in Juvenile Cases.

— See opinion of Attorney General to Mr. William Y. Bicketty, 41 N.C.A.G. 892 (1972).

§ 160A-286. Extraterritorial jurisdiction of policemen. — In addition to their authority within the corporate limits, city policemen shall have all the powers invested in law-enforcement officers by statute or common law within one mile of the corporate limits of the city, and on all property owned by or leased to the city wherever located.

Any officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all of the privileges, immunities, and benefits to which he would be entitled if acting within the city, including coverage under the workmen's compensation laws. (1971, c. 698, s. 1; c. 896, s. 4; 1973, c. 426, s. 46; c. 1286, s. 24.)

Editor's Note. —

The first 1973 amendment added "and on all property owned by or leased to the city wherever located" at the end of the first paragraph.

The second 1973 amendment, effective Sept. 1, 1975, deleted the former first sentence of the second paragraph, which allowed a city policeman to pursue an offender for a distance of three miles outside the corporate limits of the city for the purpose of making an arrest.

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

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

"Sec. 31. This act becomes effective on July

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

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

Applied in *State v. Dark*, 22 N.C. App. 566, 207 S.E.2d 290 (1974).

§ 160A-288. Law-enforcement officers of one political subdivision to assist officers of another political subdivision upon request.

Cross Reference. — As to authority of counties under this section, see also § 153A-212.

ARTICLE 14.

Fire Protection.

§ 160A-293. Fire protection outside city limits; immunity; injury to firemen.

A Town May Furnish Fire Protection for Property outside the Corporate Limits of the Town. — See opinion of Attorney General to Mr.

E.M. Johnson, *Pembroke Town Attorney*, 40 N.C.A.G. 473 (1969).

ARTICLE 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets. — A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to:

- (1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair;
- (2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions;
- (3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain;
- (4) The power to close any street or alley either permanently or temporarily;
- (5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges;
- (6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface;
- (7) The power to provide for lighting the streets, alleys, and bridges of the city; and
- (8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273. (1917, c. 136, subch. 5, s. 1; subch. 10, s. 1; 1919, cc. 136, 237; C. S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1; 1973, c. 507, s. 5.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

Liability for Failure to Maintain or Repair Streets. —

Municipalities may be liable in tort for failure to maintain their streets in a reasonably safe condition, and they are now required to do so by this section. *McClellan v. City of Concord*, 16 N.C. App. 136, 191 S.E.2d 430 (1972).

A municipality may be held liable for negligent or wanton failure to keep its streets in proper repair and in a reasonably safe condition. *Bowman v. Town of Granite Falls*, 21 N.C. App. 333, 204 S.E.2d 239 (1974).

And to Use Due Care, etc. —

The exercise of the due care in keeping streets and public ways safe and in suitable condition is a positive obligation imposed upon a municipal corporation. *Kaplan v. City of Winston-Salem*, 21 N.C. App. 168, 203 S.E.2d 653 (1974).

Necessity for Notice of Defect. — Notice of a defect in a street, actual or constructive, and a failure to act on the part of the municipality to remedy the situation are prerequisites to recovery in an action involving a municipality. *Bowman v. Town of Granite Falls*, 21 N.C. App. 333, 204 S.E.2d 239 (1974).

A municipality is responsible, etc. —

It is generally held that the duty of keeping sidewalks in a reasonably safe condition rests primarily on a municipality. *Kaplan v. City of Winston-Salem*, 21 N.C. App. 168, 203 S.E.2d 653 (1974).

City Cannot Plead Governmental Immunity. —

In accord with 1st paragraph in original. See *Kaplan v. City of Winston-Salem*, 21 N.C. App. 168, 203 S.E.2d 653 (1974).

A municipality may not undertake a task of street improvement or repair in a careless or negligent fashion and then seek to escape liability by invoking the privilege of governmental immunity. *Kaplan v. City of Winston-Salem*, 21 N.C. App. 168, 203 S.E.2d 653 (1974).

Maintenance Tasks Must Be Performed in Competent Manner. — The duty to maintain sidewalks and streets in a safe condition carries with it a correlative duty to perform these maintenance tasks in a competent manner or suffer the consequences of negligently inflicted damage which is foreseeable. *Kaplan v. City of Winston-Salem*, 21 N.C. App. 168, 203 S.E.2d 653 (1974).

§ 160A-297. Streets under authority of Board of Transportation. — (a) A city shall not be responsible for maintaining streets or bridges under the authority and control of the Board of Transportation, and shall not be liable for injuries to persons or property resulting from any failure to do so.

(b) A city may, at its own expense, widen any street or bridge under the authority and control of the Board of Transportation, subject to the Board of Transportation's engineering and design specifications.

(c) Nothing in this Article shall authorize any city to interfere with the rights and privileges of the Board of Transportation with respect to streets and bridges under the authority and control of the Board of Transportation. (1925, c. 71, s. 3; 1957, c. 65, s. 11; 1971, c. 698, s. 1; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" and for "Commission."

Subsection (a) is intended to apply where there is no contract between a city and the Board of Transportation and does not, per se, absolve a city from liability for injury, if any, imposed upon it by such contract. *Matternes v. City of Winston-Salem*, 286 N.C. 1, 209 S.E.2d 481 (1974).

Liability of City where Maintenance Contracted.—An individual user of a street which is part of the State highway system who sustains personal injuries or property damage as the result of a dangerous condition of such street cannot maintain an action for damages against a city which contracted with the Board of Transportation to repair or remove such condition and then did nothing whatsoever about it. *Matternes v. City of Winston-Salem*, 286 N.C. 1, 209 S.E.2d 481 (1974).

§ 160A-298. Railroad crossings.

(c) A city shall have authority to require the installation, construction, erection, reconstruction, and improvement of warning signs, gates, lights, and other safety devices at grade crossings, and the city shall bear ninety percent (90%) of the costs thereof and the railroad company shall bear ten percent (10%) of the costs. The costs of maintaining warning signs, gates, lights, and other safety devices installed after January 1, 1972, shall be borne equally by the city and the railroad company. The maintenance shall be performed by the railroad company and the city shall pay annually to the railroad company fifty percent (50%) of these costs. In maintaining maintenance cost records and determining such costs, the city and the railroad company shall use the same methods and procedures as are now or may hereafter be used by the Board of Transportation.

(1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in subsection (c).

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

§ 160A-299. Procedure for permanently closing streets and alleys. — (a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Board of Transportation, a copy of the resolution shall be mailed to the Board of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council

after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Board of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. The court shall hear the matter de novo, and shall have full jurisdiction to try the issues arising and to order the street or alley closed upon proper findings of fact by the jury. No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may 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 begun within 30 days after the order is adopted.

(e) No street or alley under the control of the Board of Transportation may be closed unless the Board of Transportation consents thereto. (1971, c. 698, s. 1; 1973, c. 426, s. 47; c. 507, s. 5.)

Local Modification. — City of Durham: 1973, c. 415.

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

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for

"State Highway Commission" in subsections (a), (b) and (e) and for "Commission" in subsections (a) and (e).

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

§ 160A-299.1. Applications for intermittent closing of roads within watershed improvement project by municipality; notice; costs; markers. —

(a) Upon proper application by the board of commissioners of a drainage district established under the provisions of Chapter 156 of the General Statutes by the board of trustees of a watershed improvement district established under the provisions of Article 2 of Chapter 139 of the General Statutes, by the board of county commissioners of any county operating a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes, by the board of commissioners of any watershed improvement commission appointed by a board of county commissioners, or by the board of supervisors of any soil and water conservation district designated by a board of county commissioners to exercise authority in carrying out a county watershed improvement program, any municipality for roads or streets coming under its jurisdictional control is hereby authorized to permit the intermittent closing of any highway or public road within the boundaries of any watershed improvement project operated by the applicants, whenever in the judgment of the municipality it is necessary to do so, and when the highway or public road will be intermittently subject to inundation by floodwaters retained by an approved watershed improvement project.

(b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the appropriate municipality by the public body having jurisdiction over the watershed improvement project. The application shall specify the highway, road, or street involved, and shall request that a permit be granted to the applicant public body to allow the intermittent closing of the road.

(c) Upon receipt of such an application the municipality shall give public notice of the proposed action by publication in a newspaper of general circulation in the county or counties, within which the proposed intermittent closing of road

or roads would occur; and such notices shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition, the municipality shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notices to the appropriate offices of the public utility or common carrier having jurisdiction over the affected facilities of the public utility or common carrier. Not sooner than 14 days after publication and mailing of notices, the municipality may issue its permit with respect to such road.

(d) All cost in connection with the publication and mailing of notices shall be paid by the applicant. In the event any municipality issues a permit allowing the intermittent closing of a road, the permit shall contain a provision that the applicant public body having jurisdiction over the watershed improvement project causing the potential flooding shall cause suitable markers to be installed on the road to advise the general public of the intermittent closing of the road. (1975, c. 639, s. 2.)

§ 160A-301. Parking. — (a) **On-Street Parking.** — A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by coins or tokens. Proceeds from the use of parking meters on public streets must be used to defray the cost of enforcing and administering traffic and parking ordinances and regulations.

(b) **Off-Street Parking.** — A city may by ordinance regulate the use of lots, garages, or other facilities owned or leased by the city and designated for use by the public as parking facilities. The city may impose fees and charges for the use of these facilities, and may provide for the collection of these fees and charges through parking meters, attendants, automatic gates, or any other feasible means. The city may make it unlawful to park any vehicle in an off-street parking facility without paying the established fee or charge and may ordain other regulations pertaining to the use of such facilities.

Revenues realized from off-street parking facilities may be pledged to amortize bonds issued to finance such facilities, or used for any other public purpose.

(c) Nothing contained in Public Laws 1921, Chapter 2, Section 29, or Public Laws 1937, Chapter 407, Section 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1; 1973, c. 426, s. 48.)

Editor's Note. —

The 1973 amendment rewrote the former provisions of this section as subsections (a) and (c) and added subsection (b).

Constitutionality Not Affected by Britt v. City of Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952). — See opinion of Attorney General to Mr. Rufus C. Boutwell, Jr., 43 N.C.A.G. 141 (1973).

§ 160A-302.1. Fishing from bridges regulated. — The governing body of any city is hereby authorized to enact an ordinance prohibiting or regulating fishing from any bridge for the purpose of protecting persons fishing on the bridge from passing vehicular or rail traffic. Such ordinance may also prohibit or regulate fishing from any bridge one mile beyond the corporate limits of the city where the board or boards of county commissioners by resolution agree to such prohibition or regulation; provided, however, that the board or boards of county commissioners may upon 30 days' written notice withdraw their respective

approval of the municipal ordinance, and that ordinance shall have no further effect within that county's jurisdiction. The ordinance shall provide that signs shall be posted on any bridge where fishing is prohibited or regulated reflecting such prohibition or regulation. In any event, no one may fish from the drawspan of any regularly attended drawbridge.

The police department of the city is hereby vested with the jurisdiction and authority to enforce any ordinance passed pursuant to this section.

The authority granted under the provisions of this section shall be subject to the authority of the Board of Transportation to prohibit fishing on any bridge on the State highway system. (1971, c. 690, ss. 2, 3, 6; c. 896, s. 15; 1973, c. 426, s. 49; c. 507, s. 5.)

Editor's Note. —

The first 1973 amendment substituted "city" for "municipality" in three places.

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle. An abandoned motor vehicle is one that:

- (1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
- (2) Is left on property owned or operated by the city for longer than 24 hours; or
- (3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or
- (4) Is left on any public street or highway for longer than seven days.

A junked motor vehicle is an abandoned motor vehicle that also:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and worth less than one hundred dollars (\$100.00); or
- (4) Does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When any junked or abandoned motor vehicle is removed, the city shall give written notice of the removal to the registered owner at his last known address according to the latest registration certificate or certificate of title on file with the Department of Motor Vehicles. The notice shall inform the owner of the possible sale or other disposition that can be made of the vehicle under this section. The owner may regain possession of the vehicle by paying to the city all reasonable costs incidental to the removal and storage. Notice need not be given to the registered owner of the vehicle when it does not display a license plate and the vehicle identification numbers have been removed or defaced so as to be illegible.

(d) After holding an unclaimed abandoned motor vehicle for 30 days, the city may sell or dispose of it as provided by this subsection. If the vehicle appears to be worth less than one hundred dollars (\$100.00), the city may dispose of the

vehicle as a junked motor vehicle as provided by subsection (e) of this section. With the consent of the owner, the city may remove and dispose of any motor vehicle as a junked motor vehicle without regard to the value, condition or age of the vehicle, and without holding it for any prescribed period of time. If the vehicle is worth one hundred dollars (\$100.00) or more it shall be sold at public auction. Twenty days' written notice of the sale shall be given to the registered owner at his last known address, the holders of all liens of record against the vehicle, and the Department of Motor Vehicles. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date: The proceeds of the sale shall be paid to the city treasurer who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale, and liens in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the city for 60 days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within 60 days after the sale, the funds shall be deposited in the city's general fund and the owner's rights therein shall be forever extinguished. When it receives a city's bill of sale from a purchaser or other person entitled to receive any vehicle disposed of as provided in this subsection, the Department of Motor Vehicles shall issue a certificate of title for the vehicle as required by law.

(h) Subsections (d) and (e) of this section do not apply when the vehicle does not display a license plate and the vehicle identification numbers have been removed or defaced so as to be illegible. Such vehicles may be destroyed or sold at private sale (without regard to value) after being held for 48 hours. (1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1; 1973, c. 426, s. 50.)

Editor's Note. — The 1973 amendment substituted "one hundred dollars (\$100.00)" for "fifty dollars (\$50.00)" in the second subdivision (3) in subsection (b) and in two places in subsection (d). The amendment also added the last sentence of subsection (c), deleted, preceding "the city may dispose of" in the first

sentence of subsection (d), "the city shall have it appraised by two disinterested dealers or garagemen, and if the appraisal is less than fifty dollars (\$50.00)," and added subsection (h).

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

§ 160A-303.1. Regulation of the placing of trash, refuse and garbage within municipal limits. — The governing body of any municipality is hereby authorized to enact an ordinance prohibiting the placing, discarding, disposing or leaving of any trash, refuse or garbage upon a street or highway located within that municipality or upon property owned or operated by the municipality unless such garbage, refuse or trash is placed in a designated location or container for removal by a specific garbage or trash service collector. Any ordinance adopted pursuant hereto may prohibit the placing, discarding, disposing or leaving of any trash, refuse or garbage upon private property located within the municipality without the consent of the owner, occupant, or lessee thereof and may provide that the placing, discarding, disposing or leaving of the articles forbidden by this section shall, for each day or portion thereof the articles or matter are left, constitute a separate offense.

The governing body of a municipality, in any ordinance adopted pursuant hereto, may provide that a person who violates the ordinance may be punished by a fine not exceeding fifty dollars (\$50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 953.)

§ 160A-308. Regulation of dune buggies. — A municipality may by ordinance regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the municipality on the foreshore, beach strand and the barrier dune system. Violation of any ordinance adopted by the governing body of a municipality pursuant to this section is a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00), or by imprisonment for not more than 30 days, or both in the discretion of the court.

Provided, a municipality shall not prohibit the use of such specified vehicles from the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities. Commercial fishermen, however, shall abide by all other regulations or restrictions duly enacted by municipalities under this section. (1973, c. 856; c. 1401.)

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

§§ 160A-309, 160A-310: Reserved for future codification purposes.

ARTICLE 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined. — As used in this Article, the term "public enterprise" includes:

- (4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.

(1975, c. 549, s. 2; c. 821, s. 3.)

Editor's Note. — The first 1975 amendment inserted "production, storage, transmission, and" in subdivision (4).

The second 1975 amendment added the language beginning "where systems shall also include" at the end of subdivision (4).

Session Laws 1975, c. 821, s. 6, contains a severability clause.

As the rest of the section was not changed by the amendments, only the introductory language and subdivision (4) are set out.

Cited in *Duke Power Co. v. City of High Point*, 22 N.C. App. 91, 205 S.E.2d 774 (1974).

§ 160A-312. Authority to operate public enterprises. — A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, and operate any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.

A city shall have full authority to protect and regulate any public enterprise system belonging to it by adequate and reasonable rules and regulations.

A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for

natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise. (1971, c. 698, s. 1; 1973, c. 426, s. 51; 1975, c. 821, s. 5.)

Editor's Note. —

The 1973 amendment substituted, in the second sentence, "acquire, construct, establish, enlarge, improve, maintain, own" for "extend."

The 1975 amendment added the third paragraph.

Session Laws 1975, c. 821, s. 6, contains a severability clause.

The term "reasonable limitations" does not refer solely to the territorial extent of the venture, but embraces all facts and circumstances which affect the reasonableness of the venture. *Domestic Elec. Serv., Inc. v. City of Rocky Mount*, 285 N.C. 135, 203 S.E.2d 838 (1974).

Effect of Utilities Commission's Assignment of Area to Electric Suppliers. — The Utilities Commission's assignment to an electric supplier of an area does not automatically preclude a city from extending its service lines into the area. *Domestic Elec. Serv., Inc. v. City of Rocky Mount*, 285 N.C. 135, 203 S.E.2d 838 (1974).

Extension by City of Its Electric System Across City Limits Exceeded "Reasonable Limitations". — See *Domestic Elec. Serv., Inc. v. City of Rocky Mount*, 285 N.C. 135, 203 S.E.2d 838 (1974).

§ 160A-319. Utility franchises. — A city shall have authority to grant upon reasonable terms franchises for the operation within the city of any of the enterprises listed in G.S. 160A-311 and for the operation of telephone systems. No franchise shall be granted for a period of more than 60 years, and cable television franchises shall not be granted for a period of more than 20 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

For the purposes of this section, "cable television system" means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. "Cable television system" does not include providing master antenna services only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1975, c. 664, s. 11.)

Editor's Note. —

The 1975 amendment added "and for the operation of telephone systems" at the end of the first sentence of the first paragraph and

inserted "when a city operates an enterprise, or" in the last sentence of that paragraph.

Stated in *Duke Power Co. v. City of High Point*, 22 N.C. App. 91, 205 S.E.2d 774 (1974).

§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise. — A city is authorized to sell or lease as lessor any enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfers to another governmental entity pursuant to G.S. 160A-274, a city-owned enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223;

C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1973, c. 489, s. 2.)

Editor's Note. —

The 1973 amendment inserted "except as to transfers to another governmental entity

pursuant to G.S. 160A-274" in the second sentence.

Part 2. Electric Service in Urban Areas.

§ 160A-331. **Definitions.** — Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

- (5) "Secondary supplier" means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 52.)

Editor's Note. — The 1973 amendment substituted "consumers" for "customers" in the first sentence of subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (5) are set out.

Section 62-110.2 was passed together with this Part, as part of the same act. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 20 N.C. App. 347, 201 S.E.2d 508, aff'd on other grounds, 285 N.C. 135, 203 S.E.2d 838 (1974).

Section 62-110.2, applying to rural areas, and this Part, applying to municipalities, were part of the same act, and both sought to eliminate the wasteful duplication of power lines by assigning territories to specific suppliers of electricity. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 20 N.C. App. 347, 201 S.E.2d 508, aff'd on other grounds, 285 N.C. 135, 203 S.E.2d 838 (1974).

Considered together, the two statutes cover the entire State and reflect the interests of municipalities, utility companies and cooperatives. They form a unified plan for eliminating duplication of electric facilities by assigning territories to particular suppliers. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 20 N.C. App. 347, 201 S.E.2d 508, aff'd on other grounds, 285 N.C. 135, 203 S.E.2d 838 (1974).

Rights of Certain Nonmunicipal Suppliers Recognized. — By the enactment of this Part, the General Assembly took a considerable step in recognizing rights of nonmunicipal suppliers of electric power in cities operating their own systems. Duke Power Co. v. City of High Point, 22 N.C. App. 91, 205 S.E.2d 774 (1974).

Applied in State ex rel. Utilities Comm'n v. Hunt Mfg. Co., 16 N.C. App. 335, 192 S.E.2d 16 (1972).

§ 160A-332. Electric service within city limits.

Applied in State ex rel. Utilities Comm'n v. Hunt Mfg. Co., 16 N.C. App. 335, 192 S.E.2d 16 (1972).

§ 160A-333. Temporary electric service. — No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this Part if such premises were already constructed. The construction of lines for, and the furnishing of, temporary electric service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish service to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier that furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 53.)

Editor's Note. — The 1973 amendment substituted "service" for "services" near the middle of the second sentence.

§ 160A-334. Authority and jurisdiction of Utilities Commission. — Notwithstanding G.S. 160A-332 and 160A-333, if the North Carolina Utilities Commission finds that service being furnished to or to be furnished to the consumer by a secondary supplier is or will be inadequate or undependable, or that rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory, the Commission shall have the authority and jurisdiction, after notice to each affected electric supplier, and after hearing, if a hearing is requested by an interested party, to:

- (1) Order a primary supplier that is subject to the jurisdiction of the Commission to furnish electric service to any consumer who desires service from the primary supplier at any premises served by a secondary supplier, or at premises which a secondary supplier has the right to serve pursuant to other sections of this Part, and to order such secondary supplier to cease and desist from furnishing electric service to such premises, or
- (2) Order any secondary supplier to cease and desist from furnishing electric service to any premises being served by it or to any premises which it has the right to serve pursuant to other sections of this Part, if the consumer desires service from a primary supplier that is not subject to the jurisdiction of the Commission and which is willing to furnish service to such premises. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 54.)

Editor's Note. — The 1973 amendment rewrote the introductory paragraph, inserting the provisions relating to findings by the Commission, and deleted, at the end of subdivision (2), "if the Commission finds that service being furnished to or to be furnished to the consumer by a secondary supplier is or will

be inadequate or undependable, or that the rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory."

Applied in State ex rel. Utilities Comm'n v. Hunt Mfg. Co., 16 N.C. App. 335, 192 S.E.2d 16 (1972).

ARTICLE 17A.

Cemetery Trustees.

§ 160A-349.1. Creation of board authorized; official title; terms of office; vacancies. — The governing body of any municipal corporation which now owns or shall hereafter own a cemetery is authorized, if it is deemed proper, to create a board composed of not less than three nor more than five persons, to be known as “Cemetery Trustees of the Town or City of, North Carolina”; shall fix the term of office of each member, in no case to exceed five years, and in case of any vacancy by death, resignation or otherwise, elect a successor. (Pub. Loc. 1923, c. 583, s. 1.)

Editor’s Note. — This Article, which is derived from Public-Local Laws 1923, c. 583, as amended by Session Laws 1951, c. 87, and Session Laws 1973, c. 474, s. 31, was omitted from the General Statutes of 1943, and is codified for the first time in 1973.

§ 160A-349.2. Members to meet and organize; meetings; bond of secretary and treasurer; record of proceedings. — The members of said board, when properly elected, shall within 30 days after notice of their election convene and designate one of their number chairman, one secretary and treasurer, and provide for regular meetings at such times as the said board shall fix; it shall also fix the bond to be given by the secretary and treasurer, conditioned for the faithful accounting of all moneys which shall come into his hands; shall provide for special meetings, and shall cause the secretary to keep a record of its proceedings. (Pub. Loc. 1923, c. 583, s. 2.)

§ 160A-349.3. Property vested. — Upon the creation of such board the title to all property held by the town or city and used for cemetery purposes shall pass to and vest in said board, subject to the same limitations, conditions and restrictions as it was held by the town or city. (Pub. Loc. 1923, c. 583, s. 3.)

§ 160A-349.4. Control and management; superintendent and assistants; enumeration of powers. — The said board shall have the exclusive control and management of such cemetery; shall have the power to employ a superintendent and such assistants as may be needed, and may do any and all things pertaining to the control, maintenance, management and upkeep of the cemetery which the governing body of the town or city could have done, or which by law the governing body of the town or city shall hereafter be authorized to do. (Pub. Loc. 1923, c. 583, s. 4.)

§ 160A-349.5. Rules continued in force. — All rules and regulations heretofore adopted by the town or city for the control, upkeep, management, and maintenance, as well as policing of the cemetery, shall continue in force and effect until and after the said board shall have changed the same as herein provided for. (Pub. Loc. 1923, c. 583, s. 5.)

§ 160A-349.6. Rules for maintaining order and policing; force of rules; copy to governing body; publication. — The said board shall have power to adopt rules and regulations for maintaining order in the cemetery and policing the same, and such rules and regulations, when adopted, shall have the same force and effect as ordinances adopted and passed by the governing body of the town or city. When any such rules and regulations shall be adopted the secretary of the board shall transmit a copy thereof to the governing body of the town or city, and shall cause a copy to be published in some newspaper published in the town or city, and the said rules and regulations shall be in force and effect 10 days after their publication. (Pub. Loc. 1923, c. 583, s. 6.)

§ 160A-349.7. Presentation of budget; details of budget; appropriation; payment to board. — Thirty days prior to the adoption of the annual budget by the governing body of the town or city, the said trustees shall present to such governing body a budget for the ensuing year, in which said budget there shall be set out in detail an accurate account of the receipts and expenditures of the board for the previous year, the estimated expense for the ensuing year, the estimated source of income from all sources, other than appropriation by the governing body of the town or city, any balance on hand, and such other information as the said trustees may think proper; and the said governing body of the town or city shall in the annual budget include a sufficient appropriation for the care and maintenance of the said cemetery for the ensuing year, which shall be paid over to the board of trustees in monthly installments.

For purposes of the Local Government Budget and Fiscal Control Act (Chapter 159, Subchapter III), the board of trustees of a cemetery is a board of the municipal corporation establishing the board of trustees and is not a public authority as defined by G.S. 159-7. (Pub. Loc. 1923, c. 583, s. 7; 1971, c. 780, s. 37.3; 1973, c. 474, s. 31.)

Editor's Note. — The 1973 amendment added the second paragraph. The 1973 amendment was enacted by Session Laws 1971, c. 780, s. 37.3,

which section was added to the 1971 act by Session Laws 1973, c. 474, s. 31. The 1971 act became effective July 1, 1973.

§ 160A-349.8. Commissioners to obtain maps, plats and deeds; list of lots sold and owners; surveys and plats to be made; additional lots, streets, walks and parkways; price of lots; regulation of sale of lots. — The board of trustees shall obtain from the governing body all maps, plats, deeds and other evidences relating to the lands, lots and property of the cemetery; they shall also obtain from the governing body of the town or city, as nearly as possible, an accurate list of the lots theretofore sold, together with the names of the owners thereof. The said board of trustees shall from time to time cause surveys to be made, maps and plats prepared, laying out additional lots, streets, paths, walks and parkways; shall fix a price at which such lots shall be sold, which price may from time to time, in the discretion of the board, be changed; shall adopt rules and regulations as to the sale of said lots and deliver to the purchaser or purchasers deed or evidences of title thereto. (Pub. Loc. 1923, c. 583, s. 8.)

§ 160A-349.9. Power to acquire land; adjacent property; disposal of money from lot sales; investments; income from investment. — The said board shall have the power to acquire additional lands for cemetery purposes, either by purchase or otherwise. In making such additional acquisitions of property, if possible, they shall acquire adjacent property; all moneys received from the sale of lots shall be held by the board of trustees intact and used for the purchase of additional lands; to beautify and otherwise maintain and keep the present property and the future acquired property. The board may, if it seems best to it, invest the said money in good, interest-bearing securities, payable to the said board, and the income derived therefrom shall be by the board used in the beautifying, maintenance and upkeep of the cemetery or cemeteries under its control. (Pub. Loc. 1923, c. 583, s. 9.)

§ 160A-349.10. Power to condemn land; procedure for condemnation; board incorporated. — If it becomes necessary to acquire additional lands for cemetery purposes and the said board cannot agree with the owners upon the price thereof, the said board shall have the power to condemn the said lands for cemetery purposes, and in so doing the provisions of Chapter 40 shall be followed as nearly as possible, and to that end, and for that purpose, the board of trustees of any cemetery acquired under this Article shall be deemed and considered a corporation and a body politic. (Pub. Loc. 1923, c. 583, s. 10.)

§ 160A-349.11. Price of lands included in budget. — If any lands are acquired by purchase or condemnation for cemetery purposes and the board of trustees shall not have sufficient funds with which to pay for the same, the amount necessary shall be included in their budget, and the governing body of any town or city shall make an appropriation necessary to complete the purchase. (Pub. Loc. 1923, c. 583, s. 11.)

§ 160A-349.12. Power to accept gifts; exclusive use of gifts. — The board of trustees of any cemetery shall have the power to accept gifts, either by devise, bequeath or otherwise, and hold the same for the purposes expressed in the gift, and any moneys coming into the hands of such board by devise or otherwise shall be by the board used exclusively for the purposes for which it is given. (Pub. Loc. 1923, c. 583, s. 12.)

§ 160A-349.13. Sale of unnecessary property. — The board of trustees of any cemetery, created pursuant to this Article, shall have the power to sell at public auction, as provided by G.S. 160-59, any real property, title to which is held by it, which it shall determine to be unfit or unnecessary for cemetery purposes, except when such sale would violate the terms of any deed, gift or trust pursuant to which the property proposed to be sold was acquired. Any such sales and conveyances heretofore made by any such board of trustees are hereby validated. (1951, c. 87.)

Editor's Note. — Section 160-59, referred to in this section, was repealed by Session Laws 1971, c. 698, s. 2, effective Jan. 1, 1972. For

present provisions as to sale of municipal property at public auction, see § 160A-270.

ARTICLE 18.

Parks and Recreation.

§ 160A-350. Short title.

Cross Reference. — As to power of counties to establish parks and recreational programs pursuant to this Article, see § 153A-444.

§ 160A-353. Powers. — In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

- (3) Acquire real property, either within or without the corporate limits of the city or the boundaries of the county, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method.
(1973, c. 426, s. 55.)

Editor's Note. — The 1973 amendment inserted "either within or without the corporate limits of the city or the boundaries of the county" in subdivision (3).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (3) are set out.

§ 160A-356. Financing parks and recreation. — Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law. (1945, c. 1052; 1971, c. 698, s. 1; 1975, c. 664, s. 12.)

Editor's Note. — The 1975 amendment related to the use of locally levied taxes and the deleted the second and third sentences, which issuance of bonds and notes.

§ 160A-357: Repealed by Session Laws 1975, c. 664, s. 13.

ARTICLE 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(i) Whenever a city or county, pursuant to this section, acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or county acquiring jurisdiction may take any action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided in this subsection, any building, structure, or other land use in a territory over which a city or county has acquired jurisdiction is subject to the ordinances and regulations of the city or county.

(j) Repealed by Session Laws 1973, c. 669, s. 1. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; c. 1076, s. 3; 1973, c. 426, s. 56; c. 525; c. 669, s. 1.)

Cross References. — As to powers of counties under this Article, see also §§ 153A-320 through 153A-324. As to territorial jurisdiction of counties under this Article, see § 153A-320. As to procedure for adopting or amending county ordinances under this Article, see § 153A-323. As to validation of certain ordinances not in compliance with this section, see § 160A-366.

Editor's Note. —

The first 1973 amendment inserted "or a new city is incorporated in, or a city extends its

jurisdiction to include" near the beginning, and "or incorporation" near the end, of the first sentence of subsection (f).

The second 1973 amendment added subsection (i).

The third 1973 amendment repealed subsection (j).

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

§ 160A-361. Planning agency. — Any city may by ordinance create or designate one or more agencies to perform the following duties:

- (1) Make studies of the area within its jurisdiction and surrounding areas;
- (2) Determine objectives to be sought in the development of the study area;
- (3) Prepare and adopt plans for achieving these objectives;
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) Advise the council concerning the use and amendment of means for carrying out plans;
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
- (7) Perform any other related duties that the council may direct.

An agency created or designated pursuant to this section may include one or more of the following, with such staff as the council may deem appropriate:

- (1) A planning board or commission of any size (not less than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
- (2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C. S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57.)

Editor's Note. — The 1973 amendment corrected an error in this section as set out in the replacement volume by inserting "or" between "one" and "more" in the second unnumbered paragraph.

§ 160A-364. Procedure for adopting or amending ordinances under Article. — Before adopting or amending any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 15 days nor more than 25 days before the date fixed for the hearing. (1923, c. 250, s. 4; C. S., s. 2776(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 58.)

Local Modification. — City of Greensboro: 1975, c. 100, amending 1973, c. 213.

Cross Reference. — As to validation of certain ordinances not in compliance with this section, see § 160A-366.

Editor's Note. — The 1973 amendment deleted the former last sentence, which provided

that the ordinance should not become effective until recorded in the office of the register of deeds of each county in which property directly affected was located.

Applied in *Town of Mount Olive v. Price*, 20 N.C. App. 302, 201 S.E.2d 362 (1973).

§ 160A-366. Validation of ordinance. — Any city ordinance regularly adopted before January 1, 1972, under authority of general laws revised and reenacted in Chapter 160A, Article 19, or under authority of any city charter or local act concerning the same subject matter, is validated with respect to its application within the corporate limits of the city and as to its application within the extraterritorial jurisdiction of the city. Such an ordinance, and any city ordinance adopted since January 1, 1972, under authority of general laws revised and reenacted in Chapter 160A, Article 19, are hereby validated, notwithstanding the fact that such ordinances were not recorded pursuant to G.S. 160A-360(b) or G.S. 160A-364 and notwithstanding the fact that the adopting city council did not also adopt an ordinance defining or delineating by specific description the areas within its extraterritorial jurisdiction pursuant to

G.S. 160A-360; provided that this act shall be deemed to validate ordinances of cities in Mecklenburg County only with respect to their application within the corporate limits of such cities. (1973, c. 669, s. 2.)

§§ 160A-367 to 160A-370: Reserved for future codification purposes.

Part 2. Subdivision Regulation.

§ 160A-372. **Contents and requirements of ordinance.** — A subdivision control ordinance may provide for the orderly growth and development of the city; 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 recreation areas serving residents of the immediate neighborhood within the subdivision, and rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat 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.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning agency. In order for this authorization to become effective, before approving such plans the council or planning agency and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning agency shall immediately notify the board of education and the board shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning agency and no site shall be reserved. If the board does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place. (1955, c. 1334, s. 1; 1961, c. 1168; 1971, c. 698, s. 1; 1973, c. 426, s. 59.)

Editor's Note. — The 1973 amendment rewrote the third paragraph.

§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner. — Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

- (1) The city council,
- (2) The city council on recommendation of a planning agency, or
- (3) A designated planning agency.

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 city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by the chairman or head of the agency. The register of deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the 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 any city. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

Editor's Note. —

The 1973 amendment substituted "Part" for "Article" in the first paragraph.

Subdivision Ordinances and Amendments Thereto Must Be Filed with Register of Deeds;

Recording These Ordinances Includes Indexing and Filing. — See opinion of Attorney General to Mr. James Dick Proctor, 41 N.C.A.G. 752 (1972).

§ 160A-376. Definition. — For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

- (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 municipality as shown in its subdivision regulations;
- (2) The division of land into parcels greater than 10 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; and
- (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 municipality, as shown in its subdivision regulations. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 61.)

Editor's Note. — The 1973 amendment deleted a comma following "purpose of sale"

and substituted "divisions" for "division" near the middle of the introductory paragraph.

Part 3. Zoning.

§ 160A-381. Grant of power.

Zoning ordinances are in derogation, etc. —

Zoning ordinances are in derogation of the rights of private property and should be liberally construed in favor of the property owner. *Clark v. Richardson*, 24 N.C. App. 556, 211 S.E.2d 530 (1975).

The original zoning power of the State, etc. —

In accord with 1st paragraph in original. See *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

The zoning power of municipalities is derived from the State. *State v. Joyner*, 286 N.C. 366, 211 S.E.2d 320 (1975).

Power Has Been Delegated, etc. —

The General Assembly has delegated to the legislative body of a municipality the power to adopt zoning regulations for the purpose of promoting health, safety, morals or the general welfare of the community. *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

But Power Is Subject to Limitations of Enabling Act. —

In accord with 6th paragraph in original. See *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

A zoning ordinance or an amendment thereto which is not adopted in accordance with the enabling statute is invalid and ineffective. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

Special Use Permit. — Where a municipal ordinance required the board of adjustment to issue a special use permit when it made certain affirmative findings specified in the ordinance, the board's determination of whether to issue a special use permit was not an unlawful exercise of legislative power. *Kenan v. Board of Adjustment*, 13 N.C. App. 688, 187 S.E.2d 496 (1972).

Permit May Not Be Denied under Invalid Amendment. — An applicant's right to a permit, denied under an existing valid ordinance which entitled him to it, may not be defeated by a purported amendment which was void ab initio because it was not adopted as required by the enabling statute. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

Vested Rights under Building Permit. — The issuance of a building permit to which the permittee is entitled under the existing ordinance creates no vested right to build contrary to the provisions of a subsequently enacted zoning ordinance, unless the permittee, acting in good faith, has made substantial expenditures in reliance upon the permit at a

time when they did not violate declared public policy. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

When, at the time a builder obtains a permit, he has knowledge of a pending ordinance which would make the authorized construction a nonconforming use and thereafter hurriedly makes expenditures in an attempt to acquire a vested right before the law can be changed, he does not act in good faith and acquires no rights under the permit. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

Safeguards against arbitrary action by zoning boards in granting or denying special use permits are not only to be found in specific guidelines for their action. Equally important is the requirement that in each instance the board (1) follow the procedures specified in the ordinance; (2) conduct its hearings in accordance with fair-trial standards; (3) base its findings of fact only upon competent, material, and substantial evidence; and (4) in allowing or denying the application, it state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. *Humble Oil & Ref. Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974).

Provisions for amortization of nonconforming uses in zoning ordinances are valid if reasonable, and the per se rule holding all amortization provisions unconstitutional is rejected. *State v. Joyner*, 286 N.C. 366, 211 S.E.2d 320 (1975).

Validity of Ordinances. —

Zoning ordinance which prohibited operation of a building material salvage yard in certain districts, and which permitted a three-year period after it was adopted for the removal of such business, is not so arbitrary, unreasonable or unrelated to the general welfare of the community as to be unconstitutional by its terms, but to the contrary, it represents a conscious effort on the part of the legislative body of the city to regulate the use of land throughout the city and thus promote the health, safety or general welfare of the community. *State v. Joyner*, 286 N.C. 366, 211 S.E.2d 320 (1975).

In examining the reasonableness of a zoning ordinance, due process dictates that the court look at the entire ordinance and not only at the provision as it applies to a particular inhabitant of the municipality. *State v. Joyner*, 286 N.C. 366, 211 S.E.2d 320 (1975).

A duly adopted rezoning ordinance, etc. —

In accord with 1st paragraph in original. See *State v. Joyner*, 286 N.C. 366, 211 S.E.2d 320 (1975).

Burden of Establishing Invalidity, etc. —

The burden is on the complaining party to

show that a duly adopted rezoning ordinance is invalid. *State v. Joyner*, 286 N.C. 366, 211 S.E.2d 320 (1975).

§ 160A-382. Districts. — For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All 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. (1923, c. 250, s. 2; C. S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7; 1963, c. 1058, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

Editor's Note. — The 1973 amendment substituted "Part" for "Article" in the first sentence.

Applied in *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

Quoted in *State v. Joyner*, 286 N.C. 366, 211 S.E.2d 320 (1975).

§ 160A-383. Purposes in view.

The concept of zoning implies a restriction upon the owner's right to use a specific tract for a use profitable to him but detrimental to the value of other properties in the area, thus promoting the most appropriate use of land throughout the municipality, considered as a whole. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Zoning Need Not Assure Most Profitable Use of Each Tract. — This section does not contemplate that a zoning pattern must be, or should be, designed to permit each individual tract of land to be devoted to its own most profitable use, irrespective of the surrounding area. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Spot zoning, etc. —

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning." *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Spot zoning is beyond the authority of the municipality, in the absence of a clear showing of a reasonable basis for such distinction. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Police Power Permits Restrictions upon Specific Tract. — The police power, upon which zoning ordinances must rest, permits restriction

upon the right of the owner of a specific tract, when the legislative body has reasonable basis to believe that it will promote the general welfare by conserving the values of other properties and encouraging the most appropriate use thereof. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Unlawful Spot Zoning. — An ordinance rezoning five acres of land from classification for single family residences to a less restrictive classification constituted unlawful "spot zoning," where the rezoned property was surrounded by a very large area classified R-4 and extensively developed by the construction and occupancy of single family residences, and the record discloses no reasonable basis for granting the owner of the tract freedom from restrictions imposed upon the owners of other properties in the surrounding area. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Unlawful Contract Zoning. — A municipal ordinance rezoning a tract of land to a less restrictive R-6 classification constituted unlawful "contract zoning," where there was nothing in the record to indicate that the city council contemplated the opening of the tract to all uses permissible under the R-6 classification, and it is apparent that the city council's action was based on its approval of the applicant's plans to construct specifically described town houses on the property. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Applied in *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

§ 160A-384. Method of procedure.

Court Will Not Substitute Its Judgment, etc. —

The courts may not substitute their judgment for that of the legislative body concerning the wisdom of imposing restrictions upon the use of properties within that body's legislative jurisdiction. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Court May Inquire into Procedure and Reasonableness of Zoning. — The courts may inquire into procedures followed by a city legislative body at a hearing before it and determine whether a zoning ordinance was adopted in violation of required procedures, or is arbitrary and without reasonable basis in view of the established circumstances. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Rezoning. —

A city may, from time to time, amend its zoning ordinance so as to transfer an area from one use district into another, since the enactment of a zoning ordinance is not a contract by the city

with property owners to maintain the zoning pattern thereby established. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Safeguards against arbitrary action by zoning boards in granting or denying special use permits are not only to be found in specific guidelines for their action. Equally important is the requirement that in each instance the board (1) follow the procedures specified in the ordinance; (2) conduct its hearings in accordance with fair-trial standards; (3) base its findings of fact only upon competent, material, and substantial evidence; and (4) in allowing or denying the application, it state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. *Humble Oil & Ref. Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974).

Applied in *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

§ 160A-385. Changes.

The enactment of a zoning ordinance is not a contract, etc. —

A comprehensive zoning ordinance does not constitute a contract between a municipality and property owners which precludes the municipality from changing the boundaries if at a later date it deems a change to be desirable. *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

A comprehensive zoning ordinance does not vest in any property owner the right that the restrictions imposed by it upon his property or the property of others should remain unaltered. *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

A city may, from time to time, amend its zoning ordinance so as to transfer an area from one use district into another, since the enactment of a zoning ordinance is not a contract by the city with property owners to maintain the zoning pattern thereby established. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972).

Zoning regulations may be amended or changed when the action is authorized by the enabling statute and does not contravene constitutional limitations on the zoning power. *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

But Power Is Subject to Limitations. — A municipality's authority to enact and amend zoning ordinances is subject to the limitations imposed by the enabling statute and by the Constitution. These limitations forbid arbitrary and unduly discriminating interference with

property rights in the exercise of such power. Thus, a zoning ordinance or an amendment thereto which is not adopted in accordance with the enabling statute is invalid and ineffective. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

Zoning regulations may be amended or changed but constitutional limitations forbid arbitrary and unduly discriminatory interference with property rights in the exercise of such power. *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

Burden on Complaining Party. — An amendment to a municipal zoning ordinance is presumed to be valid and the burden is on the complaining party to show its invalidity. *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972).

Permit May Not Be Denied under Invalid Amendment. — An applicant's right to a permit, denied under an existing valid ordinance which entitled him to it, may not be defeated by a purported amendment which was void ab initio because it was not adopted as required by the enabling statute. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

Vested Rights under Building Permit. — The issuance of a building permit to which the permittee is entitled under the existing ordinance creates no vested right to build contrary to the provisions of a subsequently enacted zoning ordinance, unless the permittee, acting in good faith, has made substantial

expenditures in reliance upon the permit at a time when they did not violate declared public policy. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

When, at the time a builder obtains a permit, he has knowledge of a pending ordinance which would make the authorized construction a

nonconforming use and thereafter hurriedly makes expenditures in an attempt to acquire a vested right before the law can be changed, he does not act in good faith and acquires no rights under the permit. *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972).

§ 160A-387. Planning agency; zoning plan; certification to city council. — In order to exercise the powers conferred by this Part, a city council shall create or designate a planning agency under the provisions of this Article or of a special act of the General Assembly. The planning agency shall prepare a zoning plan, including both the full text of a zoning ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the plan. Upon completion, the planning agency shall certify the plan to the city council. The city council shall not hold its required public hearing or take action until it has received a certified plan from the planning agency. Following its required public hearing, the city council may refer the plan back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance. (1923, c. 250, s. 6; C. S., s. 2776(w); 1967, c. 1208, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

Editor's Note. — The 1973 amendment substituted "Part" for "Article" near the beginning of the first sentence.

§ 160A-388. Board of adjustment.

The general administrative agencies review statutes are applicable to municipal agencies such as zoning boards. *Humble Oil & Ref. Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974).

Issuance of Special Permit Is Not Unlawful Exercise of Power. — Where a municipal ordinance required the board of adjustment to issue a special use permit when it made certain affirmative findings specified in the ordinance, the board's determination of whether to issue a special use permit was not an unlawful exercise of legislative power. *Kenan v. Board of Adjustment*, 13 N.C. App. 688, 187 S.E.2d 496 (1972).

Safeguards against arbitrary action by zoning boards in granting or denying special use permits are not only to be found in specific

guidelines for their action. Equally important is the requirement that in each instance the board (1) follow the procedures specified in the ordinance; (2) conduct its hearings in accordance with fair-trial standards; (3) base its findings of fact only upon competent, material, and substantial evidence; and (4) in allowing or denying the application, it state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. *Humble Oil & Ref. Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974).

Applied in *Quadrant Corp. v. City of Kinston*, 22 N.C. App. 31, 205 S.E.2d 324 (1974).

Part 3A. Historic Districts.

§ 160A-395. Exercise of powers under this Part by counties as well as cities; designation of historic districts. — The term "municipal governing body" or "municipal legislative body" as used in this Part shall be deemed to include the governing board or legislative board of a county, to the end that counties may exercise the same powers as cities with respect to the establishment of historic districts.

Any such legislative body may, as part of a zoning ordinance enacted or amended pursuant to this Article, designate (and from time to time amend) one

or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use-district classification or as districts which overlap other zoning districts. Where historic districts are designated as separate use-districts, the zoning ordinances may include among permitted uses those uses found by the historic district commission to have existed during the period sought to be restored or preserved, or to be compatible with the authentic restoration or preservation of the district. No historic district or districts shall be designated until:

- (1) The local planning board shall have made an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and shall have prepared a description of the boundaries of such district, and
- (2) The Department of Cultural Resources, acting through such agent or employee as may be designated by its Secretary, shall have made an analysis of and recommendations concerning, such report and description of proposed boundaries. Failure of the department to submit its analysis and recommendations to the municipal governing body within 60 days after a written request for such analysis has been mailed to it shall relieve the municipal governing body of any responsibility for awaiting such analysis, and said body may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The municipal governing body may also, in its discretion, refer the planning board's report and proposed boundaries to any local historic sites commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance.

On receipt of these reports and recommendations, the municipal legislative body may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions. (1965, c. 504, § 2; 1971, c. 884, ss. 1, 2, 4; c. 896, s. 7; 1973, c. 476, s. 48.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural

Resources" for "State Department of Archives and History" and "Secretary" for "Director" in subdivision (2).

§ 160A-396. Historic district commission. — Before it may designate one or more historic districts, a municipality shall establish or designate a historic district commission. The municipal governing board shall determine the number of members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history or architecture; and all the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360.

In lieu of establishing a separate historic district commission, a municipality may designate as its historic district commission, either (i) the municipal historic properties commission, established pursuant to G.S. 160A-399.2, or (ii) the municipal planning board. In order for the planning board to be designated, at least two of its members shall have demonstrated special interest, experience, or education in history or architecture.

A county and one or more cities in the county may establish or designate a joint historic district commission. If a joint commission is established or designated, the county and city and cities involved shall determine the residence requirements of members of the joint historic district commission. (1965, c. 504, s. 2; 1971, c. 884, s. 2; c. 896, s. 7; 1973, c. 426, s. 62.)

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

§ 160A-397. Certificate of appropriateness required. — From and after the designation of a historic district, no exterior portion of any building or other structure (including stone walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, or moved within such district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the historic district commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required.

For purposes of this Part, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size, and location of all such signs.

The commission shall not consider interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, or moving of buildings, structures, appurtenant fixtures, or outdoor advertising signs in the historic district which would be incongruous with the historic aspects of the district.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying the certificate, in the same manner as any other appeal to such Board. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

The Department of Cultural Resources, acting through any agent or employee designated by its Secretary, or the North Carolina Advisory Council on Historic Preservation, shall, either upon the request of the Department or at the initiative of the historic district commission, be given an opportunity to review, comment and make recommendations upon the substance and effect of any application for a certificate of appropriateness in any historic district established pursuant to G.S. 160A-395 through 160A-399. Its comments and recommendations may be provided in writing to the historic district commission or made orally at any public hearing held in connection with the application. The historic district commission shall consider these comments and recommendations prior to the issuance of a certificate of appropriateness. If any certificate is issued contrary to the recommendations of the Department, the historic district commission shall enter the reasons therefor in the minutes of the meeting at which such action is taken, and a copy of the minutes shall be forwarded to the Department by the commission's secretary. If the Department does not submit its comments or recommendations in connection with any application within 30 days following receipt by the Department of any materials needed for its review of the application, whether such review is at the request of the Department or the historic district commission, the commission and any city or county governing board shall be relieved of any responsibility to consider those comments and

recommendations. In this case, the certificate of appropriateness may thereafter be issued without regard to the requirements of this paragraph. (1965, c. 504, s. 2; 1971, c. 884, ss. 2, 5; c. 896, s. 7; 1973, c. 426, s. 60; c. 476, s. 48.)

Editor's Note. —

The first 1973 amendment substituted "Part" for "Article" near the beginning of the second paragraph.

The second 1973 amendment substituted

"Department of Cultural Resources" for "North Carolina Department of Archives and History" and "Secretary" for "Director" near the beginning of the last paragraph.

§ 160A-398. Certain changes not prohibited. — Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district which does not involve a change in design, material, color, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. (1965, c. 504, s. 2; 1971, c. 884, s. 2; c. 896, s. 7; 1973, c. 426, s. 60.)

Editor's Note. — The 1973 amendment substituted "Part" for "Article" near the beginning of the section.

Part 3B. Historic Properties Commissions.

§ 160A-399.1. Legislative findings. — The historical heritage of our State is one of our most valued and important assets. Conservation of historic properties will stabilize and increase the values in their areas and strengthen the overall economy of the State. This Part authorizes cities and counties of the State, within their respective zoning jurisdictions, and by means of listing, regulation, and acquisition,

- (1) To safeguard the heritage of the city or county by preserving any property therein that embodies important elements of its cultural, social, economic, political or architectural history; and
- (2) To promote the use and conservation of such property for the education, pleasure and enrichment of the residents of the city or county and the State as a whole. (1971, c. 885, s. 1; 1973, c. 426, s. 62.)

Cross Reference. — As to territorial jurisdiction of counties under this Part, see § 153A-320.

Editor's Note. — Sections 160A-399.1 through

160A-399.13 were originally codified as chapter

157A, comprising §§ 157A-1 through 157A-13.

They were transferred to their present position

by Session Laws 1973, c. 426, s. 62.

§ 160A-399.2. Appointment or designation of historic properties commission. — Before it may exercise the powers set forth in this Part, a city or county shall establish or designate a historic properties commission. The city or county governing board shall determine the number of members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history or architecture; and all the members shall reside within the territorial jurisdiction of the city or county as established pursuant to G.S. 160A-360. In establishing such a commission and making appointments to it, a city or county

may seek the advice of any State or local historical agency, society, or organization.

In lieu of establishing a separate historic properties commission, a city or county may designate as its historic properties commission either (i) the city or county historic districts commission, established pursuant to G.S. 160A-396, or (ii) the city or county planning board. In order for the planning board to be designated, at least two of its members shall have demonstrated special interest, experience, or education in history or architecture.

A county and one or more cities in the county may establish or designate a joint historic properties commission. If a joint commission is established or designated, the county and city or cities involved shall determine the residence requirements for members of the joint historic properties commission. (1971, c. 885, s. 2; 1973, c. 426, s. 62.)

Local Modification. — Mecklenburg: 1973, c. 331; city of Charlotte: 1973, c. 331.

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

§ 160A-399.3. Powers of the properties commission. — Any city or county historic properties commission appointed or designated pursuant to this Part shall be authorized to:

- (1) Recommend to the city or county governing board structures, sites, areas or objects to be designated by ordinance as "historic properties."
- (2) Acquire the fee or any lesser included interest to any such historic properties, to hold, manage, restore and improve the same, and to exchange and dispose of the same by sale, lease or otherwise subject to the rights of public access and other covenants and in a manner that will conserve the property for the purposes of this Part.
- (3) Restore, preserve and operate such historic properties.
- (4) Recommend to the governing board that designation of any building, structure, site, area or object as a historic property be revoked or removed.
- (5) Conduct an educational program on historic properties within its jurisdiction.
- (6) Cooperate with the State, federal and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law.
- (7) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (8) All meetings or hearings of the commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public. (1971, c. 885, s. 3; 1973, c. 426, s. 62.)

§ 160A-399.4. Adoption of an ordinance; criteria for designation. — Upon complying with G.S. 160A-399.5, the governing board may adopt and from time to time amend or repeal an ordinance designating one or more historic properties on the following criteria: historical and cultural significance; suitability for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs.

In order for any building, structure, site, area or object to be designated in the ordinance as a historic property, it must in addition meet the criteria established for inclusion of the property in the National Register of Historic Places established by the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C.A. section 470a, as amended, as evidenced by appropriate findings in resolutions of the city or county historic properties commission.

The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, and any other information the governing board deems necessary within the authority of this Part. For each building, structure, site, area or object designated as a historic property, the ordinance shall require that the waiting period set forth in G.S. 160A-399.6 be observed prior to its demolition, material alteration, remodeling or removal. For each designated historic property, the ordinance shall also provide for a suitable sign on the property that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects the sign shall be placed on a nearby public right-of-way. (1971, c. 885, s. 4; 1973, c. 426, s. 62.)

§ 160A-399.5. Required procedures. — No ordinances designating a historic building, structure, site, area or object nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a historic properties commission or the governing board of a city or county, until the following procedural steps have been taken:

- (1) The historic properties commission shall make or cause to be made an investigation and report on the historic, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition.
- (2) The Department of Cultural Resources, or another agent or employee of the Department designated by the Secretary, shall make an analysis of and recommendations concerning the report of the historic properties commission. This is waived if the Department fails to submit its analysis and recommendations to the governing board within 60 days after written request for the analysis has been mailed to the Department by the clerk of the city or county governing board. This requirement is also waived with respect to any building, structure, site, area or object of national, State or local historical significance that is currently listed (as certified by the Secretary of Cultural Resources) on the National Register of Historic Places established by the National Historic Preservation Act of 1966, Public Law 89-655, 16 U.S.C.A. section 470a, as amended.
- (3) The historic properties commission and the governing board shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published at least once in a newspaper generally circulated within the city or county in which the property or properties to be designated or acquired are located, and written notice of the hearing shall be mailed by the properties commission to all owners and occupants of properties whose identity and current mailing address can be ascertained by the exercise of reasonable diligence. All such notices shall be published or mailed not less than 10 nor more than 20 days prior to the date set for the public hearing.
- (4) Following the joint public hearing, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposal.
- (5) Upon adoption of the ordinance, the owners and occupants of each designated historic property shall be given written notification of such designation by the governing board, insofar as reasonable diligence permits. One copy of the ordinance and each amendment thereto shall

be filed by the historic properties commission in the office of the register of deeds of the county in which the property or properties are located. Each historic property designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the historic properties commission shall pay a reasonable fee for filing and indexing. In the case of any property lying within the zoning jurisdiction of a city, a second copy of the ordinance and each amendment thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and each amendment thereto shall be given to the city or county building inspector, if any. The fact that a building, structure, site, area or object has been designated a historic property shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

- (6) Upon the adoption of the historic properties ordinance or any amendment thereto, it shall be the duty of the historic properties commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (1971, c. 885, s. 5; 1973, c. 426, s. 62; c. 476, s. 48.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Cultural Resources" for "North Carolina Department of Archives and History, acting through the Advisory Council on Historic Preservation" and "Secretary" for "Director" in the first sentence of subdivision (2), and

substituted "Secretary of Cultural Resources" for "Director of the Department of Archives and History" in the third sentence of subdivision (2).

Section 160A-399.5 was originally codified as § 157A-5. It was transferred to its present position by Session Laws 1973, c. 426, s. 62.

§ 160A-399.6. Required waiting period. — A property which has been designated as a historic property by ordinance as herein provided may, after notice has been made to the owner as provided in G.S. 160A-399.5(5), be demolished, materially altered, remodeled or removed only after 90 days' written notice of the owner's proposed action has been given to the historic properties commission. During this period, the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property. During this period, or at any time prior thereto following notice of designation to the owner as provided in G.S. 160A-399.5(5) and where such action is reasonably necessary or appropriate for the continued preservation of the property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange or otherwise of the property or any interest therein authorized by G.S. 160A-399.3. The commission may reduce the waiting period required by this section in any case where the owner would suffer extreme hardship, not including loss of profit, unless a reduction in the required waiting period were allowed. The commission shall have the discretionary authority to waive all or any portion of the required waiting period, provided that the alteration, remodeling or removal is undertaken subject to conditions agreed to by the commission insuring the continued maintenance of the architectural or historical integrity and character of the property. (1971, c. 885, s. 6; 1973, c. 426, s. 62.)

§ 160A-399.7. Certain changes not prohibited. — Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property that does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the commission that such action is required for the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations. (1971, c. 885, s. 7; 1973, c. 426, s. 62.)

§ 160A-399.8. Authority to acquire historic buildings. — Within the limits of its zoning jurisdiction, any city or county governing board (and, with the approval of the governing board, any historic properties commission) may acquire property designated by ordinance as historic property, and may pay therefor out of any funds which may be appropriated for that purpose. The general powers granted to municipalities by G.S. 160-200(1), (2), (4), and (5) and to counties by G.S. 153-2(2), (3), and (4), and by G.S. 153-9(13) and (14) shall be deemed to include specifically the authority to acquire, maintain, manage, repair, restore, exchange or dispose of any building or structure designated as a historic property in any ordinance adopted pursuant to this Part. In the event the property is acquired under this section but is not used for some other governmental purpose, it shall be deemed to be a "museum" under the provisions of G.S. 160-200(40), notwithstanding the fact that the property may be or remain in private use, so long as the property is made reasonably accessible to and open for visitation by the general public. (1971, c. 885, s. 8; 1973, c. 426, s. 62.)

Editor's Note. — Section 160-200 was repealed by Session Laws 1971, c. 698, s. 2. As to corporate powers of municipalities generally, see now § 160A-11. As to museums, see now § 160A-488.

Sections 153-2 and 153-9 were repealed by Session Laws 1973, c. 822, effective Feb. 1, 1974. As to corporate powers of counties generally, see now § 153A-11.

§ 160A-399.9. Appropriations. — A city or county governing board is authorized to make appropriations to a historic properties commission established pursuant to this Part in any amount that it may determine necessary for the expenses of the operation of the commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation and management of historic buildings, structures, sites, areas or objects designated as historic properties, or of land on which historic buildings or structures are located or to which they may be removed. (1971, c. 885, s. 9; 1973, c. 426, s. 62.)

§ 160A-399.10. Ownership of property. — All lands, buildings, structures, sites, areas or objects acquired by funds appropriated by a city or county shall be acquired in the name of the city or county unless otherwise provided by the governing board. So long as owned by the city or county, historic properties may be maintained by or under the supervision and control of the city or county. However, all lands, buildings or structures acquired by a historic properties commission from funds other than those appropriated by a city or county may be acquired and held in the name of the historic properties commission, the city or county, or both. (1971, c. 885, s. 10; 1973, c. 426, s. 62.)

§ 160A-399.11. Part to apply to publicly owned buildings and structures. — Nothing in this Part shall be construed to prevent the regulation or acquisition of historic buildings, structures, sites, areas or objects owned by the State of North Carolina or any of its political subdivisions, agencies, or instrumentalities. (1971, c. 885, s. 11; 1973, c. 426, s. 62.)

§ 160A-399.12. Conflict with other laws. — Whenever any ordinance adopted pursuant to this Part requires a longer waiting period or imposes other higher standards with respect to a designated historic property than are established under any other statute, charter provision, or regulation, this Part shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under this Part, such other statute, charter provision, ordinance or regulation shall govern. (1971, c. 885, s. 12; 1973, c. 426, s. 62.)

§ 160A-399.13. Remedies. — In case any building, structure, site, area or object designated a historic property is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled or removed, except in compliance with the ordinance, the city or county or the historic properties commission, may institute any appropriate action or proceedings to prevent such unlawful demolition, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such historic property. (1971, c. 885, s. 13; 1973, c. 426, s. 62.)

§ 160A-400: Reserved for future codification purposes.

Part 4. Acquisition of Open Space.

§ 160A-406. Appropriations authorized. — For the purposes set forth in this Part, a county or city may appropriate funds not otherwise limited as to use by law. (1963, c. 1129, s. 6; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1975, c. 664, s. 14.)

Editor's Note. — The 1973 amendment substituted "Part" for "Article."

The 1975 amendment rewrote this section.

Part 5. Building Inspection.

§ 160A-413. Joint inspection department; other arrangements. — A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or county. The inspector shall, while exercising the duties of the position, be considered a municipal employee.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request in the manner provided in G.S. 160A-360(g). (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 64.)

Editor's Note. — The 1973 amendment added “in the manner provided in G.S. 160A-360(g)” at the end of the section.

§ 160A-417. Permits. — No person shall commence or proceed with

- (1) The construction, reconstruction, alteration, repair, removal, or demolition of any building or structure,
- (2) The installation, extension, or general repair of any plumbing system,
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. Violation of this section shall constitute a misdemeanor. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C. S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 65.)

Editor's Note. —

The 1973 amendment inserted “the work” following “no permit for” in the next-to-last sentence.

§ 160A-423. Certificates of compliance. — At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if he finds that the completed work complies with all applicable State and local laws and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, and no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or moved may be occupied, until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied prior to final completion of the entire building. Violation of this section shall constitute a misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 66.)

Editor's Note. — The 1973 amendment rewrote the second sentence.

§ 160A-425. Defects in buildings to be corrected. — When a local inspector finds any defects in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property he owns. (1905, c. 506, s. 28; Rev., s. 3009; 1915, c. 192, s. 14; C. S., s. 2771; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 67.)

Editor's Note. — The 1973 amendment substituted "or occupant" for "of the contents" and inserted "each" in the second sentence.

§ 160A-429. Order to take corrective action. — If, upon a hearing held pursuant to the notice prescribed in G.S. 160A-428, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 68.)

Editor's Note. — The 1973 amendment inserted "a" between "in" and "condition" near the beginning of the section.

§ 160A-430. Appeal; finality of order if not appealed. — Any owner who has received an order under G.S. 160A-429 may appeal from the order to the city council by giving notice of appeal in writing to the inspector and to the city clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector shall be final. The city council shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 69.)

Editor's Note. — The 1973 amendment substituted "of" for "to" following "order" in the second sentence and inserted "affirm," following "may" in the third sentence.

Part 6. Minimum Housing Standards.

§ 160A-441. Exercise of police power authorized. — It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance

enacted by the governing body of a county pursuant to this Part shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto.

In addition to the exercise of police power authorized herein, any city may by ordinance provide for the repair, closing or demolition of any abandoned structure which the city council finds to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities. Such ordinance, if adopted, may provide for the repair, closing or demolition of such structure pursuant to the same provisions and procedures as are prescribed herein for the repair, closing or demolition of dwellings found to be unfit for human habitation. (1939, c. 287, s. 1; 1969, c. 913, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1975, c. 664, s. 15.)

Editor's Note. —

The 1973 amendment substituted "Part" for "Article" in the last sentence of the first paragraph.

The 1975 amendment added the second paragraph.

Purpose. — This Part was enacted for the purpose of insuring that minimum housing standards would be achieved in the cities and counties of this State. *Harrell v. City of Winston-Salem*, 22 N.C. App. 386, 206 S.E.2d 802 (1974).

§ 160A-442. Definitions. — The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

- (7) "Public officer" means the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Part. (1939, c. 287, s. 2; 1941, c. 140; 1953, c. 675, s. 29; 1961, c. 398, s. 1; 1969, c. 913, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

Editor's Note. — The 1973 amendment substituted "Part" for "Article" in subdivision (7).

As the rest of the section was not changed by

the amendment, only the introductory paragraph and subdivision (7) are set out.

Cited in *Harrell v. City of Winston-Salem*, 22 N.C. App. 386, 206 S.E.2d 802 (1974).

§ 160A-443. Ordinance authorized as to repair, closing and demolition; order of public officer. — Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city; the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

- (3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,
- a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

- b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(1973, c. 426, s. 70.)

Editor's Note. — The 1973 amendment substituted "value" for "cost" in the parentheses in paragraphs a and b of subdivision (3).

As the rest of the section was not changed by

the amendment, only the introductory paragraph and subdivision (3) are set out.

Stated in *Harrell v. City of Winston-Salem*, 22 N.C. App. 386, 206 S.E.2d 802 (1974).

§ 160A-444. Standards. — An ordinance adopted by a city under this Part shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city. Defective conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness. The ordinances may provide additional standards to guide the public officers, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

Editor's Note. — The 1973 amendment substituted "Part" for "Article" in the first sentence.

§ 160A-445. Service of complaints and orders. — Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. If the whereabouts of persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the persons may be made by publication in the manner prescribed in the Rules of Civil Procedure. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

Editor's Note. —

The 1973 amendment substituted "Part" for "Article" in the first sentence.

§ 160A-446. Remedies.

Plaintiffs must exhaust the administrative remedies available to them, and they cannot be allowed to undermine the prescribed statutory procedure set forth in this section. *Harrell v. City of Winston-Salem*, 22 N.C. App. 386, 206 S.E.2d 802 (1974).

Purpose of writ of certiorari in subsection (e) is to bring the matter before the court, upon the evidence presented by the record itself. *Axler v.*

City of Wilmington, 25 N.C. App. 110, 212 S.E.2d 511 (1975).

Purpose of restraining order authorized by subsection (f) is to protect an aggrieved party until there has been a final determination of a proceeding commenced under authority of the minimum housing standards of this Chapter. *Axler v. City of Wilmington*, 25 N.C. App. 110, 212 S.E.2d 511 (1975).

§ 160A-448. Additional powers of public officer. — An ordinance adopted by the governing body of the city may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this Part, including the following powers in addition to others herein granted:

- (1) To investigate the dwelling conditions in the city in order to determine which dwellings therein are unfit for human habitations;
- (2) To administer oaths, affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of officers, agents and employees necessary to carry out the purposes of the ordinances; and
- (5) To delegate any of his functions and powers under the ordinance to other officers and other agents. (1939, c. 287, s. 7; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

Editor's Note. — The 1973 amendment substituted "Part" for "Article" in the introductory paragraph.

Part 7. Community Appearance Commissions.

§ 160A-451. Membership and appointment of commission; joint commission. — Each municipality and county in the State may create a special commission, to be known as the official appearance commission for the city or county. The commission shall consist of not less than seven nor more than 15 members, to be appointed by the governing body of the municipality or county for such terms, not to exceed four years, as the governing body may by ordinance provide. All members shall be residents of the municipality's or county's area of planning and zoning jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times a majority of members who have had special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field. Members of the commission may be reimbursed for actual expenses incidental to the performance of their duties within the limits of any funds available to the commission, but shall serve without pay unless otherwise provided in the ordinance establishing the commission. Membership of the commission is declared to be an office that may be held concurrently with any other elective or appointive office pursuant to Article VI, Sec. 9, of the Constitution.

A county and one or more cities in the county may establish a joint appearance commission. If a joint commission is established, the county and the city or cities

involved shall determine the residence requirements for members of the joint commission. (1971, c. 896, s. 6; c. 1058; 1973, c. 426, s. 63.)

Editor's Note. —

The 1973 amendment added the second paragraph.

§ 160A-455. Receipt and expenditure of funds. — The commission may receive contributions from private agencies, foundations, organizations, individuals, the State or federal government, or any other source, in addition to any sums appropriated for its use by the city or county governing body. It may accept and disburse these funds for any purpose within the scope of its authority as herein specified. All sums appropriated by the city or county to further the work and purposes of the commission are deemed to be for a public purpose. (1971, c. 896, s. 6; c. 1058; 1975, c. 664, s. 16.)

Editor's Note. — The 1975 amendment deleted "and a necessary expense" at the end of the last sentence.

Part 8. Community Development.

§ 160A-456. Community development programs and activities. — (a) Any city is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a city may engage in the following activities:

- (1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;
- (2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any city council may exercise directly those powers granted by law to municipal redevelopment commissions and those powers granted by law to municipal housing authorities. Any city council desiring to do so may delegate to any redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any city council and any board of county commissioners may by agreement undertake or carry out for each other any specified community development activities. Any city council may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any city council any specified community development activities.

(c) Any city council undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any city council proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such city.

(e) No state or local taxes shall be appropriated or expended by a city pursuant to this section for any purpose not expressly authorized by G.S. 160A-209, unless the same is first submitted to a vote of the people as therein provided. (1975, c. 435, s. 1; c. 689, s. 1.)

Editor's Note. — The 1975 amendment inserted "State or local" near the beginning of subsection (e).

§§ 160A-457 to 160A-459: Reserved for future codification purposes.

ARTICLE 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. **Definitions.** — The words defined in this section shall have the meanings indicated when used in this Part:

- (1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government. (1975, c. 821, s. 4.)

Local Modification. — Cherokee, Graham, Jackson and Swain: 1973, c. 1406.

Cross References. — As to application of this Part to joint construction of buildings by counties, cities or other units of local government, see § 153A-164. As to authority of counties under this Part, see also § 153A-212. As to power of county to take action under the provisions of this Part, see § 153A-445.

Editor's Note. — The 1975 amendment inserted "public enterprise" near the end of subdivision (1).

Session Laws 1975, c. 821, s. 6, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

Part 2. Regional Councils of Governments.

§ 160A-470. **Creation of regional councils; definition of "unit of local government".** — (a) Any two or more units of local government may create a regional council of governments by adopting identical concurrent resolutions to that effect in accordance with the provisions and procedures of this Part. To the extent permitted by the laws of its state, a local government in a state adjoining North Carolina may participate in regional councils of governments organized under this Part to the same extent as if it were located in this State. The concurrent resolutions creating a regional council of governments, and any amendments thereto, will be referred to in this Part as the "charter" of the regional council.

(b) For the purposes of this Part, "unit of local government" means a county, city, or consolidated city-county. (1971, c. 698, s. 1; 1973, c. 426, s. 71.)

Cross Reference. — As to power of county to take action under the provisions of this Part, see § 153A-445.

Editor's Note. — The 1973 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

§ 160A-471. Membership. — Each unit of local government initially adopting a concurrent resolution under G.S. 160A-470 shall become a member of the regional council. Thereafter, any local government may join the regional council by ratifying its charter and by being admitted by a majority vote of the existing members. All of the rights and privileges of membership in a regional council of governments shall be exercised on behalf of its member governments by their delegates to the council. (1971, c. 698, s. 1; 1973, c. 426, s. 72.)

Editor's Note. — The 1973 amendment substituted "a majority" for "unanimous" in the second sentence.

§ 160A-475. Specific powers of council. — The charter may confer on the regional council any of the following powers:

- (1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the council), and any private or civic agency;
- (8) Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of each of its member governments which are affected thereby. (1971, c. 698, s. 1; 1975, c. 517, ss. 1, 2.)

Editor's Note. — The 1975 amendment substituted "dispense funds and grants" for "disburse funds, grants, and services" near the beginning of subdivision (1), and added at the end of subdivision (8) the language beginning

"to the extent such powers are specifically delegated."

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (8) are set out.

§ 160A-476. Fiscal affairs. — Each unit of local government having membership in a regional council may appropriate funds to the council from any legally available revenues. Services of personnel, use of equipment and office space, and other services may be made available to the council by its member governments as a part of their financial support. (1971, c. 698, s. 1; 1973, c. 426, s. 73.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "unit of local government" for "city and county" and "from any legally available revenues" for "and levy annual taxes for the payment of the appropriations as a special purpose, in addition to any allowed by the Constitution" in the first sentence and deleted the former second and

third sentences, which declared the levy of taxes and expenditure of the proceeds for the purpose of this Part a necessary expense and a special purpose and which authorized a referendum if such levy and expenditure should be declared not for a necessary expense by a court of competent jurisdiction.

ARTICLE 21.

Miscellaneous.

§ 160A-485. **Waiver of immunity through insurance purchase.** — (a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance.

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State. (1951, c. 1015, ss. 1-5; 1971, c. 698, s. 1; 1975, c. 723.)

Editor's Note. —

The 1975 amendment rewrote this section, which formerly provided only for waiver of immunity from liability for the negligent operation of motor vehicles.

The Rules of Civil Procedure are found in § 1A-1.

Modification of Immunity Is Function of Legislature. — Although the doctrine of sovereign immunity was first adopted in North Carolina by the Supreme Court, this judicial doctrine is firmly established in law today, and by legislation has been recognized by the

General Assembly as the public policy of the State. Any further modification or the repeal of the doctrine should come from the General Assembly, not the Supreme Court. *Stelman v. City of New Bern*, 279 N.C. 589, 184 S.E.2d 239 (1971).

Extent of Immunity under Former Law. —

Prior to the 1975 amendment, this section authorized a waiver only in actions involving the operation of motor vehicles. The waiver did not cover maintenance of playground equipment. *Rich v. City of Goldsboro*, 282 N.C. 383, 192 S.E.2d 824 (1972).

§ 160A-487. City and county financial support for rescue squads.

Cross Reference. — As to power of counties to take action under this section, see § 153A-445.

§ 160A-488. Art galleries and museums.

(b) For the purposes set forth in this section, a city or county may appropriate funds not otherwise limited as to use by law. (1955, c. 1338; 1961, c. 309; 1965, c. 1019; 1971, c. 698, s. 1; 1975, c. 664, s. 17.)

Cross Reference. — As to power of counties to take action under this section, see § 153A-445.

Editor's Note. — The 1975 amendment rewrote subsection (b).

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

§ 160A-489. Auditoriums, coliseums, and convention centers. — Any city is authorized to establish and support public auditoriums, coliseums, and convention centers. As used in this section, "support" includes but is not limited to: acquisition, construction, and renovation of buildings and acquisition of the necessary land and other property therefor; purchase of equipment; compensation of personnel; and all operating and maintenance expenses of the facility. For the purposes set forth in this section, a city may appropriate funds not otherwise limited as to use by law. (1971, c. 698, s. 1; 1975, c. 664, s. 18.)

Cross Reference. — As to power of counties to take action under this section, see § 153A-445.

Editor's Note. — The 1975 amendment substituted the present third sentence for the former third and fourth sentences, which related to voter approval for the use of certain funds.

This section does not confer implied authority to engage in the restaurant business on any municipal corporation or other governmental unit of a county. *Smith v. County of Mecklenburg*, 280 N.C. 497, 187 S.E.2d 67 (1972).

§ 160A-492. Human relations, community action and manpower development programs. — The governing body of any city, town, or county is hereby authorized to undertake, and to expend tax or nontax funds for, human relations, community action and manpower development programs. In undertaking and engaging in such programs, the governing body may enter into contracts with and accept loans and grants from the State or federal governments. The governing body may appoint such human relations, community action and manpower development committees or boards and citizens' committees, as it may deem necessary in carrying out such programs and activities, and may authorize the employment of personnel by such committees or boards, and may establish their duties, responsibilities, and

powers. The cities and counties may jointly undertake any program or activity which they are authorized to undertake by this section. The expenses of undertaking and engaging in the human relations, community action and manpower development programs and activities authorized by this section are declared to be necessary expenses for which funds derived from taxation may be expended without the necessity of prior approval of the voters.

For the purposes of this section, a "human relations program" shall be defined as one devoted to the study of problems in the area of human relations, or to the promotion of equality of opportunity for all citizens, or to the promotion of understanding, respect and goodwill among all citizens, or to the provision of channels of communication among the races, or to encourage the employment of qualified people without regard to race, or to encourage youth to become better trained and qualified for employment. (1971, c. 896, s. 11; c. 1207, ss. 1, 2; 1973, c. 641.)

Editor's Note. —

The 1973 amendment inserted "community

action and manpower development" in three places in the first paragraph.

§ 160A-493. Animal shelters. — A city may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. (1973, c. 426, s. 73.1.)

§ 160A-494. Drug abuse programs. — Any city may provide for the prevention and treatment of narcotic, barbituric and other types of drug abuse and addiction through education, medication, medical care, hospitalization, and outpatient housing, and may appropriate the necessary funds therefor. (1973, c. 608.)

§ 160A-495. Appropriations for establishment, etc., of local government center in Raleigh. — Counties, cities and towns are hereby authorized to appropriate money for payment to their respective instrumentalities, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities for the purpose of financing the cost, in whole or in part, of purchasing, constructing, equipping, maintaining and operating a local government center in the City of Raleigh to serve as permanent headquarters for said organizations. (1973, c. 1131.)

§ 160A-496. Incorporation of local acts into charter. — (a) A city may from time to time require the city attorney to present to the council any local acts relating to the property, affairs, and government of the city and not part of the city's charter which the city attorney recommends be incorporated into the charter. In his recommendations, the city attorney may include suggestions for renumbering or rearranging the provisions of the charter and other local acts, for providing catch lines, and for any other modifications in arrangement or form that do not change the provisions themselves of the charter or local acts and that may be necessary to effect an orderly incorporation of local acts into the charter.

(b) After considering the recommendations of the attorney, the council may by ordinance direct the incorporation of any such local acts into the charter.

(c) For purposes of this section, "charter" means that local act of the General Assembly or action of the Municipal Board of Control incorporating a city or a later local act that includes provisions expressly denominated the city's "charter," plus any other local acts inserted therein pursuant to this section or a comparable provision of a local act. (1975, c. 156.)

§§ 160A-497 to 160A-499: Reserved for future codification purposes.

ARTICLE 22.

Urban Redevelopment Law.

§ 160A-500. **Short title.** — This Article shall be known and may be cited as the “Urban Redevelopment Law.” (1951, c. 1095, s. 1; 1973, c. 426, s. 75.)

Editor’s Note. — Sections 160A-500 through 160A-505 and 160A-506 through 160A-526 were originally codified as §§ 160-454 through 160-474.2. They were transferred to their present position by Session Laws 1973, c. 426, s. 75.

A redevelopment commission is a municipal corporation and exempt from ad valorem

taxation. *Redevelopment Comm’n v. Guilford County*, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

Applied in *Gastonia Redevelopment Comm’n v. Coxco, Inc.*, 21 N.C. App. 335, 204 S.E.2d 211 (1974).

§ 160A-501. **Findings and declaration of policy.** — It is hereby determined and declared as a matter of legislative finding:

- (1) That there exist in urban communities in this State blighted areas as defined herein.
- (2) That such areas are economic or social liabilities, inimical and injurious to the public health, safety, morals and welfare of the residents of the State, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.
- (3) That the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of communities.
- (4) That the foregoing conditions are beyond remedy or control entirely by regulatory processes in the exercise of the police power and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted.
- (5) That the acquisition, preparation, sale, sound replanning, and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

Therefore, it is hereby declared to be the policy of the State of North Carolina to promote the health, safety, and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as redevelopment commissions, which shall exist and operate for the public purposes of acquiring and replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain. (1951, c. 1095, s. 2; 1973, c. 426, s. 75.)

§ 160A-502. Additional findings and declaration of policy. — It is further determined and declared as a matter of legislative finding:

- (1) That the cities of North Carolina constitute important assets for the State and its citizens; that the preservation of the cities and of urban life against physical, social, and other hazards is vital to the safety, health, and welfare of the citizens of the State, and sound urban development in the future is essential to the continued economic development of North Carolina, and that the creation, existence, and growth of substandard areas present substantial hazards to the cities of the State, to urban life, and to sound future urban development.
- (2) That blight exists in commercial and industrial areas as well as in residential areas, in the form of dilapidated, deteriorated, poorly ventilated, obsolete, overcrowded, unsanitary, or unsafe buildings, inadequate and unsafe streets, inadequate lots, and other conditions detrimental to the sound growth of the community; that the presence of such conditions tends to depress the value of neighboring properties, to impair the tax base of the community, and to inhibit private efforts to rehabilitate or improve other structures in the area; and that the acquisition, preparation, sale, sound replanning and redevelopment of such areas in accordance with sound and approved plans will promote the public health, safety, convenience and welfare.
- (3) That not only is it in the interest of the public health, safety, convenience and welfare to eliminate existing substandard areas of all types, but it is also in the public interest and less costly to the community to prevent the creation of new blighted areas or the expansion of existing blighted areas; that vigorous enforcement of municipal and State building standards, sound planning of new community facilities, public acquisition of dilapidated, obsolescent buildings, and other municipal action can aid in preventing the creation of new blighted areas or the expansion of existing blighted areas; and that rehabilitation, conservation, and reconditioning of areas in accordance with sound and approved plans, where, in the absence of such action, there is a clear and present danger that the area will become blighted, will protect and promote the public health, safety, convenience and welfare.

Therefore it is hereby declared to be the policy of the State of North Carolina to protect and promote the health, safety, and welfare of the inhabitants of its urban areas by authorizing redevelopment commissions to undertake nonresidential redevelopment in accord with sound and approved plans and to undertake the rehabilitation, conservation, and reconditioning of areas where, in the absence of such action, there is a clear and present danger that the area will become blighted. (1961, c. 837, s. 1; 1973, c. 426, s. 75.)

§ 160A-503. Definitions. — The following terms where used in this Article, shall have the following meanings, except where the context clearly indicates a different meaning:

- (1) "Area of operation" — The area within the territorial boundaries of the city or county for which a particular commission is created.
- (2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the

public health, safety, morals or welfare; provided, no area shall be considered a blighted area nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

- (3) "Bonds" — Any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to this Article.
- (4) "City" — Any city or town. "The city" shall mean the particular city for which a particular commission is created.
- (5) "Commission" or "redevelopment commission" — A public body and a body corporate and politic created and organized in accordance with the provisions of this Article.
- (6) "Field of operation" — The area within the territorial boundaries of the city for which a particular commission is created.
- (7) "Governing body" — In the case of a city or town, the city council or other legislative body. The board of county commissioners.
- (8) "Government" — Includes the State and federal governments or any subdivision, agency or instrumentality corporate or otherwise of either of them.
- (9) "Municipality" — Any incorporated city or town, or any county.
- (10) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:
 - a. Dilapidation, deterioration, age or obsolescence of buildings and other structures,
 - b. Inadequate provisions for ventilation, light, air, sanitation or open spaces,
 - c. Defective or inadequate street layout,
 - d. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,
 - e. Tax or special assessment delinquency exceeding the fair value of the property,
 - f. Unsanitary or unsafe conditions,
 - g. The existence of conditions which endanger life or property by fire and other causes, or
 - h. Any combination of such factors
 1. Substantially impairs the sound growth of the community,
 2. Has seriously adverse effects on surrounding development, and
 3. Is detrimental to the public health, safety, morals or welfare;
 provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable

counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

- (11) "Obligee of the Commission" or "obligee" — Any bondholder, trustee or trustees for any bondholders, any lessor demising property to a commission used in connection with a redevelopment project, or any assignees of such lessor's interest, or any part thereof, and the federal government, when it is a party to any contract with a commission.
- (12) "Planning commission" — Any planning commission established by ordinance for a municipality of this State. "The planning commission" shall mean the particular planning commission of the city or town in which a particular commission operates.
- (13) "Real property" — Lands, lands under water, structures and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.
- (14) "Redeveloper" — Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of an area under the provisions of this Article.
- (15) "Redevelopment" — The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this Article with respect to the area for which such program is undertaken.
- (16) "Redevelopment area" — Any area which a planning commission may find to be
 - a. A blighted area because of the conditions enumerated in subdivision (2) of this section;
 - b. A nonresidential redevelopment area because of conditions enumerated in subdivision (10) of this section;
 - c. A rehabilitation, conservation, and reconditioning area within the meaning of subdivision (21) of this section;
 - d. Any combination thereof, so as to require redevelopment under the provisions of this Article.
- (17) "Redevelopment contract" — A contract between a commission and a redeveloper for the redevelopment of an area under the provisions of this Article.
- (18) "Redevelopment plan" — A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this Article.
- (19) "Redevelopment project" shall mean any work or undertaking:
 - a. To acquire blighted or nonresidential redevelopment areas or portions thereof, or individual tracts in rehabilitation, conservation, and reconditioning areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;
 - b. To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities,

and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

- c. To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan;
- d. To carry out plans for a program of voluntary or compulsory repair, rehabilitation, or reconditioning of buildings or other improvements in such areas.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project.

(20) "Redevelopment proposal" — A proposal, including supporting data and the form of a redevelopment contract for the redevelopment of all or any part of a redevelopment area.

(21) "Rehabilitation, conservation, and reconditioning area" shall mean any area which the planning commission shall find, by reason of factors listed in subdivision (2) or subdivision (10), to be subject to a clear and present danger that, in the absence of municipal action to rehabilitate, conserve, and recondition the area, it will become in the reasonably foreseeable future a blighted area or a nonresidential redevelopment area as defined herein. In such an area, no individual tract, building, or improvement shall be subject to the power of eminent domain, within the meaning of this Article, unless it is of the character described in subdivision (2) or subdivision (10) and substantially contributes to the conditions endangering the area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners. (1951, c. 1095, s. 3; 1957, c. 502, ss. 1-3; 1961, c. 837, ss. 2, 3, 4, 6; 1967, c. 1249; 1969, c. 1208, s. 1; 1973, c. 426, s. 75.)

The term "municipality" or "municipal corporation" has been defined as any incorporated city, town or village, or a county. *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).

The term "municipal corporation" should not be construed narrowly to include only cities, towns, counties and school districts, but in its broader sense the term includes all public corporations exercising governmental functions within constitutional limitations. *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).

A municipal corporation, city or town, is an agency created by the State to assist in the civil government of a designated territory and the people embraced within these limits. *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).

A municipal corporation must have a public purpose and be invested with a governmental function. *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).

Counsel Fees Provision of Subdivision (10) Helps Equalize Bargaining Power. —

Subdivision (10), conferring power of eminent domain upon urban redevelopment Commissions, provides that the commission pay counsel fees for the property owner when it is necessary to condemn his property. Such a provision grants more freedom to the property owner to contest condemnation proceedings as it permits him to receive the award for his property, even after legal action, without having it reduced by the payment of attorney fees. It helps to equalize the bargaining power of the property owner and the commission and prevent insofar as possible any undue economic pressures. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Control over the amount of the attorney's fees allowed is found in the requirement that such counsel fees are to be fixed by the court and are to be reasonable in amount. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Allowance of attorneys' fees under subdivision (10)h3 is by the court, and is not affected by the existence of contracts for fees between counsel and their landowner clients.

See *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Determination of Reasonable Counsel Fees. — Reasonable counsel fees in subdivision (10)h3 may be determined in part by the amount of the verdict obtained in the condemnation proceeding in the light of the proposals made to the property owner prior to his employment of an attorney. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

The results obtained by an attorney are a legitimate consideration in determining the amount of his fee. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Payment of Fee Must Be Commensurate with Services Performed. — There is no uncertainty under subdivision (10)h3 about the payment of an attorney fee commensurate with the services performed. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Award Is Not Contingent Fee. — When a statute such as this section, provides for

attorney fees to be awarded as a part of the costs to be paid by the governmental authority which is appropriating the property, it is not a contingent fee, but an amount equal to the actual reasonable value of the attorney's services. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Whether there was any recovery or not, counsel for the property owner is entitled to a reasonable fee, and it should not be set upon the basis of a contingency which did not exist. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

The element of risk in connection with the contingent fee justifies a much larger fee when the litigation is successfully terminated, but in eminent domain takings under subdivision (10)h3, there is no such risk, and the court must take this lack of risk into account. *Redevelopment Comm'n v. Hyder*, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Cited in *Housing Authority v. Farabee*, 17 N.C. App. 431, 194 S.E.2d 553 (1973).

§ 160A-504. Formation of commissions. — (a) Each municipality, as defined herein, is hereby authorized to create separate and distinct bodies corporate and politic to be known as the redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance or resolution creating a commission to function within the territorial limits of said municipality. Notice of the intent to consider the passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting.

(b) The governing body of a municipality shall not adopt a resolution pursuant to subsection (a) above unless it finds:

- (1) That blighted areas (as herein defined) exist in such municipality, and
- (2) That the redevelopment of such areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

(c) The governing body shall cause a certified copy of such ordinance or resolution to be filed in the office of the Secretary of State; upon receipt of the said certificate the Secretary of State shall issue a certificate of incorporation.

(d) In any suit, action or proceeding involving or relating to the validity or enforcement of any contract or act of a commission, a copy of the certificate of incorporation duly certified by the Secretary of State shall be admissible in evidence and shall be conclusive proof of the legal establishment of the commission. (1951, c. 1095, s. 4; 1973, c. 426, s. 75.)

§ 160A-505. Alternative organization. — (a) In lieu of creating a redevelopment commission as authorized herein, the governing body of any municipality may, if it deems wise, either designate a housing authority created under the provisions of Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission as prescribed herein, or undertake to exercise such powers, duties, and responsibilities itself. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the findings specified in G.S. 160A-504(a) and (b). In the event a governing body designates itself to perform the powers, duties, and responsibilities of a redevelopment commission, then where any act or proceeding is required to be done, recommended, or approved both by a redevelopment commission and by the municipal governing body, then the performance, recommendation, or approval thereof once by the municipal

governing body shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event a municipal governing body designates itself to exercise the powers, duties, and responsibilities of a redevelopment commission, it may assign the administration of redevelopment policies, programs and plans to any existing or new department of the municipality.

(b) The governing body of any municipality which has prior to July 1, 1969, created, or which may hereafter create, a redevelopment commission may, in its discretion, by resolution abolish such redevelopment commission, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the redevelopment commission of the municipality is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the municipality. Any municipality which abolishes a redevelopment commission pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the governing body:

- (1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;
- (2) All property, real and personal and mixed, belonging to the redevelopment commission shall vest in, belong to, and be the property of the municipality;
- (3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission shall remain, vest in, and inure to the benefit of the municipality;
- (4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the redevelopment commission shall be owed to and collected by the municipality;
- (5) Any actions, suits, and proceedings pending against, or having been instituted by the redevelopment commission shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission and shall pay or cause to be paid any judgment rendered against the redevelopment commission in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;
- (6) All obligations of the redevelopment commission, including outstanding indebtedness, shall be assumed by the municipality, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the municipality;
- (7) All ordinances, rules, regulations and policies of the redevelopment commission shall continue in full force and effect until repealed or amended by the governing body of the municipality.

(c) Where the governing body of any municipality has in its discretion, by resolution abolished a redevelopment commission, pursuant to subsection (b) above, the governing body of such municipality may, at any time subsequent to the passage of a resolution abolishing a redevelopment commission, or concurrently therewith, by the passage of a resolution adopted in accordance with the procedures and pursuant to the findings specified in G.S. 160A-504(a) and (b), designate an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission. Where the governing body of any municipality

designates, pursuant to this subsection, an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission, on the day set in the resolution of the governing body passed pursuant to subsection (b) of this section, or pursuant to subsection (c) of this section:

- (1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;
- (2) All property, real and personal and mixed, belonging to the redevelopment commission or to the municipality as hereinabove provided in subsections (a) or (b), shall vest in, belong to, and be the property of the existing housing authority of the municipality;
- (3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission or in favor of the municipality as hereinabove provided in subsections (a) or (b), shall remain, vest in, and inure to the benefit of the existing housing authority of the municipality;
- (4) All rentals, taxes, assessments, and any other funds, charges or fees owing to the redevelopment commission, or owing to the municipality as hereinabove provided in subsections (a) or (b), shall be owed to and collected by the existing housing authority of the municipality;
- (5) Any actions, suits, and proceedings pending against or having been instituted by the redevelopment commission, or the municipality, or to which the municipality has become a party, as hereinabove provided in subsections (a) or (b), shall not be abated by such abolition but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the existing housing authority of the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission, or the municipality, and shall pay or cause to be paid any judgments rendered in such actions, suits, or proceedings, and no new processes need be served in such action, suit, or proceeding;
- (6) All obligations of the redevelopment commission, or the municipality as hereinabove provided in subsections (a) or (b), including outstanding indebtedness, shall be assumed by the existing housing authority of the municipality; and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the existing housing authority of the municipality.
- (7) All ordinances, rules, regulations, and policies of the redevelopment commission, or of the municipality as hereinabove provided in subsections (a) or (b), shall continue in full force and effect until repealed and amended by the existing housing authority of the municipality.

(d) A housing authority designated by the governing body of any municipality to exercise the powers, duties and responsibilities of a redevelopment commission shall, when exercising the same, do so in accordance with Article 22 of Chapter 160A of the General Statutes. Otherwise the housing authority shall continue to exercise the powers, duties and responsibilities of a housing authority in accordance with Chapter 157 of the General Statutes. (1969, c. 1217, s. 1; 1971, c. 116, ss. 1, 2; 1973, c. 426, s. 75.)

§ 160A-505.1. Commission budgeting and accounting systems as a part of municipality budgeting and accounting systems. — The governing body of a municipality may by resolution provide that the budgeting and accounting systems of the municipality's redevelopment commission or, if the municipality's housing authority is exercising the powers, duties, and responsibilities of a redevelopment commission, the budgeting and accounting systems of the housing authority, shall be an integral part of the budgeting and accounting systems of the municipality. If such a resolution is adopted:

- (1) For purposes of the Local Government Budget and Fiscal Control Act, the commission or authority shall not be considered a "public authority," as that phrase is defined in G.S. 159-7(b), but rather shall be considered a department or agency of the municipality. The operations of the commission or authority shall be budgeted and accounted for as if the operations were those of a public enterprise of the municipality.
- (2) The budget of the commission or authority shall be prepared and submitted in the same manner and according to the same procedures as are the budgets of other departments and agencies of the municipality; and the budget ordinance of the municipality shall provide for the operations of the commission or authority.
- (3) The budget officer and finance officer of the municipality shall administer and control that portion of the municipality's budget ordinance relating to the operations of the commission or authority. (1971, c. 780, s. 37.2; 1973, c. 474, s. 30.)

Editor's Note. — Session Laws 1973, c. 474, s. 30, added to Session Laws 1971, c. 780, a new section, numbered 37.2. The new section added to the 1971 act by the 1973 act enacted § 160A-505.1, above. The 1971 act became effective July 1, 1973.

§ 160A-506. Creation of a county redevelopment commission. — If the board of county commissioners of a county by resolution declares that blighted areas do exist in said county, and the redevelopment of such areas is necessary in the interest of public health, safety, morals, or welfare of the residents of such county, the county commissioners of said county are hereby authorized to create a separate and distinct body corporate and politic to be known as the redevelopment commission of said county by passing a resolution to create such a commission to function in the territorial limits of said county. Provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by said municipality.

All of the provisions of Article 22, Chapter 160A of the General Statutes, shall be applicable to county redevelopment commissions, including the formation, appointment, tenure, compensation, organization, interest and powers as specified therein. (1969, c. 1208, s. 2; 1973, c. 426, s. 75.)

§ 160A-507. Creation of a regional redevelopment commission. — If the board of county commissioners of two or more contiguous counties by resolution declare that blighted areas do exist in said counties and the redevelopment of such areas is necessary in the interest of public health, morals, or welfare of the residents of such counties, the county commissioners of said counties are hereby authorized to create a separate and distinct body corporate and politic to be known as the regional redevelopment commission by the passage of a resolution by each county to create such a commission to function in the

territorial limits of the counties; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by the municipality.

The board of county commissioners of each county included in the regional redevelopment commission shall appoint one person as a commissioner and such a person may be appointed at or after the time of the adoption of the resolution creating the redevelopment commission. The board of county commissioners shall have the authority to appoint successors or to remove persons for misconduct who are appointed by them. Each commissioner to the redevelopment commission shall serve for a five-year term except that initial appointments may be for less time in order to establish a fair donation system of appointments. In the event that a regional redevelopment commission shall have an even number of counties, the Governor of North Carolina shall appoint a member to the commission from the area to be served. The appointed members as commissioners shall constitute the regional redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in Article 22 of Chapter 160A of the General Statutes, shall apply to the creation and operation of a regional redevelopment commission, and where reference is made to municipality, it shall be interpreted to apply to the area served by the regional redevelopment commission. (1969, c. 1208, s. 3; 1973, c. 426, s. 75.)

§ 160A-507.1. Creation of a joint county-city redevelopment commission.

— A county and one or more cities within the county are hereby authorized to create a separate and distinct body corporate and politic to be known as the joint redevelopment commission by the passage of a resolution by the board of county commissioners and the governing body of one or more cities within the county creating such a commission to function within the territorial limits of such participating units of government; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the affected governing boards for such purposes, and further provided that a joint redevelopment commission created hereunder shall have authority to operate in an area where there presently exists a redevelopment commission upon the approval of the municipality or county concerned. The governing body of each participating local government shall appoint one or more commissioners as such governing bodies shall determine; such persons may be appointed at or after the time of adoption of the resolution creating the joint redevelopment commission. The appointing authority shall have the authority to appoint successors or to remove persons for misfeasance, malfeasance or nonfeasance who are appointed by them. Each commissioner shall serve for a term designated by the governing bodies of not less than one nor more than five years. The appointed members as commissioners shall constitute the joint redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in Article 22 of Chapter 160A of the General Statutes shall apply to the creation and operation of a joint redevelopment commission and where reference is made to municipality, it shall be interpreted to apply to the units of government creating a joint redevelopment commission. (1975, c. 407.)

§ 160A-508. Appointment and qualifications of members of commission. — Upon certification of a resolution declaring the need for a commission to operate in a city or town, the mayor and governing board thereof, respectively, shall appoint, as members of the commission, not less than five nor more than nine citizens who shall be residents of the city or town in which the commission is to operate. The governing body may at any time by resolution or ordinance increase or decrease the membership of a commission, within the limitations herein prescribed. (1951, c. 1095, s. 5; 1971, c. 362, ss. 6, 7; 1973, c. 426, s. 75.)

Local Modification. — City of Sanford: 1973, c. 990.

§ 160A-509. Tenure and compensation of members of commission. — The mayor and governing body shall designate overlapping terms of not less than one nor more than five years for the members who are first appointed. Thereafter, the term of office shall be five years. A member shall hold office until his successor has been appointed and qualified. Vacancies for the unexpired terms shall be promptly filled by the mayor and governing body. A member shall receive such compensation, if any, as the municipal governing board may provide for this service, and shall be entitled within the budget appropriation to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. (1951, c. 1095, s. 6; 1967, c. 932, s. 4; 1971, c. 362, s. 8; 1973, c. 426, s. 75.)

§ 160A-510. Organization of commission. — The members of a commission shall select from among themselves a chairman, a vice-chairman, and such other officers as the commission may determine. A commission may employ a secretary, its own counsel, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. A majority of the members shall constitute a quorum for its meeting. Members shall not be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against such commission. A commission may delegate to one or more of its members, agents or employees such of its powers as it shall deem necessary to carry out the purposes of this Article, subject always to the supervision and control of the commission. For inefficiency or neglect of duty or misconduct in office, a commissioner of a commission may be removed by the governing body, but a commissioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. (1951, c. 1095, s. 7; 1971, c. 362, s. 9; 1973, c. 426, s. 75.)

§ 160A-511. Interest of members or employees. — No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project. The acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. If any member or employee of a commission shall have already owned or controlled within the preceding two years any interest, direct or indirect, in any property later included or planned to be included in any redevelopment project, under the jurisdiction of the commission, or has any such interest in any contract for material or services to be furnished or used in connection with any

redevelopment project, he shall disclose the same in writing to the commission and to the local governing body, and such disclosure shall be entered in writing upon the minute books of the commission. Failure to make such disclosure shall constitute misconduct in office. (1951, c. 1095, s. 8; 1973, c. 426, s. 75.)

Applicable to Member's Lease of Building in Redevelopment Project. — See opinion of Attorney General to Mr. Miles B. Fowler, 42 N.C.A.G. 197 (1973).

§ 160A-512. Powers of commission. — A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

- (1) To procure from the planning commission the designation of areas in need of redevelopment and its recommendation for such redevelopment;
- (2) To cooperate with any government or municipality as herein defined;
- (3) To act as agent of the State or federal government or any of its instrumentalities or agencies for the public purposes set out in this Article;
- (4) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the municipality and to undertake and carry out "redevelopment projects" within its area of operation;
- (5) Subject to the provisions of G.S. 160A-514(b) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this Article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;
- (6) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and notwithstanding the provisions of G.S. 160-59 but subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several developers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts with "developers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to

effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

- (7) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursements, in such investments as may be lawful for guardians, executors, administrators or other fiduciaries under the laws of this State; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled;
- (8) To borrow money and to apply for and accept advances, loans evidenced by bonds, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private for the purposes of this Article, to give such security as may be required and to enter into and carry out contracts in connection therewith; and, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this Article;
- (9) Acting through one or more commissioners or other persons designated by the commission, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers;
- (10) Within its area of operation, to make or have made all surveys, studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this Article and in connection therewith to enter into or upon any land, building, or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building, or improvement except for injuries resulting from negligence, wantonness or malice; and to contract or cooperate with any and all persons or agencies public or private, in the making and carrying out of such surveys, appraisals, studies and plans.

A redevelopment commission is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements and (ii) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The redevelopment commission is further authorized to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and urban blight.

- (11) To make such expenditures as may be necessary to carry out the purposes of this Article; and to make expenditures from funds obtained from the federal government;
- (12) To sue and be sued;
- (13) To adopt a seal;
- (14) To have perpetual succession;
- (15) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary, or, treasurer or assistant treasurer of the commission shall be held to have been properly executed for and on its behalf;
- (16) To make and from time to time amend and repeal bylaws, rules, regulations and resolutions;
- (17) To make available to the government or municipality or any appropriate agency, board or commission, the recommendations of the commission affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety or welfare;
- (18) To perform redevelopment project undertakings and activities in one or more contiguous or noncontiguous redevelopment areas which are planned and carried out on the basis of annual increments. (1951, c. 1095, s. 9; 1961, c. 837, ss. 5, 7; 1969, c. 254, s. 1; 1973, c. 426, s. 75.)

Editor's Note. — Section 160-59, referred to in subdivision (6) of this section, was repealed by Session Laws 1971, c. 698, s. 2. For present provisions as to sale of municipal property, see §§ 160A-266 to 160A-276.

§ 160A-513. Preparation and adoption of redevelopment plans. — (a) A commission shall prepare a redevelopment plan for any area certified by the planning commission to be a redevelopment area. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan, if any (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the area.

(c) A commission shall not acquire real property for a development project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as hereinafter prescribed; provided, however, that the commission may acquire, through negotiation, specific pieces of property in the redevelopment area prior to the approval of such plan when the governing body finds that advance acquisition of such properties is in the public interest and specifically approves such action.

(d) The redevelopment commission's redevelopment plan shall include, without being limited to, the following:

- (1) The boundaries of the area, with a map showing the existing uses of the real property therein;
- (2) A land use plan of the area showing proposed uses following redevelopment;
- (3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;
- (4) A preliminary site plan of the area;

- (5) A statement of the proposed changes, if any, in zoning ordinances or maps;
- (6) A statement of any proposed changes in street layouts or street levels;
- (7) A statement of the estimated cost and method of financing redevelopment under the plan; provided, that where redevelopment activities are performed on the basis of annual increments, such statement to be sufficient shall set forth a schedule of the activities proposed to be undertaken during the incremental period, together with a statement of the estimated cost and method of financing such scheduled activities only;
- (8) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this Article;
- (9) A statement of a feasible method proposed for the relocation of the families displaced.

(e) The commission shall hold a public hearing prior to its final determination of the redevelopment plan. Notice of such hearing shall be given once a week for two successive calendar weeks in a newspaper published in the municipality, or if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than 15 days prior to the date fixed for said hearing.

(f) The commission shall submit the redevelopment plan to the planning commission for review. The planning commission, shall, within 45 days, certify to the redevelopment commission its recommendation on the redevelopment plan, either of approval, rejection or modification, and in the latter event, specify the changes recommended.

(g) Upon receipt of the planning commission's recommendation, or at the expiration of 45 days, if no recommendation is made by the planning commission, the commission shall submit to the governing body the redevelopment plan with the recommendation, if any, of the planning commission thereon. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs, which will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangements, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions or blight.

(h) The governing body, upon receipt of the redevelopment plan and the recommendation (if any) of the planning commission, shall hold a public hearing upon said plan. Notice of such hearing shall be given once a week for two successive weeks in a newspaper published in the municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than 15 days prior to the date fixed for said hearing. The notice shall describe the redevelopment area by boundaries, in a manner designed to be understandable by the general public. The redevelopment plan, including such maps, plans, contracts, or other documents as form a part of it, together with the recommendation (if any) of the planning commission and supporting data,

shall be available for public inspection at a location specified in the notice for at least 10 days prior to the hearing.

At the hearing the governing body shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known, and consider recommendations in writing with reference to the redevelopment plan.

(i) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(j) Subject to the proviso in subsection (c) of this section, upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the plan, in accordance with the provisions of this Article.

(k) A redevelopment plan may be modified at any time by the commission; provided that, if modified after the sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body as provided above. (1951, c. 1095, s. 10; 1961, c. 837, s. 8; 1965, c. 808; 1969, c. 254, s. 2; 1973, c. 426, s. 75.)

Each landowner has the right to know that the taking agency has on hand the money to pay for his property or, in lieu thereof, has

present authority to obtain it. *Redevelopment Comm'n v. Hagins*, 258 N.C. 220, 128 S.E.2d 391 (1962).

§ 160A-514. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project. — (a) A commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid.

(b) In entering and carrying out any contract for construction, demolition, moving of structures, or repair work or the purchase of apparatus, supplies, materials, or equipment, a commission shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes. In construing such provisions, the commission shall be considered to be the governing board of a "subdivision of the State," and a contract for demolition or moving of structures, shall be treated in the same manner as a contract for construction or repair. Compliance with such provisions shall not be required, however, where the commission enters into contracts with the municipality which created it for the municipality to furnish any such services, work, apparatus, supplies, materials, or equipment, the making of these contracts without advertisement or bids is hereby specifically authorized. Advertisement or bids shall not be required for any contract for construction, demolition, moving of structures, or repair work, or for the purchase of apparatus, supplies, materials, or equipment, where such contract involves the expenditure of public money in an amount less than five hundred dollars (\$500.00).

(c) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this Article; provided that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (d) below.

(d) Except as hereinafter specified, no sale of any property by the commission or agreement relating thereto shall be effected except after advertisement, bids and award as hereinafter set out. The commission shall, by public notice, by publication once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. The commission may require such bid bonds as it deems appropriate. After receipt of all bids, the sale shall be made to the highest responsible bidder. All bids may be rejected. All sales shall be subject to the approval of the governing body of the municipality. Nothing herein, however, shall prevent the sale at private sale without advertisement and bids to the municipality or other public body, or to a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, of such property as is specified in subdivisions (1), (2), (3), or (4) of subsection (e) of this section, provided that such sale is in accordance with the provisions of said subdivisions. The commission may also sell personal property of a value of less than five hundred dollars (\$500.00) at private sale without advertisement and bids.

(e) In carrying out a redevelopment project, the commission may:

- (1) With or without consideration and at private sale convey to the municipality in which the project is located such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways;
- (2) With or without consideration, convey at private sale, grant, or dedicate easements and rights-of-way for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan; and
- (3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body such real property as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.
- (4) After a public hearing advertised in accordance with the provisions of G.S. 160A-513(e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made.

(f) After receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

- (1) Plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure and general character of the proposed redevelopment;
- (2) A statement of the use intended for each part of the proposed redevelopment;

- (3) A guaranty of completion of the proposed redevelopment within specified time limits;
- (4) The amount, if known, of the consideration to be paid;
- (5) Adequate safeguards for proper maintenance of all parts of the proposed redevelopment;
- (6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this Article.

Any deed to a redeveloper in furtherance of a redevelopment contract shall be executed in the name of the commission, by its proper officers, and shall contain in addition to all other provisions, such conditions, restrictions and provisions as the commission may deem desirable to run with the land in order to effectuate the purposes of this Article.

(g) The commission may temporarily rent or lease, operate and maintain real property in a redevelopment project area, pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. (1951, c. 1095, s. 11; 1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2; 1965, c. 679, s. 2; 1967, c. 24, s. 18; c. 932, s. 1; 1973, c. 426, s. 75.)

Local Modification. — Durham, Lee, Mecklenburg, Robeson, Sampson and Wayne: 1971, c. 1060; 1973, c. 308; city of Asheboro: 1971, c. 1060; 1973, c. 308; city of New Bern: 1965, c. 1206; 1967, c. 815; 1971, c. 1060; 1973, c. 1104;

city of Williamston: 1971, c. 1060; 1975, c. 470; towns of Chapel Hill and Tarboro: 1973, c. 346; 1975, c. 379.

Applied in *Campbell v. First Baptist Church*, 19 N.C. App. 343, 199 S.E.2d 34 (1973).

§ 160A-515. Eminent domain. — Title to any property acquired by a commission through eminent domain shall be an absolute or fee simple title, unless a lesser title shall be designated in the eminent domain proceedings. The commission may exercise the right of eminent domain in accordance with the provisions of Article 2 of Chapter 40 of the General Statutes, with the following modifications:

- (1) Upon the request in writing of any party to the proceeding submitted as part of the petition or of any answer thereto, the clerk of superior court shall order and preside over a formal hearing before the commissioners of appraisal at the time of their first meeting. At such hearing any party or his attorney shall be afforded an opportunity to present such competent evidence as he may choose relating to the value of the property in question.
- (2) Upon payment into court of the amount specified by the commissioners, as provided in G.S. 40-19, title to the property or other interest specified in the petition, together with the right to immediate possession thereof, shall vest in the commission, and the court or judge shall enter such orders in the cause as may be required to place the commission in possession. Such property or interest therein shall be deemed to be condemned and the right to just compensation therefor shall vest in the person or persons owning said property or any compensable interest therein. Payment into court of this amount shall not prejudice the right of the commission to take an appeal as to the amount of compensation payable for the property.
- (3) Following payment into court of the amount specified by the commissioners, the court may upon application of the person or persons owning said property or having any compensable interest therein (and subject to the provisions of G.S. 40-23) order that the money deposited or any part thereof be paid to the person or persons entitled thereto. The court shall have power to make such orders with respect to

encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

Acceptance or receipt of money thus disbursed shall not prejudice the right of any party to further proceedings in the cause to determine just compensation, and in the event that an increased amount is awarded, the amount thus received shall be applied as a credit against the total compensation awarded. In the event that a lesser amount is awarded, the appropriate amount shall be returned to the court for repayment to the redevelopment commission, and the court shall have power to make any necessary orders requiring such repayment.

- (4) To the amount awarded as damages by the commissioners, jury, or judge, the judge shall as a part of just compensation add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this section. For the purposes of this subdivision, the "date of taking" shall be the date on which the petition is filed.
- (5) Pending disbursement of any funds thus paid into court, the clerk of superior court may in his discretion invest part or all of said funds as permitted by G.S. 7A-112. Any interest or dividends accruing from such deposit shall be applied to the sum finally ascertained to be due the owners of the property taken, and any excess resulting shall be returned to the redevelopment commission.

Subdivisions (2), (3), (4), (5) shall not be applicable in a suit against a corporation possessing the power of eminent domain under Chapter 40 of the General Statutes in which such corporation, by its answer, raises the issue of the right of the commission to condemn the land or interest therein of such corporation.

General Statutes 40-10 shall not apply to the commission. If any of the real property in the redevelopment area which is to be acquired has, prior to such acquisition, been devoted to another public use, it may, nevertheless, be acquired by condemnation; provided, that no real property belonging to any municipality or county or to the State may be acquired without its consent. The Department of Administration is hereby empowered to give such consent on behalf of the State; the governing board of any municipality or county is authorized to give such consent on behalf of the municipality or county. (1951, c. 1095, s. 12; 1965, c. 679, s. 3; c. 1132; 1967, c. 932, ss. 2, 3; 1973, c. 426, s. 75.)

§ 160A-516. Issuance of bonds. — (a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

- (1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or
- (2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said commission acquired for the purpose of this Article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes. Bonds may be issued by a commission under this Article notwithstanding any debt or other limitation prescribed in any statute. This Article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorization and issuance shall not be subject to any conditions, restrictions or limitations imposed by any other statute whether general, special or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) Bonds shall be sold by the redevelopment commission at public sale upon such terms and in such manner, consistent with the provisions hereof, as the redevelopment commission may determine. Prior to the sale of bonds hereunder, the redevelopment commission shall first cause a notice of the sale of the bonds to be published at least once at least 10 days before the date fixed for the receipt of bids for the bonds (i) in a newspaper having the largest or next largest circulation in the redevelopment commission's area of operation and (ii) in a publication that carries advertisements for the sale of State and municipal bonds published in the City of New York in the State of New York; provided, however, that in its discretion the redevelopment commission may cause any such notice of sale in the New York publication to be published as part of a consolidated notice of sale offering for sale the obligations of other public agencies in addition to the redevelopment commission's bonds, and provided, further, that any bonds may be sold by the redevelopment commission to the government at private sale upon such terms and conditions as are mutually agreed upon between the commission and the government. No bonds issued pursuant to this Article shall be sold at less than par and accrued interest. The provisions of the Local Government Act shall not be applicable with respect to bonds sold or issued under this Article.

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this Article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a

redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Article. (1951, c. 1095, s. 13; 1961, c. 837, s. 10; 1971, c. 87, s. 3; 1973, c. 426, s. 75.)

§ 160A-517. Powers in connection with issuance of bonds. — (a) In connection with the issuance of bonds or the incurring of obligations and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

- (1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;
- (2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;
- (3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any redevelopment project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;
- (4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds, to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof;
- (5) To covenant (subject to the limitations contained in this Article) as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;
- (6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;
- (7) To covenant as to the use, maintenance and replacement of any of or all of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys, and to warrant its title to such property;
- (8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (9) To vest in any obligees of the commissions the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default to take possession of and use, operate and manage any redevelopment project or any part thereof, title to which is in the commission, or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose

of such moneys in accordance with the agreement with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof, and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

- (10) To exercise all or any part or combination of the powers herein granted; to make such covenants (other than and in addition to the covenants herein expressly authorized) and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said commission, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

(b) The commission shall have power by its resolution, trust indenture, mortgage lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

- (1) To cause possession of any redevelopment project or any part thereof title to which is in the commission, to be surrendered to any such obligee;
- (2) To obtain the appointment of a receiver of any redevelopment project of said commission or any part thereof, title to which is in the commission and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of, carry out, operate and maintain such project or any part therefrom and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct; and
- (3) To require said commission and the commissioners, officers, agents and employees thereof to account as if it and they were the trustees of an express trust. (1951, c. 1095, s. 14; 1973, c. 426, s. 75.)

§ 160A-518. Right of obligee. — An obligee of the commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

- (1) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this Article; and
- (2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission. (1951, c. 1095, s. 15; 1973, c. 426, s. 75.)

§ 160A-519. Cooperation by public bodies. — (a) For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

- (1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a commission;
- (2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise

empowered to undertake, to be furnished in connection with a redevelopment project;

- (3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;
- (4) Plan or replan, zone or rezone any part of the redevelopment;
- (5) Cause administrative and other services to be furnished to the commission of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;
- (6) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;
- (7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan;

(b) Any sale, conveyance, or agreement provided for in this section may be made by a public body without public notice, advertisement or public bidding. (1951, c. 1095, s. 16; 1973, c. 426, s. 75.)

§ 160A-520. Grant of funds by community. — Any municipality located within the area of operation of a commission may appropriate funds to a commission for the purpose of aiding such commission in carrying out any of its powers and functions under this Article. To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds. (1951, c. 1095, s. 17; 1973, c. 426, s. 75.)

§ 160A-521. Records and reports. — (a) The books and records of a commission shall at all times be open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, shall be filed with the city clerk and shall be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required shall be made. Copies of such reports shall be filed with the mayor and governing body of the municipality. (1951, c. 1095, s. 18; 1973, c. 426, s. 75.)

§ 160A-522. Title of purchaser. — Any instrument executed by a commission and purporting to convey any right, title or interest in any property under this Article shall be conclusive evidence of compliance with the provisions of this Article insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. (1951, c. 1095, s. 19; 1973, c. 426, s. 75.)

§ 160A-523. Preparation of general plan by local governing body. — The governing body of any municipality or county, which is not otherwise authorized to create a planning commission with power to prepare a general plan for the development of the community, is hereby authorized and empowered to prepare such a general plan prior to the initiation and carrying out of a redevelopment project under this Article. (1951, c. 1095, s. 20; 1973, c. 426, s. 75.)

§ 160A-524. Inconsistent provisions. — Insofar as the provisions of this Article are inconsistent with the provisions of any other law, the provisions of this Article shall be controlling. (1951, c. 1095, s. 22; 1955, c. 1349; 1957, c. 502, s. 4; 1973, c. 426, s. 75.)

§ 160A-525. Certain actions and proceedings validated. — All proceedings, resolutions, ordinances, motions, notices, findings, determinations, and other actions of redevelopment commissions, incorporated cities and towns, governing bodies, and planning boards and commissions, had and taken prior to January 1, 1965, pursuant to or purporting to comply with the Urban Redevelopment Law (G.S. 160A-500 to 160A-526) and incident to the creation and organization of redevelopment commissions and appointment of members thereof, designation of redevelopment and project areas, findings and determinations respecting conditions in redevelopment and project areas, preparation, development, review, processing and approval of urban redevelopment projects and plans, including redevelopment plans, calling and holding of public hearings, and the time and manner of giving and publishing notices thereof, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such actions are declared to be valid and lawfully authorized; provided, however, that no such actions shall be legalized, ratified, approved, validated or confirmed under this section if they appertain to any redevelopment or project area, the acquisition or taking of any property in any such area, any urban redevelopment project or any redevelopment plan respecting which any decree or judgment has been rendered by the Supreme Court of North Carolina prior to May 25, 1965. (1963, c. 194; 1965, c. 680; 1973, c. 426, s. 75.)

§ 160A-526. Contracts and agreements validated. — All contracts or agreements of redevelopment commissions heretofore entered into with the federal government or its agencies, and with municipalities or others relating to financial assistance for redevelopment projects in which it was required that loans or advances shall bear an interest rate in excess of six per centum (6%) per annum, or in which a municipality or others had agreed to pay funds equal to the interest in excess of six per centum (6%) per annum are hereby validated, ratified, confirmed, approved and declared legal with respect to the payment of interest in excess of six per centum (6%), and all things done or performed in reference thereto. The redevelopment commissions are hereby authorized to assume the full obligation of the municipalities under the contracts or agreements with reference to interest in excess of six per centum (6%), and to reimburse any municipality which has made any interest payment under such contracts or agreements. (1971, c. 87, s. 4; 1973, c. 426, s. 75.)

§§ 160A-527 to 160A-534: Reserved for future codification purposes.

ARTICLE 23.

Municipal Service Districts.

§ 160A-535. Title; effective date. — This Article may be cited as "The Municipal Service District Act of 1973," and is enacted pursuant to Article V, Sec. 2(4) of the Constitution of North Carolina, effective July 1, 1973. (1973, c. 655, s. 1.)

§ 160A-536. Purposes for which districts may be established. — The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

- (1) Beach erosion control and flood and hurricane protection works;
- (2) Downtown revitalization projects;
- (3) Drainage projects; and
- (4) Off-street parking facilities.

As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a municipal service district shall not prejudice the city's authority to undertake urban renewal projects in the same area. (1973, c. 655, s. 1.)

§ 160A-537. Definition of service districts. — (a) Standards. — The city council of any city may by resolution define a service district upon finding that a proposed district is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.

(b) Report. — Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

- (1) A map of the proposed district, showing its proposed boundaries;
- (2) A statement showing that the proposed district meets the standards set out in subsection (a); and
- (3) A plan for providing in the district one or more of the services listed in G.S. 160A-536.

The report shall be available for public inspection in the office of the city clerk for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The city council shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed by first-class mail at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council. (1973, c. 655, s. 1.)

§ 160A-538. Extension of service districts. — (a) Standards. — The city council may by resolution annex territory to any service district upon finding that:

- (1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;
- (2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. — The city council may also by resolution extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the council for annexation to the service district.

(c) Report. — Before the public hearing required by subsection (d), the council shall cause to be prepared a report containing:

- (1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;
- (2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a) or (b); and
- (3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the city clerk for at least two weeks before the date of the public hearing.

(d) Hearing and Notice. — The council shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (c) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(e) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the council. (1973, c. 655, s. 1.)

§ 160A-539. Consolidation of service districts. — (a) The city council may by resolution consolidate two or more service districts upon finding that:

- (1) The districts are contiguous or are in a continuous boundary; and
- (2) The services provided in each of the districts are substantially the same; or
- (3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report. — Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

- (1) A map of the districts to be consolidated;
- (2) A statement showing the proposed consolidation meets the standards of subsection (a); and
- (3) If necessary, a plan for increasing the services for one or more of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the city clerk for at least two weeks before the public hearing.

(c) Hearing and Notice. — The city council shall hold a public hearing before adopting any resolution consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the council. (1973, c. 655, s. 1.)

§ 160A-540. Required provision or maintenance of services. — (a) New District. — When a city defines a new service district, it shall provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a city annexes territory for a service district, it shall provide, maintain, or let contracts for the services provided or maintained throughout the district to the residents of the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

(c) Consolidated District. — When a city consolidates two or more service districts, one of which has had provided or maintained a lower level of services, it shall increase the services within that district (or let contracts therefor) to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 655, s. 1.)

§ 160A-541. Abolition of service districts. — Upon finding that there is no longer a need for a particular service district, the city council may by resolution abolish that district. The council shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the council. (1973, c. 655, s. 1.)

Editor's Note. — Session Laws 1973, c. 655, s. 2, provides that this section and § 160A-542 become effective on July 1, 1973, "but all acts necessary to approve a tax levy or issue bonds

on or after July 1, 1973, may be taken at any time after ratification of this act." The act was ratified May 22, 1973.

§ 160A-542. Taxes authorized; rate limitation. — A city may levy property taxes within defined service districts in addition to those levied throughout the city, in order to finance, provide or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire city. In addition, a city may allocate to a service district any other revenues whose use is not otherwise restricted by law.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the city as of the preceding January 1.

Property taxes may not be levied within any district established pursuant to this Article in excess of a rate on each one hundred dollar (\$100.00) value of property subject to taxation which, when added to the rate levied city wide for purposes subject to the rate limitation, would exceed the rate limitation established in G.S. 160A-209(d), unless that portion of the rate in excess of this limitation is submitted to and approved by a majority of the qualified voters residing within the district. Any referendum held pursuant to this paragraph shall be held and conducted as provided in G.S. 160A-209.

This Article does not impair the authority of a city to levy special assessments pursuant to Article 10 of this Chapter for works authorized by G.S. 160A-491, and may be used in addition to that authority. (1973, c. 655, s. 1.)

Editor's Note. — Session Laws 1973, c. 655, s. 2, provides that § 160A-541 and this section become effective on July 1, 1973, "but all acts necessary to approve a tax levy or issue bonds

on or after July 1, 1973, may be taken at any time after ratification of this act." The act was ratified May 22, 1973.

§ 160A-543. Bonds authorized. — A city may issue its general obligation bonds under the Local Government Bond Act to finance services, facilities or functions provided within a service district. If a proposed bond issue is required by law to be submitted to and approved by the voters of the city, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than city wide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire city and by a majority of the total of those voting in all of the affected or to be affected service districts. (1973, c. 655, s. 1.)

Chapter 160B.
Consolidated City-County Act.

Article 1.

Title and Definition.

- Sec.
160B-1. Title; effective date.
160B-2. Definitions.

Article 2.

Defining Urban Service Districts.

- 160B-3. Authority; purpose of districts.
160B-4. Definition of urban service districts to replace municipalities abolished at the time of consolidation.
160B-5. Definition of urban service districts to replace municipalities abolished subsequent to consolidation.
160B-6. Definition of urban service districts where no municipality existed.
160B-7. Extension of urban service districts.
160B-8. Consolidation of urban service districts.

Sec.

- 160B-9. Required provision or maintenance of services, facilities and functions.
160B-10. Abolition of urban service districts.

Article 3.

Levy of Taxes in Urban Service Districts.

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160B-13. Authority to borrow money and issue bonds.
160B-14. Procedure for issuing general obligation and revenue bonds.
160B-15. Debt limitations.

Editor's Note. — Session Laws 1973, c. 537, s. 8, contains a severability clause.

ARTICLE 1.

Title and Definition.

§ 160B-1. **Title; effective date.** — This Chapter shall be cited as the "Consolidated City-County Act of 1973" and is enacted pursuant to Article V, Sec. 2(4) of the North Carolina Constitution, effective July 1, 1973. (1973, c. 537, s. 1.)

§ 160B-2. **Definitions.** — In this Chapter:

- (1) "Consolidated city-county" means any county where the largest municipality in the county has been abolished and its powers, duties, rights, privileges and immunities consolidated with those of the county. Other municipalities in the county, if any, may or may not have been abolished and their powers, duties, rights, privileges and immunities consolidated with those of the county.
- (2) "Governing board" means the governing board of a consolidated city-county. (1973, c. 537, s. 1.)

ARTICLE 2.

Defining Urban Service Districts.

§ 160B-3. **Authority; purpose of districts.** — The governing board may define any number of urban service districts in order to finance, provide or

maintain for the districts services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire consolidated city-county. (1973, c. 537, s. 1.)

§ 160B-4. Definition of urban service districts to replace municipalities abolished at the time of consolidation. — The governing board, by resolution, may define an urban service district within the boundaries of the largest municipality that existed in the county before consolidation and within the boundaries of any other municipality abolished at the time of the establishment of the consolidated city-county. Any urban service district so defined shall comprise the total area of the abolished municipality as it existed immediately before the effective date of consolidation. The resolution shall take effect upon its adoption. (1973, c. 537, s. 1.)

§ 160B-5. Definition of urban service districts to replace municipalities abolished subsequent to consolidation. — The governing board, by resolution, may define an urban service district within the boundaries of any municipality within the consolidated city-county the citizens of which, subsequent to the establishment of the consolidated city-county, have voted in a referendum to abolish their municipality and consolidate its powers, duties, rights, privileges and immunities with those of the consolidated city-county. An urban service district so defined shall comprise the total area of the municipality as it existed immediately before the effective date of its abolition. The resolution shall take effect at the beginning of the fiscal year next occurring after its adoption. (1973, c. 537, s. 1.)

§ 160B-6. Definition of urban service districts where no municipality existed. — (a) Standards. — The governing board, by resolution, may define an urban service district upon finding that a proposed district:

- (1) Has a resident population of at least 1,000;
- (2) Has a resident population density of at least one person per acre;
- (3) Has an assessed valuation of at least two and one-half million dollars (\$2,500,000);
- (4) Requires one or more of the services, facilities and functions that are provided or maintained only or to a greater extent for an urban service district; and
- (5) Does not include any territory within an active incorporated municipality.

(b) Report. — Prior to the public hearing required by subsection (c), the consolidated city-county shall prepare a report containing:

- (1) A map of the proposed district, showing its proposed boundaries;
- (2) A statement showing that the proposed district meets the standards of subsection (a); and
- (3) A plan for providing urban services, facilities and functions for the district.

The report shall be available in the office of the clerk of the consolidated city-county for at least two weeks prior to the date of the public hearing.

(c) Hearing and Notice. — The governing board shall hold a public hearing prior to adoption of any resolution defining a new urban service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk of the consolidated city-county. The notice shall be published in a newspaper of general circulation in the county at least once and not less than one week prior to the date of the hearing. In addition it shall be mailed at least four weeks prior to the date of the hearing to the owners as shown by the tax records of the consolidated city-county of all

property located within the proposed district. The person designated by the governing board to mail the notice shall certify to the governing board that the mailing has been completed and his certificate shall be conclusive in the absence of fraud. The hearing may be held within the proposed district.

(d) **Effective Date.** — The resolution defining an urban service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the governing board. (1973, c. 537, s. 1.)

§ 160B-7. Extension of urban service districts. — (a) **Standards.** — The governing board, by resolution, may extend by annexation the boundaries of any urban service district upon finding that:

- (1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;
- (2) The area to be annexed has a resident population density of at least one person per acre and an assessed valuation of at least one thousand dollars (\$1,000) per resident person; or the area to be annexed is so developed that at least sixty per cent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes and at least sixty per cent (60%) of the total acreage of the area at the time of annexation is devoted to these uses; and
- (3) The area to be annexed requires the services, facilities or functions that are provided for the contiguous urban service district.

(b) **Annexation by Petition.** — The governing board also, by resolution, may extend by annexation the boundaries of any urban service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the governing board for annexation to the service district.

(c) **Report.** — Prior to the public hearing required by subsection (d), the consolidated city-county shall prepare a report containing:

- (1) A map of the urban service district and the adjacent territory, showing the present and proposed boundaries of the district;
- (2) A statement showing that the area to be annexed meets the standards of subsection (a) or comes before the governing board by petition as provided by subsection (b); and
- (3) A plan for extending urban services, facilities and functions to the area to be annexed.

The report shall be available in the office of the clerk of the consolidated city-county for at least two weeks prior to the date for the public hearing.

(d) **Hearing and Notice.** — The governing board shall hold a public hearing prior to adoption of any resolution extending the boundaries of an urban service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (c) is available for inspection in the office of the clerk of the consolidated city-county. Notice shall be published in a newspaper of general circulation in the county at least once and not less than one week prior to the date of the hearing. In addition notice shall be mailed at least four weeks prior to the date of the hearing to the owners as shown by the tax records of the consolidated city-county on all property located within the area to be annexed. The person designated by the governing board to mail the notice shall certify to the governing board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(e) **Effective Date.** — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the governing board.

(f) A consolidated city-county may not utilize the procedures of this section to annex to an urban service district territory within the boundaries of an active incorporated municipality. (1973, c. 537, s. 1.)

§ 160B-8. Consolidation of urban service districts. — (a) Standards. — The governing board, by resolution, may consolidate two or more urban service districts upon finding that:

- (1) The districts are contiguous or are in a continuous boundary; and
- (2) The provision or maintenance of urban services, facilities and functions for each of the districts is substantially the same; or
- (3) If the provision or maintenance of urban services, facilities and functions is lower for one of the districts, there is a need to increase those services, facilities and functions for that district. However, no urban service district providing electric or telephone services may be consolidated with any other urban service district unless the voters of the district providing these utility services approve the consolidation in a referendum held for that purpose. Any consolidated city-county may hold these referendums.

(b) Report. — Prior to the public hearing required by subsection (c), the consolidated city-county shall prepare a report containing:

- (1) A map of the districts to be consolidated;
- (2) A statement showing the proposed consolidation meets the standards of subsection (a); and
- (3) If necessary, a plan for increasing the urban services, facilities and functions for one of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the clerk of the consolidated city-county for at least two weeks prior to the date of the public hearing.

(c) Hearing and Notice. — The governing board shall hold a public hearing prior to adoption of any resolution consolidating urban service districts. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk of the consolidated city-county. Notice shall be published in a newspaper of general circulation in the county at least once and not less than two weeks prior to the date of the hearing. In addition, if the services, facilities and functions for one of the districts will be substantially increased as a result of the consolidation, notice shall be mailed at least four weeks prior to the date of the hearing to the owners as shown by the tax records of the consolidated city-county of all property located within the district. The person designated by the governing board to mail the notice shall certify to the governing board that the mailing has been completed and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The consolidation of urban service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the governing board. (1973, c. 537, s. 1.)

§ 160B-9. Required provision or maintenance of services, facilities and functions. — (a) New District. — When a consolidated city-county defines a new urban service district, it shall provide or maintain the services, facilities and functions for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a consolidated city-county annexes territory to an urban service district, it shall provide or maintain the services, facilities and functions provided or maintained throughout the district to the residents

of the area annexed to the district within a reasonable time not to exceed one year, after the effective date of the annexation.

(c) Consolidated District.— When a consolidated city-county consolidates two or more urban service districts, one of which has provided or maintained a lower level of urban services, it shall increase the services, facilities and functions within that district to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 537, s. 1.)

§ 160B-10. Abolition of urban service districts. — Upon finding that there is no longer a need for a particular urban service district, the governing board, by resolution, may abolish that district. The governing board shall hold a public hearing prior to adoption of a resolution abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published in a newspaper of general circulation in the county at least once a week for two successive weeks prior to the date of the hearing. The abolition of any urban service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the governing board. (1973, c. 537, s. 1.)

ARTICLE 3.

Levy of Taxes in Urban Service Districts.

§ 160B-11. Taxes authorized; limits. — A consolidated city-county may levy the following taxes within defined urban service districts in addition to those levied throughout the county, in order to finance, provide or maintain for the districts services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county.

- (1) Property Taxes. — A consolidated city-county may levy within any urban service district a tax on property at a rate not to exceed one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) of appraised valuation. This rate limitation does not apply to property taxes levied (i) for debt service on general obligation bonds of the consolidated city-county, (ii) for the support of the public schools or (iii) for any purpose approved by a special vote of the people.
- (2) Motor Vehicle and Taxicab License Taxes. — A consolidated city-county may levy within any urban service district the motor vehicle and taxicab license taxes authorized in G.S. 20-97.
- (3) Privilege License Taxes. — A consolidated city-county may levy within any urban service district privilege license taxes as authorized for cities and towns under the general law of the state. (1973, c. 537, s. 1.)

ARTICLE 4.

Allocation of Other Revenues.

§ 160B-12. Other allocation authorized. — A consolidated city-county may allocate to any urban service district it creates any other revenues of the consolidated government whose use is not otherwise restricted by law. (1973, c. 537, s. 1.)

§ 160B-13. Authority to borrow money and issue bonds. — A consolidated city-county may borrow money and issue its bonds under Chapter 159, Subchapter IV, and for those purposes shall be considered a unit of local government under Article 4 thereof and a municipality under Article 5 thereof. A consolidated city-county may borrow money and issue its bonds for any purpose for which either a city or a county may do so. (1973, c. 537, s. 1.)

§ 160B-14. Procedure for issuing general obligation and revenue bonds. — In issuing its general obligation and revenue bonds, a consolidated city-county, except as expressly modified by this Part, is subject to the provisions of Chapter 159 of the General Statutes of North Carolina.

If a proposed bond issue is required by law to be submitted to and approved by the voters of the consolidated government, and if the proceeds of the proposed bond issue are to be used in connection with a service, facility or function that is or, if the bond issue is approved, will be financed, provided or maintained only for one or more urban service districts, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire consolidated government and by a majority of the total of those voting in all the affected or to be affected urban service districts. (1973, c. 537, s. 1.)

§ 160B-15. Debt limitations. — The net indebtedness in the form of general obligations of a consolidated city-county for school purposes may not exceed eight percent (8%) of the appraised valuation of taxable property in the county. The net indebtedness in the form of general obligations of a consolidated city-county for all purposes other than for schools or water, sewerage, gas and electric purposes may not exceed eight percent (8%) of the appraised valuation of taxable property in the county. No other debt limitations applying to counties and municipalities in North Carolina apply to a consolidated city-county. (1973, c. 537, s. 1.)

Chapter 161.
Register of Deeds.

Article 1.

The Office.

- Sec.
161-2. Four-year term for registers of deeds; counties excepted.
161-5. Vacancy in office.
161-10. Uniform fees of registers of deeds.
161-10.1. Exemption of armed forces discharge documents and certain other records needed in support of claims for veterans' benefits.
161-11. [Repealed.]

Article 2.

The Duties.

- 161-12, 161-13. [Repealed.]

Sec.

- 161-14.01. Registration of instruments for business and other purposes.
161-22. Index and cross-index of registered instruments.
161-24, 161-25. [Repealed.]
161-29. Validating acts of assistant and deputy registers of deeds in failing to execute instruments in the name of the register of deeds.
161-30. Modernization of land records.

ARTICLE 1.

The Office.

§ 161-2. Four-year term for registers of deeds; counties excepted. — At the general election for the year 1936 and quadrennially thereafter there shall be elected in each county of this State by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Beaufort, Cherokee, Clay, Dare, Davidson, Halifax, Haywood, Hyde, Jackson, Johnston, Lincoln, Macon, Mitchell, Moore, Orange, Rowan, Swain, Vance and Yadkin Counties. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192; 1949, cc. 756, 830; 1957, c. 1022, s. 2; 1973, c. 215, s. 1.)

Editor's Note. — The 1973 amendment deleted Iredell from the list of counties in the proviso.

Section 2 of the 1973 amendatory act provides: "It is the purpose and intent of this act that the

Register of Deeds of Iredell County shall, from and after the primary election and general election of 1974, be elected to a term of four years."

§ 161-5. Vacancy in office. — (a) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law.

In those counties subject to this paragraph, when a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by appointment of a successor for the unexpired term. The successor shall be from the same political party as the register of deeds being succeeded, and shall qualify and give bond as required by law. The appointment shall be from a list of three persons recommended by the county executive committee of the same political party as the register of deeds being succeeded, and these recommendations shall be made within 30 days of the vacancy and the appointment shall be made within 30 days from the receipt of recommendations; provided, if no recommendations are made within 30 days the county commissioners may proceed to fill the vacancy. This paragraph shall

apply only to the Counties of Buncombe, Cherokee, Clay, Forsyth, Graham, Haywood, Jackson, Macon, Madison, Swain and Transylvania.
(1975, c. 868, ss. 1, 2.)

Local Modification. — Beaufort: 1975, c. 202.

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

Editor's Note. — The 1975 amendment added the second paragraph of subsection (a).

§ 161-10. Uniform fees of registers of deeds. — (a) In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

- (1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be two dollars (\$2.00) for the first page, which page shall not exceed eight and one-half inches by 14 inches, plus one dollar (\$1.00) for each additional page or fraction thereof. A page exceeding eight and one-half inches by 14 inches shall be considered two pages.
- (2) Marriage Licenses. — For issuing a license — seven dollars (\$7.00); for issuing a delayed certificate with one certified copy — five dollars (\$5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy — five dollars (\$5.00).
- (3) Plats. — For each original or revised plat recorded — seven dollars (\$7.00); for furnishing a certified copy of a plat — two dollars (\$2.00).
- (4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded — five dollars (\$5.00). This fee is to be collected from the Board of Transportation.
- (5) Registration of Birth Certificate Four Years or More after Birth. — For preparation of necessary papers when birth to be registered in another county — two dollars and fifty cents (\$2.50); for registration when necessary papers prepared in another county, with one certified copy — two dollars and fifty cents (\$2.50); for preparation of necessary papers and registration in the same county, with one certified copy — five dollars (\$5.00).
- (6) Amendment of Birth or Death Record. — For preparation of amendment and effecting correction — one dollar (\$1.00).
- (7) Legitimations. — For preparation of all documents concerned with legitimations — five dollars (\$5.00).
- (8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license — one dollar (\$1.00).
- (9) Certified Copies. — For furnishing a certified copy of any instrument for which no other provision is made by this section — one dollar (\$1.00) per page or fraction thereof.
- (10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof — one dollar (\$1.00).
- (11) Uncertified Copies. — When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

- (12) Acknowledgment. — For taking an acknowledgment, oath, or affirmation or for the performance of any notarial act — one dollar (\$1.00). This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.
- (13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.
- (14) Torrens Registration. — Such fees as are provided in G.S. 43-5.
- (15) Master Forms. — Such fees as are provided for instruments in general.
- (16) Probate. — For certification of instruments for registration as provided in G.S. 47-14 — fifty cents (\$.50).
- (17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10-2 — three dollars (\$3.00).
- (18) Reinstatements of Articles of Incorporation. — For filing reinstatements of articles of incorporation prepared pursuant to G.S. 105-232 — two dollars (\$2.00). The fee shall be paid by the corporation affected.
- (b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.
- (c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C. S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" in subdivision (4) of subsection (a).

The second 1973 amendment, effective July 1, 1974, substituted "seven dollars (\$7.00)" for "five dollars (\$5.00)" near the beginning of subdivision (2) and in subdivision (3), added present subdivisions (7) and (8) and redesignated former subdivisions (7) through (10) as (9) through (12), eliminated former subdivision (11),

relating to federal tax liens, and redesignated former subdivisions (13) through (16) as (12) through (17), all in subsection (a). The amendment also substituted "one dollar (\$1.00)" for "fifty cents (\$.50)" in the first sentence of present subdivision (12) and "for instruments in general" for "in G.S. 47-21" in present subdivision (15) and "three dollars (\$3.00)" for "one dollar (\$1.00)" at the end of present subdivision (17) of subsection (a).

The 1975 amendment, effective July 1, 1975, added subdivision (18) of subsection (a).

§ 161-10.1. Exemption of armed forces discharge documents and certain other records needed in support of claims for veterans' benefits. — Any schedule of fees which is now or may be prescribed in Chapter 161 of the General Statutes or in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of Article 5 of Chapter 47 of the General Statutes. Any schedule of fees which is now or may be hereafter prescribed in Chapter 161 of the General Statutes or as may appear in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of G.S. 165-11. (1971, c. 679.)

Editor's Note. —

This section is set out to correct a typographical error in the replacement volume.

§ 161-11: Repealed by Session Laws 1973, c. 1027.

ARTICLE 2.

The Duties.

§§ 161-12, 161-13: Repealed by Session Laws 1973, c. 1027.

§ 161-14.01. Registration of instruments for business and other purposes.

— (a) The register of deeds is hereby authorized to record and file documents relating to persons, partnerships, and corporations for business and other purposes, including but not limited to certificates of partnerships, assumed business names, incorporations, dissolutions, or amendments thereto, in a consolidated book or record, including books or records used for the filing of deeds, deeds of trust, leases, and similar documents. It is the intent of this section that the register of deeds may file and record some or all of the above instruments and documents and those of a similar nature in one book or record or in a series of books or records consolidated for recording purposes; provided, said instruments and documents shall be indexed as required by law.

(b) All other laws providing for the filing of documents provided for herein shall not be applicable to the county upon adoption by the register of deeds of a consolidated recording and filing system as authorized herein. (1973, c. 1013, ss. 1, 2.)

§ 161-22. Index and cross-index of registered instruments. — The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well-bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within 24 hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and wherever the "Family" index system shall be in use, to also show the name of each party under the appropriate family name and the initials of said party under the appropriate alphabetical arrangement of said index; and all instruments shall be indexed according to the particular system in use in the respective office in which the instrument is filed for record. Reference shall be made, opposite each name to the page, title or number of the book in which is registered any instrument: Provided, that where the "Family" system hereinbefore referred to has not been installed, but there has been installed an indexing system having subdivisions of the several letters of the alphabet, a registered instrument shall be deemed to be properly indexed only when the same shall have been indexed under the correct subdivision of the appropriate letter of the alphabet: Provided, further, that no instrument shall be deemed to be properly registered until the same has been properly indexed as herein provided: Provided, further, that in all counties where a separate index system is kept for chattel mortgages or other instruments concerning personal property, no instrument affecting the title to real estate shall be deemed to be properly registered until the same has been properly registered and indexed in the books and index system kept for real estate conveyances. A violation of this section shall constitute a misdemeanor.

Notwithstanding any provision to the contrary in this section or elsewhere in the General Statutes of North Carolina, the register of deeds may index deeds of trust in the name of the grantor and the trustee only.

The register of deeds of every county shall index any certificate filed in his office pursuant to G.S. 59-2, the Uniform Limited Partnership Act, only under the name of the partnership and of each of the general partners.

Every register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that such partnerships are indexed only under the name of the partnership and of each of the general partners. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C. S., s. 3561; 1929, c. 327, s. 2; 1967, cc. 443, 1262; 1973, c. 1136, ss. 1, 2.)

Editor's Note. — The 1973 amendment, effective Jan. 1, 1975, added the last paragraph.

§ 161-24: Repealed by Session Laws 1973, c. 108, s. 99.

§ 161-25: Repealed by Session Laws 1973, c. 803, s. 36, effective July 1, 1973.

§ 161-29. **Validating acts of assistant and deputy registers of deeds in failing to execute instruments in the name of the register of deeds.** — (a) Any and all acts and duties performed by any and all assistant or deputy registers of deeds in executing any instrument, while acting under the provisions of G.S. 161-6 or any other provisions of law, general, local or special, which failed to substantially comply with G.S. 161-6(b), shall be and the same are hereby validated, ratified and confirmed to all intents and purposes as if executed in full compliance with G.S. 161-6(b).

(b) The provisions of this validating act shall include all acts and duties of the office of assistant or deputy register of deeds, as enumerated and set forth under the specific provisions of this Chapter, or under the provisions of any general laws as set forth in the General Statutes of North Carolina, or in any other provisions of law, private, local or special. (1973, c. 166, ss. 1, 2.)

Editor's Note. — Session Laws 1973, c. 166, s. 3, provides: "This act shall be in full force and effect from and after its ratification. This act shall not affect pending litigation and shall

validate all acts and duties performed prior to the effective date of this act." The act was ratified April 11, 1973.

§ 161-30. **Modernization of land records.** — (a) The county commissioners of any county may require that the register of deeds shall not accept for registration any map or instrument affecting real property unless the following requirements are satisfied:

- (1) The name and address of the person to whom the map or instrument is to be returned is affixed on the face thereof.
- (2) The grantee's or owner's permanent mailing address is affixed on the face thereof.

(b) In any county in which parcel identifiers have been assigned to any of the real property situated within the county, the county commissioners may require that the register of deeds shall not accept for registration any map, deed, deed of trust or other instrument affecting real property unless the parcel identifier for all of the property described and affected is affixed and verified by the county on the face of the map or instrument or affixed and verified by the county as a part of the legal description contained in any instrument.

(c) Failure to comply with the provisions of subsections (a) and (b) above shall not affect the validity of any map or other instrument that is duly recorded. (1973, c. 992.)

Chapter 162.

Sheriff.

Article 1.

The Office.

Sec.

162-5. Vacancy filled; duties performed by coroner or chief deputy.

162-6, 162-7. [Repealed.]

Article 3.

Duties of Sheriff.

162-14. Execute process; penalty for false return.

162-26 to 162-30. [Reserved.]

Article 4.

County Prisoners.

162-31. [Repealed.]

162-32. Bond of prisoner committed on *capias* in civil action.

162-33. Prisoner may furnish necessaries.

162-34. United States prisoners to be kept.

162-35. Arrest of escaped persons from penal institutions.

162-36. Transfer of prisoners to succeeding sheriff.

162-37. Where no jail, sheriff may imprison in jail of adjoining county.

Sec.

162-38. Where no jail, courts may commit to jail of adjoining county.

162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.

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ARTICLE 1.

The Office.

§ 162-5. **Vacancy filled; duties performed by coroner or chief deputy.** — If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority. (1829, c. 5, s. 8; R. S., c. 109, s. 11; R. C., c. 105, s. 11; Code, s. 2071; Rev., s. 2811; C. S., s. 3929; 1973, c. 74.)

Local Modification. — Beaufort: 1975, c. 202.

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

§§ 162-6, 162-7: Repealed by Session Laws 1973, c. 108, s. 99.

ARTICLE 3.

Duties of Sheriff.

§ 162-14. **Execute process; penalty for false return.** — Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and other process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. He shall be subject to the penalty of forfeiting one hundred dollars (\$100.00) for each neglect, where such process shall be delivered to him 20 days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of court, upon motion and proof of such delivery, unless the sheriff can show sufficient cause to the court at the next succeeding session after the order.

For every false return, the sheriff shall forfeit and pay five hundred dollars (\$500.00), one moiety thereof to the party aggrieved and the other to him that will sue for the same, and moreover be further liable to the action of the party aggrieved, for damages. (1777, c. 218, s. 5, P. R.; 1821, c. 1110, P. R.; R. C., c. 105, s. 17; 1874, c. 33; Code, s. 2079; 1899, c. 25; Rev., s. 2817; C. S., s. 3936; 1973, c. 108, s. 98.)

I. GENERAL CONSIDERATIONS.

Editor's Note. — The 1973 amendment substituted "session" for "term" near the end of the second sentence of the first paragraph and

deleted the former third paragraph, which related to the execution of process issued by justices of the peace.

§ 162-22. Custody of jail.

Cited in *Berch v. Stahl*, 373 F. Supp. 412 (W.D.N.C. 1974).

§§ 162-26 to 162-30: Reserved for future codification purposes.

ARTICLE 4.

County Prisoners.

§ 162-31: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.

Editor's Note. — See Editor's note following the analysis to Chapter 15A.

§ 162-32. **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; 1973, c. 822, s. 3.)

Editor's Note. — This Article, comprising §§ 162-31 through 162-49, was formerly Article 15, §§ 153-177 through 153-198, of Chapter 153. It

was reenacted and transferred to its present location by Session Laws 1973, c. 822, s. 3, effective Feb. 1, 1974.

§ 162-33. 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; 1973, c. 822, s. 3.)

§ 162-34. 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; 1973, c. 822, s. 3.)

§ 162-35. 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; 1973, c. 822, s. 3.)

§ 162-36. 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; 1973, c. 822, s. 3.)

§ 162-37. Where no jail, sheriff may imprison in jail of adjoining county. — The sheriffs 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; 1973, c. 57, s. 1; c. 822, s. 3.)

Editor's Note. — Session Laws 1973, c. 57, s. 1, deleted "constables" following "sheriffs" near the beginning of the section.

§ 162-38. 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 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 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; 1973, c. 57, s. 2; c. 822, s. 3.)

Local Modification. — Elizabeth City: 1973, c. 487. peace, and all" preceding "judicial officers" and "constables" preceding "and other officers of such county" in the first sentence.

Editor's Note. — Session Laws 1973, c. 57, s. 2, deleted "superior court judges, justices of the

§ 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities. — 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 Commissioner of Correction 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 Commissioner of Correction, 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 Department of Correction if he is received in a prison unit, the actual cost of maintaining the prisoner in that jail or prison unit for the time designated by the court.

Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any judge holding superior court in the district may order the prisoners transferred to a unit of the State Department of Correction designated by the Commissioner of Correction or his authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cell separate from that used for imprisonment of persons already convicted of crimes. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred.

However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, he may request the assistance of the Department of Correction, and the Department of Correction is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Commissioner of Correction or his authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the State Department of Correction the actual cost of transporting and maintaining the prisoners. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the State Department of Correction to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Department of Correction, and upon approval of the Council of State the amount so approved shall be paid from Contingency and Emergency Fund to the Department of Correction.

When, due to an emergency, it is not feasible to obtain from a judge of superior court a prior order of transfer, the sheriff of the county and the Department of Correction may exercise the authority hereinafter conferred; provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this section shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the cost of transporting and maintaining the prisoners shall be paid by the municipality unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs. (1957, c. 1265; 1967, c. 996, ss. 13, 15; 1969, cc. 462, 1130; 1973, c. 822, s. 3.)

A "safekeeper" is a person who has been convicted of a crime in superior court, or in some instances who may be awaiting trial, and who is ordered by a judge to be transferred to the central prison or some other unit of the Department of Correction under the appropriate statutes in the interests of the safety of the prisoner or the safety of others. *Kersh v. Bounds*, 364 F. Supp. 590 (W.D.N.C. 1973).

Prisoners in Safekeeping Status Are Not Serving Sentence. — Although if a conviction is affirmed on appeal the time spent in custody before final affirmance of the conviction does count as part of the sentence to be served, prisoners are not, while in this "safekeeping" status, considered to be "serving a sentence" with the North Carolina Department of Correction. *Kersh v. Bounds*, 364 F. Supp. 590 (W.D.N.C. 1973).

Treating Safekeepers and Regular Inmates to Different Medical Treatment Is Unconstitutional. — The practice of treating

prison inmates to two different standards of medical treatment merely because the bills of safekeepers are paid by the counties, whereas the bills of regular prison inmates are paid by the State, is a denial of equal protection of the laws as required by the Constitution. *Kersh v. Bounds*, 364 F. Supp. 590 (W.D.N.C. 1973).

There is no rational basis in giving prisoners different medical treatment just because the State has divided the responsibility of footing the bills among different governmental subdivisions. The classification of safekeepers as opposed to regular inmates is even more tenuous, being based purely on the accident of which State instrumentality pays the bill, and as such it is arbitrary and unreasonable. *Kersh v. Bounds*, 364 F. Supp. 590 (W.D.N.C. 1973).

§ 162-40. When jail destroyed, transfer of prisoners provided for. — When the jail of any county is destroyed by fire or other accident, any judge or magistrate 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 or other officer of the county deputized for that purpose shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners. 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; 1973, c. 57, s. 3; c. 822, s. 3.)

Editor's Note. — Session Laws 1973, c. 57, s. 3, in the first sentence, substituted "judge or magistrate" for "justice of the peace," deleted "constable" preceding "or other officer,"

substituted "deputized" for "deputed" and deleted "upon the order aforesaid" at the end of the sentence.

§ 162-41. 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; 1973, c. 822, s. 3.)

Sheriff's Duty Is Affirmative, Not Discretionary. — When an individual is brought to a county jail as a prisoner by two police officers of a municipality in that county, the sheriff's duty is fixed by this section. He has no discretion in the matter, but is under an affirmative duty "to receive, incarcerate and retain" a prisoner until the prisoner should

become entitled to be released in some manner provided by law. *Foust v. Hughes*, 21 N.C. App. 268, 204 S.E.2d 230 (1974).

No valid claim for relief may be maintained against a sheriff for complying with the statutory duty imposed by this section. *Foust v. Hughes*, 21 N.C. App. 268, 204 S.E.2d 230 (1974).

§ 162-42. 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; 1973, c. 822, s. 3.)

§ 162-43. 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; 1973, c. 822, s. 3.)

§ 162-44. 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; 1973, c. 822, s. 3.)

§ 162-45. Convicts who may be sentenced to imprisonment at hard labor on the public roads. — 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 G.S. 148-28, 148-30 and 148-32 for such terms of 30 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. (1887, c. 355; 1889, c. 419; Rev., s. 1355; C. S., s. 1359; 1973, c. 57, s. 4; c. 822, s. 3.)

Editor's Note. — Session Laws 1973, c. 57, s. 4, eliminated the former second paragraph, relating to work on the public roads by persons sentenced to jail for less than 30 days and by insolvents.

§ 162-46. 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; 1973, c. 822, s. 3.)

§ 162-47. 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 G.S. 162-45, 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 canalizing 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; 1973, c. 822, s. 3.)

Editor's Note. — The second paragraph of § 162-45 was eliminated by 1973 amendment to that section.

§ 162-48. 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; 1973, c. 822, s. 3.)

§ 162-49. 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. 3^{1/2}; 1957, c. 65, s. 11; 1973, c. 822, s. 3.)

Chapter 162A.

Water and Sewer Systems.

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Water and Sewer Authorities.

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- 162A-45. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.
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- 162A-67. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.
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- 162A-69. Powers generally; fiscal year.
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- 162A-73. Authority of governing bodies of political subdivisions.
- 162A-74. Rights-of-way and easements in streets and highways.
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Sec.

162A-79. Article regarded as supplemental.

162A-80. Inconsistent laws declared inapplicable.

ARTICLE 1.

Water and Sewer Authorities.

§ 162A-3.1. Alternative procedure for creation. — (a) As an alternative to the procedure set forth in G.S. 162A-3, the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this section of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

- (1) The name of the authority;
- (2) A statement that such authority is organized under this section of this Article;
- (3) The names of the organizing political subdivisions;
- (4) The names and addresses of the members of the authority appointed by the organizing political subdivisions; and
- (5) A statement that members of the authority will be limited to such members as may be appointed from time to time by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this section of this Article shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this section of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this section of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1975, c. 224, s. 1.)

§ 162A-4. Withdrawal from authority; joinder of new subdivision.

(b) Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 162A-3 or 162A-3.1, as appropriate. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the

information required under G.S. 162A-3 or 162A-3.1, as appropriate, in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision if the authority was organized under G.S. 162A-3.

(1975, c. 224, s. 2.)

Editor's Note. —

The 1975 amendment added "or G.S. 162A-3.1, as appropriate" at the end of the first sentence, and near the middle of the third sentence, and added "if the authority was organized under

G.S. 162A-3" at the end of the third sentence, of subsection (b).

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

§ 162A-5. Members of authority; organization; quorum. — Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political subdivision, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created under G.S. 162A-3.1 shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution 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 secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. 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 authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of two thousand dollars (\$2,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5; 1969, c. 850; 1971, c. 892, s. 1; 1975, c. 224, ss. 3, 4.)

Editor's Note. —

The 1975 amendment substituted "one year, two years and three years" for "two years, four years and six years" in the second sentence, and "three years" for "six years" in the third sentence, of the first paragraph, added the

proviso to the third sentence of the first paragraph and rewrote the last sentence of the last paragraph, which formerly provided that the members should serve without compensation but should be reimbursed for actual expenses.

§ 162A-14. Conveyances and contracts between political subdivisions and authority. — The governing body of any political subdivision is hereby authorized and empowered:

- (1) Pursuant to the provisions of G.S. 160A-274 and subject to the approval of the Local Government Commission, except for action taken hereunder by any State agency, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair, the whole or any part of any existing water system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;
- (4) In its discretion, to submit to the 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 authority under the provisions of this Article. (1955, c. 1195, s. 13; 1971, c. 892, s. 1; 1975, c. 224, ss. 5, 6.)

Editor's Note. —

The 1975 amendment added "Pursuant to the provisions of G.S. 160A-274 and" at the beginning, and inserted "except for action taken hereunder by any State agency" near the beginning, of subdivision (1), and deleted, at the

end of subdivision (4), a former proviso requiring a contract or agreement under subdivision (1) to be submitted to and approved by the qualified electors of the political subdivision.

As subdivisions (2) and (3) were not changed by the amendment, they are not set out.

ARTICLE 2.

Regional Water Supply Planning.

§ 162A-21. Preamble. — The Legislative Research Commission was directed by Senate Resolution 875 of the 1969 General Assembly to study and report to the 1971 General Assembly on the need for legislation "concerning local and regional water supplies (including sources of water, and organization and administration of water systems)." Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning local and regional water supplies. In this report the Legislative Research Commission made the following findings concerning the need for planning and developing regional water supply systems in order to provide adequate supplies of high quality water to the citizens of North Carolina, of which the General Assembly hereby takes cognizance:

- (1) The existing pattern of public water supply development in North Carolina is dominated by many small systems serving few customers. Of the 1782 public water systems of record on July 1, 1970, according to Department of Human Resources statistics, over eighty percent (80%) were serving less than 1,000 people each. These small systems are often underfinanced, inadequately designed and maintained, difficult to coordinate with nearby regional systems, and generally inferior to systems serving larger communities as regards adequacy of source, facilities and quality. The situation which has developed reflects a need for better planning at both State and local levels.

(1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health" in subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (1) are set out.

§ 162A-23. State role and functions relating to local and regional water supply planning.

(b) Responsibility for carrying out the role of State government in regional water supply planning shall be assigned to the Department of Human Resources and the Department of Water and Air Resources [Department of Natural and Economic Resources]. Promotion and coordination of regional water supply systems shall be a shared function of the Department of Water and Air Resources [Department of Natural and Economic Resources] and the Department of Human Resources, with primary responsibility with regard to sources of raw water supply and transbasin or transwatershed diversions of water being allocated to the Department of Water and Air Resources [Department of Natural and Economic Resources], and with primary responsibility with regard to other aspects of regional water supply systems being allocated to the Department of Human Resources. (1971, c. 892, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health" in subsection (b).

Session Laws 1973, c. 1262, effective July 1, 1974, which reorganized the Department of Natural and Economic Resources, did not provide that "Department of Natural and Economic Resources" should be substituted for "Department of Water and Air Resources"

throughout the General Statutes, but, because the functions of the former Department of Water and Air Resources have devolved upon the Department of Natural and Economic Resources, the editors have inserted "Department of Natural and Economic Resources" in brackets in subsection (b) of this section as set out above.

As subsection (a) was not changed, it is not set out.

§ 162A-24. Regional Water Supply Planning Revolving Fund established; conditions and procedures. — (a) There is established under the control and direction of the Department of Administration a Regional Water Supply Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, sanitary district, or to counties and municipalities acting collectively or jointly as a regional water authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional water supply system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional water supply system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of Human Resources and of the Department of Water and Air Resources [Department of Natural and Economic Resources], a proposed plan for development and construction of a countywide or other regional water system is not feasible because of design and construction factors or because available sources of raw water supply are inadequate or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of Human Resources and the Department of Water and Air Resources [Department of Natural and Economic Resources] have declared to be feasible).

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the Department of Human Resources, the State agency responsible for public water supplies, for determination as to whether the conditions set forth below have been met. In making such determinations, the Department of Human Resources shall obtain and be guided by the recommendations of the Department of Water and Air Resources [Department of Natural and Economic Resources] on matters for which that Department has responsibility by law:

- (1) The proposed area is suitable for development of a regional water supply system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of raw water.
- (2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality water service through the construction of a regional water supply system as defined in this Article. The determination by the Department of Human Resources that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.
- (3) The applicant proposes to coordinate planning of the regional water supply with land-use planning in the area, in order that both planning efforts will be compatible.
- (4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional water supply plan, which plan will provide detailed information on source or sources of water to meet projected domestic and industrial water demands; proposed system, including raw water intake(s), treatment plant, storage facilities, distribution system, and other waterworks appurtenances; proposed interconnections with existing systems, and provisions for interconnections with other county, municipal and regional systems; phased development of systems to achieve ultimate objectives if economic feasibility is in question; projected water service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health" and "Board of Health" in subsections (a) and (b).

Session Laws 1973, c. 1262, effective July 1, 1974, which reorganized the Department of Natural and Economic Resources, does not provide for substituting the name of the department for "Department of Water and Air

Resources" throughout the General Statutes, but, because the functions of the former Department of Water and Air Resources have devolved upon the Department of Natural and Economic Resources, the editors have inserted "Department of Natural and Economic Resources" in brackets in subsections (a) and (b) of this section as set out above.

As the other subsections were not changed, they are not set out.

§ 162A-25. Construction of Article. — This Article shall be construed as providing supplemental authority in addition to the powers of the Department of Human Resources under General Statutes Chapter 130, the powers of the North Carolina Utilities Commission under General Statutes Chapter 62, and the powers of the Department of Water and Air Resources [Department of Natural and Economic Resources] under Articles 21 and 38 of General Statutes Chapter 143, and any other provisions of law concerning local and regional water supplies. (1971, c. 892, s. 1; 1973, c. 476, s. 128.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health."

Session Laws 1973, c. 1262, effective July 1, 1974, which reorganized the Department of Natural and Economic Resources, did not provide for substituting "Department of Natural and Economic Resources" for

"Department of Water and Air Resources" throughout the General Statutes, but, because the functions of the former Department of Water and Air Resources have devolved upon the Department of Natural and Economic Resources, the editors have inserted "Department of Natural and Economic Resources" in brackets in this section as set out above.

ARTICLE 3.

Regional Sewage Disposal Planning.

§ 162A-27. Definitions of "regional sewage disposal system" and "comprehensive planning". — For the purposes of this Article a "regional sewage disposal system" is defined as a public sewage disposal system of a municipality, county, sanitary district, or other political subdivision of the State, or combination thereof, which provides, is intended to provide, or is capable of providing adequate collection, treatment, purification and disposal of sewage to a substantial portion of the population within a county, or a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties. "Comprehensive planning" is defined as that planning which is a prerequisite for qualifying for receipt of federal and/or State grant funds for preparation of plans and specifications and for actual construction of regional sewage disposal systems. (1971, c. 870, s. 1; 1975, c. 251, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added the second sentence.

§ 162A-28. Role and function of Environmental Management Commission. — The North Carolina Environmental Management Commission, in order to provide a framework for comprehensive planning of regional sewage disposal systems and for orderly coordination of local actions relating to sewage disposal, to make possible the most efficient disposal of sewage and to help realize economies of scale in sewage disposal systems, shall perform the following functions:

- (1) Identify major sources of sewage for regional systems and sewer system interconnections as may be desirable and feasible.
- (2) Identify geographical areas of the State suitable for the development of regional sewage disposal systems that meet federal and State grant requirements.
- (3) Establish priorities for regionalization.
- (4) Develop plans for connecting proposed regional sewage disposal systems to major sources of sewage and for such sewer system interconnections as may be desirable and feasible.
- (5) Review and approve plans for proposed regional sewage disposal systems and for proposed municipal and countywide systems which are compatible with a regional plan.
- (6) Administer a State program of financial assistance to local governments and regional planning agencies for the development of comprehensive plans for regional sewage disposal systems or county systems compatible with regional plans.
- (7) Provide technical assistance to local and regional planning agencies and to consulting engineering firms. (1971, c. 870, s. 1; 1973, c. 1262, s. 23; 1975, c. 251, s. 2.)

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

The 1975 amendment, effective July 1, 1975, added "that meet federal and State grant requirements" at the end of subdivision (2).

§ 162A-29. Regional Sewage Disposal Planning Revolving Fund established; conditions and procedures. — (a) There is established under the control and direction of the Department of Administration a Regional Sewage Disposal Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, or sanitary district, or to counties and municipalities acting collectively or jointly as a regional sewer authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional sewage disposal system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional sewage disposal system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of Water and Air Resources [Department of Natural and Economic Resources], a proposed plan for development and construction of a countywide or other regional sewage disposal system is not feasible because of design and construction factors, or because of the effect that the sewage disposal system discharge will have upon water quality standards, or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of Water and Air Resources [Department of Natural and Economic Resources] has declared to be feasible).

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the State Department of Water and Air Resources [Department of Natural and Economic Resources], the State agency responsible for water pollution control, for determination as to whether the conditions set forth below have been met:

- (1) The proposed area is suitable for development of a regional sewage disposal system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of sewage.
- (2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality sewage disposal through the construction of a regional sewage disposal system as defined in this Article. The determination by the Department of Water and Air Resources [Department of Natural and Economic Resources], that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.
- (3) The applicant proposes to coordinate planning of the regional sewage disposal system with land-use planning in the area, in order that both planning efforts will be compatible.
- (4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional sewage disposal plan, which plan will provide detailed information on the source or sources of sewage; the proposed system, including all facilities and appurtenances thereto for the collection, transmission, treatment, purification and disposal of sewage; any proposed interconnection with existing systems, and provisions for interconnections with other county, municipal and regional systems; the phased development of

systems to achieve ultimate objectives if economic feasibility is in question; projected sewage disposal service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(c) In addition to the above conditions, the Department of Administration shall not make any advance to any applicant until the following conditions have also been met:

- (1) The Department has determined that there is a reasonable prospect of federal (or State) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or State) aid.
- (2) The Department has received firm assurances from the applicant that the work or project, if feasible, will be undertaken.
- (3) The applicant has furnished evidence that it does not have funds available to finance the plan.

(d) All advances made pursuant to this section shall be repaid in full, upon receipt of any sewage disposal facilities planning grant funds from federal or State sources, or within one year of the start of construction on the projected system, or within six months after the issuance of bonds for the financing of construction of the system, or within six years from the date of the making of the advance, whichever comes first. The Department may, in its discretion, require the repayment of any advance in installments.

(1975, c. 251, ss. 3, 4.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subdivision (3) of subsection (c) and inserted "upon receipt of any sewage disposal facilities planning grant funds from federal or State sources, or" near the beginning of the first sentence of subsection (d).

Session Laws 1973, c. 1262, effective July 1, 1974, which reorganized the Department of Natural and Economic Resources, did not provide for substituting "Department of Natural and Economic Resources" for

"Department of Water and Air Resources" throughout the General Statutes, but, because the functions of the former Department of Water and Air Resources have devolved upon the Department of Natural and Economic Resources, the editors have inserted "Department of Natural and Economic Resources" in brackets in subsections (a) and (b) of this section as set out above.

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

§ 162A-30. Construction of Article. — This Article shall be construed as providing supplemental authority in addition to the powers of the North Carolina Utilities Commission under Chapter 62 of the North Carolina General Statutes, the North Carolina Environmental Management Commission under Articles 21 and 38 of Chapter 143 of the North Carolina General Statutes, and the North Carolina Department of Human Resources under General Statutes Chapter 130, and any other provisions of law concerning local and regional sewage disposal. (1971, c. 870, s. 1; 1973, c. 476, s. 128; c. 1262, s. 23.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health."

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" near the middle of the section.

ARTICLE 4.

Metropolitan Water Districts.

§ 162A-33. Procedure for creation; resolutions and petitions for creation; notice to and action by Commission for Health Services; 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, including any existing water or sewer district, 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 water 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 water 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 water 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 fifteen per centum (15%) of the voters resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan water 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 water district having the boundaries set forth in such petition for such district.

If any water district, sewer district or special purpose district shall encompass wholly or in part within its boundaries a city or town, no such water district, sewer district or special purpose district may petition for inclusion within a metropolitan water district unless the governing body of such city or town shall approve such petition or shall also petition for its inclusion within such metropolitan water district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan water district, the board of commissioners, through its chairman shall notify the Commission for Health Services of the receipt of such resolutions and petitions, and shall request that a representative of the Commission for Health Services hold a joint public hearing with the board of commissioners concerning the creation of the proposed metropolitan water district. The Director of the Commission for Health Services 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 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan water 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 Commission for Health Services.

If, after such hearing, the Commission for Health Services 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 water district should be created and established, the Commission for Health Services shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan water district under the name and style of "..... Metropolitan Water District of County"; provided that the Commission for Health Services may make minor deviations in the

boundaries from those prescribed in the resolutions and petitions upon the Commission for Health Services 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 Commission for Health Services shall cause copies of the resolution creating the metropolitan water 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 Commission for Health Services 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 Commission for Health Services 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 water district therein described must be commenced within 30 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 water 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 30 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 water district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan water district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Notwithstanding the provisions of G.S. 160-2(6), after the creation of a water district pursuant to the provisions of this Article a municipality or other political subdivision which owns or operates an existing water system or sewer system may lease, contract, assign or convey such system or systems to the district under and subject to such terms and conditions and for such considerations as it may deem advisable for the general welfare and benefit of its citizens. (1971, c. 815, s. 3; 1973, c. 476, s. 128.)

Editor’s Note. — for “State Board of Health” throughout the section.
The 1973 amendment, effective July 1, 1973, substituted “Commission for Health Services”

§ 162A-34. 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 Commission for Health Services 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 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 24 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. (1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Commission for Health Services" for "State Board of Health" in the first paragraph of subsection (a).

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

§ 162A-35. 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 fifteen per centum (15%) of the voters 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 Commission for Health Services hold a joint public hearing with the board of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The Secretary of Human Resources 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 30 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 Commission for Health Services.

If, after such hearing, the Commission for Health Services 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 Commission for Health Services 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 fifteen per centum (15%) of the voters 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 voting 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 30 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 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 dates on which the books 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 Water District of County of" and the words "Against inclusion in the Metropolitan Water 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. Voting machines may, in the discretion of the commissioners, be utilized for said election.

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 30 days after the publication of such statement. (1971, c. 815, s. 5; 1973, c. 476, s. 128.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, substituted "Commission for Health Services" for "State Board of Health" near the middle and at the end of the first paragraph and in two

places near the beginning of the second paragraph and substituted "Secretary of Human Resources" for "Director of the State Board of Health" near the middle of the first paragraph.

§ 162A-37. Bonds and notes authorized. — A metropolitan water district may from time to time issue bonds and notes under the Local Government Finance Act. (1971, c. 780, s. 37.5; c. 815, s. 7; 1973, c. 494, s. 46.)

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

The 1973 amendment was enacted by Session Laws 1971, c. 780, s. 37.5, which section was

added to the 1971 act by Session Laws 1973, c. 494, s. 46. The 1971 act is effective July 1, 1973.

§§ 162A-38 to 162A-44: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46; effective July 1, 1973.

Cross Reference. — As to bond orders, bond ordinances or bond resolutions in effect or under consideration on July 1, 1973, and as to sale of bonds or bond anticipation notes for which notice of sale has been published prior to July 1, 1973, see the note catchlined: "Revision of Chapter" at the beginning of Chapter 159.

Editor's Note. — These sections were repealed by Session Laws 1971, c. 780, s. 37.5, which section was added to the 1971 act by Session Laws 1973, c. 494, s. 46. The 1971 act is effective July 1, 1973.

§ 162A-45. 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 water system or sewerage system or both, 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 collected 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 such bank to furnish security for protection of such deposits as provided in G.S. 159-31. (1971, c. 815, s. 15; 1973, c. 1446, s. 13.)

Editor's Note. — The 1973 amendment substituted "G.S. 159-31" for "G.S. 159-38" at the end of the section.

§§ 162A-46 to 162A-48: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46; effective July 1, 1973.

Cross Reference. — As to bond orders, bond ordinances or bond resolutions in effect or under consideration on July 1, 1973, and as to sale of bonds or bond anticipation notes for which notice of sale has been published prior to July 1, 1973, see the note catchlined: "Revision of Chapter" at the beginning of Chapter 159.

Editor's Note. — These sections were repealed by Session Laws 1971, c. 780, s. 37.5, which section was added to the 1971 act by Session Laws 1973, c. 494, s. 46. The 1971 act is effective July 1, 1973.

§§ 162A-50 to 162A-52: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46; effective July 1, 1973.

Cross Reference. — As to bond orders, bond ordinances or bond resolutions in effect or under consideration on July 1, 1973, and as to sale of bonds or bond anticipation notes for which notice of sale has been published prior to July 1, 1973, see the note catchlined: "Revision of Chapter" at the beginning of Chapter 159.

Editor's Note. — These sections were repealed by Session Laws 1971, c. 780, s. 37.5, which section was added to the 1971 act by Session Laws 1973, c. 494, s. 46. The 1971 act is effective July 1, 1973.

§ 162A-54. 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 Board of Transportation, 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. (1971, c. 815, s. 24; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

§§ 162A-59 to 162A-63: Reserved for future codification purposes.

ARTICLE 5.

Metropolitan Sewerage Districts.

§ 162A-64. Short title. — This Article shall be known and may be cited as the "North Carolina Metropolitan Sewerage Districts Act." (1961, c. 795, s. 1; 1973, c. 822, s. 4.)

Editor's Note. — This Article, comprising §§ 162A-64 through 162A-80, was formerly Article 25, §§ 153-295 through 153-324, of Chapter 153.

It was reenacted and transferred to its present location by Session Laws 1973, c. 822, s. 4, effective Feb. 1, 1974.

§ 162A-65. 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.
- (9a) The word "revenues" shall mean all moneys received by a district from, in connection with or as a result of its ownership or operation of a sewerage system, including, without limitation and if deemed advisable by the district board, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the sewerage system.
- (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; 1969, c. 993, s. 1; 1973, c. 822, s. 4.)

§ 162A-66. Procedure for creation; resolutions and petitions for creation; notice to and action by the Environmental Management Commission; notice and public hearing; resolutions creating districts; actions to set aside proceedings. — Any two or more political subdivisions in one or more counties, or any political subdivision or subdivisions and any unincorporated area or areas located within one or more counties, which political subdivisions or areas need not be contiguous, may petition for the creation of a metropolitan sewerage district under the provisions of this Article by filing with the board or boards of commissioners of the county or counties within which the proposed district will lie:

- (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 or boards of commissioners, through the chairman thereof, shall notify the North Carolina Environmental Management Commission of the receipt of such resolutions and petitions, and shall request that a representative of the Environmental Management Commission hold a joint public hearing with the board or boards of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the proposed district at which the public hearing shall be held; provided, however, that where a proposed district lies within more than one county, the public hearing shall be held in the county within which the greater portion of the proposed district lies. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at least 30 days prior to the hearing at the courthouse of the county or counties within which the district will lie and also by publication at least once a week for four successive weeks in a newspaper having general circulation in

the proposed district, the first publication to be at least 30 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 or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the creation of a metropolitan sewerage district would preserve and promote the public health and welfare in the area or areas described in such resolutions and petitions, the Environmental Management Commission 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] [Counties]"; provided, that the Environmental Management Commission may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon determination by the Environmental Management Commission that such deviations are advisable in the interest of the public health, and provided no such district shall include any political subdivision which has not petitioned for inclusion as provided in this Article.

The Environmental Management Commission shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board or boards of commissioners and to the governing body of each political subdivision included in the district. The board or boards of commissioners shall cause a copy of such resolution of the Environmental Management Commission 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 North Carolina Environmental Management Commission on the day of, 19. . . ., and was first published on the day of, 19. . . .

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan sewerage district therein described must be commenced within 30 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 30 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; 1973, c. 512, s. 1; c. 822, s. 4; c. 1262, s. 23.)

Editor's Note. — Session Laws 1973, c. 512, s. 1, rewrote this section so as to provide for creation of districts encompassing land in more than one county. The amendment also substituted "North Carolina Board of Water and Air Resources" and "Board of Water and Air

Resources" for "State Stream Sanitation Committee" throughout the section and made other changes.

Session Laws 1973, c. 1262, s. 23, effective July 1, 1974, substituted "Environmental

Management Commission" for "Board of Water and Air Resources" throughout the section.

Session Laws 1973, c. 512, s. 6, contains a severability clause.

The legislature has the sole power to create municipal corporations. The courts do not have that power. *State ex rel. Dyer v. City of Leaksville*, 275 N.C. 41, 165 S.E.2d 201 (1969).

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. *State ex rel. Dyer v. City of Leaksville*, 275 N.C. 41, 165 S.E.2d 201 (1969).

The number, nature, and duration of the powers conferred upon municipal corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. The State, therefore, at its pleasure, may modify or withdraw all such powers,

expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. In all these respects the State is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. *State ex rel. Dyer v. City of Leaksville*, 275 N.C. 41, 165 S.E.2d 201 (1969).

The governing body acts for the subdivision. *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

If No Subdivision, Majority of Freeholders Must Sign Petition. — If there is no subdivision and no governing body to act for the subdivision a majority of the freeholders must sign the petition. *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-67. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members. — (a) **Appointment of Board for District Lying Wholly or Partly outside City or Town Limits.** — The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed immediately after the creation of the district in the following manner:

- (1) If the district lies entirely within one county, the board of commissioners shall appoint to the district board three members who are qualified voters residing within the district. The members so appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Environmental Management Commission creating the district, and the board of commissioners shall designate the length of the term of each member. Successor members shall be appointed for a term of three years.
- (2) If the district lies in two counties, the board of commissioners of the county in which the largest portion of the district lies shall appoint to the district board two qualified voters residing in the county and district to serve for terms of one year and three years, respectively. The board of commissioners of the county in which the lesser portion of the district lies shall appoint to the district board one qualified voter residing in the county and district to serve for a term of two years. All successor members shall be appointed for a term of three years.
- (3) If the district lies in three or more counties, the board of commissioners of each such county shall appoint one member of the district board. Each member so appointed shall be a qualified voter residing in the district and of the county from which he is appointed and shall serve for a term of three years. Successor members shall be appointed for a term of three years.
- (4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district board. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body. If any city or town within the district shall have a population, as determined from the latest decennial census, greater than that of all other political subdivisions (other than counties) and unincorporated areas within the

district, the governing body of any such city or town shall appoint three members. All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.

(b) Appointment of Board for District Lying Wholly within City or Town Limits. — Any district lying entirely within the corporate limits of two or more cities or towns shall be governed by a district board consisting solely of members appointed by the governing bodies of such cities or towns and, in addition, one member elected by the appointed members of the district board. The governing body of each constituent city or town of the district shall appoint to the district board two qualified voters residing in the district and the city or town. The members so appointed shall elect, by majority vote, one additional member who shall be a qualified voter residing in the district and one of the constituent cities or towns.

One of the two members initially appointed by the governing body of each constituent city or town shall serve for a term which shall expire 30 days following the next regular election held for election of the governing body by which the member was appointed; and the other member shall serve for a term which shall expire two years thereafter. Successor members shall serve for a term of four years.

The member elected by the district board and his successors in office shall serve for a term of four years.

(c) Reappointment; Vacancies; Removal; Term. — Members of a district board may be reappointed. If a vacancy shall occur on a district board, the governing body which appointed the member who previously filled the vacancy shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed for cause by the governing board that appointed him. All members shall serve until their successors have been duly appointed and qualified.

(d) District Board Procedures. — 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 or clerks of the board or boards 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 officers [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 are 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 24 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. (1961, c. 795, s. 4; 1963, c. 471; 1973, c. 512, s. 2; c. 822, s. 4; c. 1262, s. 23.)

Editor's Note. —

Session Laws 1973, c. 512, s. 2, rewrote this section.

Session Laws 1973, c. 1262, s. 23, effective July 1, 1974, substituted "Environmental

Management Commission" for "Board of Water and Air Resources" in subdivision (1) of subsection (a).

Session Laws 1973, c. 512, s. 6, contains a severability clause.

§ 162A-68. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings. — 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 or boards of commissioners of the county or counties within which the district lies and shall file with the board or boards of commissioners and with the Environmental Management Commission a report setting forth the plans of the district for extending sewerage service to the political subdivision or unincorporated area. The report shall include:

- (1) A map or maps of the district and adjacent territory showing the present and proposed boundaries of the district; the existing major sewer interceptors and outfalls; and the proposed extension of such interceptors and outfalls.
- (2) A statement setting forth the plans of the district for extending sewerage services to the territory proposed to be included, which plans shall:
 - a. Provide for extending sewerage service to the territory included on substantially the same basis and in the same manner as such services are provided within the rest of the district prior to inclusion of the new territory.
 - b. Set forth a proposed time schedule for extending sewerage service to the territory proposed to be included.
 - c. Set forth the estimated cost of extending sewerage service to the territory proposed to be included; the method by which the district proposes to finance the extension; the outstanding existing indebtedness of the district, if any; and the valuation of assessable property within the district and within the territory proposed to be included.
 - d. Contain a declaration of intent of the district board to conform with the plans set forth in the report in extending sewerage services to the territory proposed to be included; and a certification by the chairman of the district board to the effect that the matters and things set forth in the report are true to his knowledge or belief.

The board or boards of commissioners, through the chairmen thereof, shall thereupon request that a representative of the Environmental Management Commission hold a joint public meeting with the board or boards of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at

the courthouse door of the county or counties at least 30 days prior to the hearing and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the district and in any such political subdivision or unincorporated area, the first publication to be at least 30 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 or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall determine that the inclusion of such political subdivision or unincorporated area in the district will preserve and promote the public health and welfare, the Environmental Management Commission 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.

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 or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with the applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Environmental Management Commission has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation within the district, the first publication to be at least 30 days prior to the election.

Notice of the resolution of the Environmental Management Commission, or in the event that an election pursuant to this section is held, notice of the results of the election, approving the inclusion of the political subdivision or unincorporated area within the district shall be published as provided in G.S. 162A-66.

Any action or proceeding in any court to set aside a resolution of the Environmental Management Commission or an election approving the inclusion of a political subdivision or unincorporated area within a district or to obtain any other relief upon the ground that such resolution or election or any proceeding or action taken with respect to the inclusion of the political subdivision or unincorporated area within the district is invalid, must be commenced within 30 days after the first publication of the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the election or the inclusion of the political subdivision or unincorporated area in the district shall be asserted, nor shall the validity of the resolution or the election or the inclusion of the political subdivision or unincorporated area be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Any political subdivision or unincorporated area included within an existing district by resolution of the Environmental Management Commission or by such resolution and election shall be subject to all debts of the district.

The annexation by a city or town within a metropolitan sewerage district of an area lying outside such district shall not be construed as the inclusion within the district of an additional political subdivision or unincorporated area within the meaning of the provisions of this section; but any such areas so annexed shall become a part of the district and shall be subject to all debts thereof.

Immediately following the inclusion of any additional political subdivision or unincorporated area within an existing district, members representing such additional political subdivision or unincorporated area shall be appointed to the district board in the manner provided in G.S. 162A-67. The terms of office of the members first appointed to represent such additional subdivision or area may be varied for a period not to exceed six months from the terms provided for in G.S. 162A-67, so that the appointment of successors to such members may more nearly coincide with the appointment of successors to members of the existing board; and all successor members shall be appointed for the terms provided for in G.S. 162A-67. (1961, c. 795, s. 5; 1973, c. 512, s. 3; c. 822, s. 4; c. 1262, s. 23.)

Editor's Note. — Session Laws 1973, c. 512, s. 3, rewrote this section.

Session Laws 1973, c. 1262, s. 23, effective July 1, 1974, substituted "Environmental

Management Commission" for "Board of Water and Air Resources" throughout the section.

Session Laws 1973, c. 512, s. 6, contains a severability clause.

§ 162A-69. 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; 1973, c. 822, s. 4.)

Editor's Note. — The reference in subdivision (12) of this section to § 159-20 is to that section in Chapter 159 before its revisions by Session Laws 1971, c. 780, effective July 1, 1973. The

corresponding section in the revised chapter is § 159-131.

Applied in *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-70. Bonds and notes authorized. — A metropolitan sewerage district shall have power from time to time to issue bonds and notes under the Local Government Finance Act. (1961, c. 795, s. 7; 1971, c. 780, s. 30; 1973, c. 822, s. 4.)

Editor's Note. — The 1971 amendment, effective July 1, 1973, rewrote this section. See the Editor's note under § 162A-64 and the

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

§ 162A-71. 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 or boards 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 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 or boards of commissioners. The board or boards of commissioners shall include the number of cents per one hundred dollars (\$100.00) certified by the district board in its next annual levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the 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 or boards 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 and, after June 30, 1973, G.S. 159-31. (1961, c. 795, s. 15; 1973, c. 512, s. 4; c. 822, s. 4.)

Editor's Note. — Session Laws 1973, c. 512, s. 4, inserted "or boards" in the first sentence of the first paragraph and in three places in the second paragraph and added "and, after June 30, 1973, G.S. 159-31" at the end of the second

paragraph. The amendment also made changes in wording in the second sentences of the first and second paragraphs.

Session Laws 1973, c. 512, s. 6, contains a severability clause.

§ 162A-72. 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; 1973, c. 822, s. 4.)

§ 162A-73. 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; 1973, c. 822, s. 4.)

Subdivisions May Contract to Cut Off Water from Delinquent Sewerage Accounts. — A provision in contracts between a sewerage district and certain subdivisions that the latter

would cut off water from users who were delinquent in their sewerage accounts, is valid. *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-74. 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 Board of Transportation, 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; 1973, c. 507, s. 5; c. 822, s. 4.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, effective July 1, 1973, "Board of Transportation" has been substituted for

"State Highway Commission" in this section as reenacted and transferred by Session Laws 1973, c. 822, s. 4, effective Feb. 1, 1974.

§ 162A-75. 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; 1973, c. 822, s. 4.)

§ 162A-76. 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; 1973, c. 822, s. 4.)

§ 162A-77. 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 the Local Government Finance Act, 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 the Local Government Finance Act. 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 30 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. 162A-71 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; 1973, c. 512, s. 5; c. 822, s. 4.)

Editor's Note. — Session Laws 1973, c. 512, s. 5, substituted “the Local Government Finance Act” for “G.S. 153-306” near the beginning and for “said G.S. 153-306” at the end of the second sentence of the first paragraph.

Session Laws 1973, c. 512, s. 6, contains a severability clause.

§ 162A-77.1. Special election upon the question of the merger of metropolitan sewerage districts into cities or towns. — Any district lying entirely within the corporate limits of a city or town may be merged into such city or town in accordance with the provisions of this section.

The governing body of a city or town, with the approval of the district board, shall call and conduct a special election within such city or town on the question of the merger of the district into the city or town. A vote in favor of such merger shall constitute a vote for such city or town to assume the obligations of the district. Such special election may be called and conducted by the governing body of a city or town upon its own motion after passage of a resolution of the district board requesting or approving the special election.

A new registration of voters shall not be required for the special election. The special election shall be conducted in accordance with the provisions of law applicable to regular elections in the city or town.

If a majority of the votes are in favor of the merger, then:

- (1) All property, real and personal and mixed, including accounts receivable, belonging to such district shall vest in, belong to, and be the property of, such city or town. All district boards are hereby authorized to take such actions and to execute such documents as will carry into effect the provisions and the intent of this section.
- (2) All judgments, liens, rights of liens, and causes of action of any nature in favor of such district shall vest in and remain and inure to the benefit of such city or town.
- (3) All taxes, assessments, sewer charges, and any other debts, charges or fees, owing to such district shall be owed to and collected by such city or town.
- (4) All actions, suits and proceedings pending against, or having been instituted by, such district shall not be abated by this section or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and such city or town shall be a party to all such actions, suits, and proceedings in the place and stead of the district and shall pay or cause to be paid any judgments rendered against the district in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.
- (5) All obligations of the district, including outstanding indebtedness, shall be assumed by such city or town, and all such obligations and outstanding indebtedness shall constitute obligations and indebtedness of such city or town, and the full faith and credit of such city or town shall be deemed to be pledged for the punctual payment of the principal of and the interest on any general obligation bonds or bond anticipation notes of such district, and all the taxable property within such city or town, as well as that formerly located within the district, shall be and remain subject to taxation for such payment.

- (6) All ordinances, rules, regulations, and policies of such district shall continue in full force and effect until repealed or amended by the governing body of such city or town.
- (7) Such district shall be abolished, and shall no longer be constituted a public body or a body politic and corporate, except for the purposes of carrying into effect the provisions and the intent of this section.

If a majority of the votes are against the merger, then such merger shall not be effective unless approved by a majority of the qualified voters who vote thereon in a subsequent special election conducted under authority of this section.

Any action or proceeding in any court to set aside a special election held under authority of this section or the result thereof, 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 is invalid, must be commenced within 30 days after the day of such special election. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the election or the result thereof shall be asserted, nor shall the validity of the election or of the result thereof be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1975, c. 448.)

§ 162A-78. 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; 1973, c. 822, s. 4.)

§ 162A-79. 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; 1973, c. 822, s. 4.)

§ 162A-80. 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; 1973, c. 822, s. 4.)

Applied in *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

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SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

ARTICLE 1.

Time of Primaries and Elections.

§ 163-1. **Time of regular elections and primaries.** — (a) Unless otherwise provided by law, elections for the officers listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed "Jurisdiction" on the dates indicated in the column headed "Date of Election." Unless otherwise provided by law, officers shall serve for the terms specified in the column headed "Term of Office."

(b) On the third Tuesday in August preceding each general election to be held in November for the offices referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party. One presidential elector shall be nominated from each congressional district and two from the state-at-large.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Solicitors	Solicitorial district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by G.S. 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election

County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917, c. 218; C. S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, deleted provisions for constables, justices of the peace and "all other township officers to be elected by the people" in the tabulation.

The 1975 amendment substituted "On the third Tuesday in August" for "On Tuesday next

after the first Monday in May" at the beginning of subsection (b).

Session Laws 1975, c. 246, provides that the provisions of the general primary laws of this Chapter shall be applicable in Mitchell County for the purpose of nominating the candidates of the Republican party for all county offices.

§ 163-2. Hours of primaries and elections. — In all primaries, general elections, special elections, and referenda held in this State, including those held in and for municipalities and special districts, the polls shall be opened at 6:30 A.M., and shall be closed at 7:30 P.M.: Provided, however, that at all voting places at which voting machines are used the responsible county board of elections may permit the polls to remain open until 8:30 P.M. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222; 1955, c. 1064; 1967, c. 775, s. 1; 1971, c. 416; c. 1093, s. 18.1; 1973, c. 793, s. 1.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, inserted "and special districts" near the middle

of the section and inserted "all" preceding "voting places" in the proviso.

ARTICLE 2.

Time of Elections to Fill Vacancies.

§ 163-11. Filling vacancies in the General Assembly. — If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the party executive committee of the county in which he was resident. Provided, that in the case of a vacancy in the General Assembly by death, resignation, or otherwise than by expiration of term of a member elected or appointed to represent a multi-county district, the Governor shall appoint for the unexpired portion of the term the person recommended by the State House of Representatives district committee or the senatorial district committee of the political party with which the vacating member was affiliated when elected. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term. The county convention or county executive committee of each political party shall elect or appoint at least one member from each county to serve as State House of Representatives district committee member and at least one member from each county to serve as senatorial district committee member. The State House of Representatives district committee and the senatorial district committee shall be made up of at least one member from each county within the district. The State House of Representatives district committee shall recommend an appointee to fill a vacancy in the State House of Representatives and the senatorial district committee shall recommend an appointee to fill a vacancy in the State Senate. This member shall be entitled to cast for his county one vote for each 300 persons or major fraction thereof residing within the county based upon the last decennial census. Each State House of Representatives district committee member and each senatorial

district committee member shall be entitled to cast all the votes allotted to his county, but in the event more than one member is elected from each county, then each member shall cast an equal share of the votes allotted to the county. (1901, c. 89, s. 74; Rev., s. 4298; C. S., s. 5919; 1947, c. 505, s. 1; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; 1973, c. 35.)

Editor's Note. — The 1973 amendment added all of the section following the first sentence.

SUBCHAPTER II. ELECTION OFFICERS.

ARTICLE 3.

State Board of Elections.

§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office. — All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary.

No person shall be eligible to serve as a member of the State Board of Elections who holds any elective or appointive office under the government of the United States, or of the State of North Carolina or any political subdivision thereof. No person who holds any office in a political party, or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board of Elections. (1901, c. 89, ss. 5, 7; Rev., ss. 2760, 4300, 4301; C. S., ss. 5921, 5922; 1933, c. 165, s. 1; 1953, c. 428; 1967, c. 775, s. 1; 1975, c. 286.)

Cross Reference. — For provision that no person shall serve as a member of the State Board of Elections who holds any elective public office or is a candidate for any office in the primary or election, see § 163-30.

Editor's Note. — The 1975 amendment, effective July 1, 1975, added the last paragraph.

§ 163-20. Meetings of Board; quorum; minutes. — (a) Call of Meeting. — The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The chairman shall call a meeting of the Board upon the written application or applications of any two members thereof. If there is no chairman, or if the chairman does not call a meeting within three days after receiving a written request or requests from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred on the Board by this Chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.

(b) Place of Meeting. — Except as provided in subsection (c), below, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in Raleigh to be designated by the chairman. However, subject to the limitation imposed by subsection (c), below, upon the prior written request of any four members, the State Board of Elections shall meet at any other place in the State designated by the four members.

(c) Meetings to Investigate Alleged Violations of This Chapter. — When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.

(d) Quorum. — A majority of the members constitutes a quorum for the transaction of business by the State Board of Elections. If any member of the Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the Governor may summarily remove any member failing to attend and appoint his successor.

(e) Minutes. — The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh. (1901, c. 89, s. 7; Rev., ss. 2760, 4301, 4302; C. S., ss. 5922, 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 3; c. 1223, s. 1.)

Editor's Note. —

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

The second 1973 amendment substituted "four members" for "three members" in the second sentence of subsection (b).

§ 163-22. Powers and duties of State Board of Elections.

(b) From time to time, the Board shall publish and furnish to the county and municipal boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials, explanatory or primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them and municipal elections board members as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county and municipal boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county and municipal boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county or municipal board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county or municipal board of

elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county or municipal board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or solicitor or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county and municipal boards of elections registration and pollbooks, cards, blank forms, instruction sheets, and forms necessary for the registration of voters and for holding primaries and elections in the counties. In the preparation and distribution of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections shall call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots, and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county and municipal boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility. (1901, c. 89, ss. 7, 11; Rev., ss. 4302, 4305; 1913, c. 138; C. S., ss. 5923, 5926; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, ss. 1, 2; 1945, c. 982; 1953, c. 410, s. 2; 1967, c. 775, s. 1; 1973, c. 793, s. 2; 1975, c. 19, s. 65.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, inserted "and municipal" near the beginning of subsection (b), inserted "and municipal elections board members" in the first sentence of subsection (c), inserted "and municipal" twice in the second sentence and added the last sentence of subsection (c). The amendment also inserted "and municipality and special district" in subsection (d), inserted "and

municipal" in the second sentence of subsection (e) and in the first sentence of subsection (f) and added subsection (j).

The 1975 amendment corrected an error in the 1973 amendatory act by inserting "or municipal" following "county" in the third, fourth and fifth sentences of subsection (c).

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

§ 163-22.1. Power of State Board to order new elections. — If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section. (1973, c. 793, s. 5.)

Editor's Note. — Session Laws 1973, c. 793, s. 96, makes the act effective July 1, 1973.

§ 163-23. Powers of chairman in execution of Board duties. — In the performance of the duties enumerated in this Chapter, the chairman of the State Board of Elections shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. Upon the written request or requests of two or more members of the State Board of Elections, he shall issue subpoenas for designated witnesses or identified papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any two members of the State Board of Elections may issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any member of the Board may administer oaths. (1901, c. 89, s. 7; Rev., s. 4302; C. S., s. 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 4.)

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

§ 163-25. Authority of State Board to assist in litigation. — The State Board of Elections shall possess authority to assist any county or municipal board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county or municipal board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed. (1969, c. 408, s. 1; 1973, c. 793, s. 6.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, inserted "or municipal" preceding "board of elections" in two places in the first sentence of

the first paragraph. The amendatory act also directed that the section be amended "by adding the words 'or municipality' before 'county' or 'counties' where those words are not used as

adjectives." No attempt has been made to give effect to this portion of the amendment in the section as set out above.

§ 163-26. Executive Secretary-Director of State Board of Elections. — There is hereby created the position of Executive Secretary-Director of the State Board of Elections, who shall perform all duties imposed upon him by statute and such duties as might be assigned to him by the State Board of Election [Elections]. (1973, c. 1272, s. 4.)

Editor's Note. — Session Laws 1973, c. 1272, s. 2, contains a severability clause.

§ 163-27. Executive Secretary-Director to be appointed by Board. — The appointment of the Executive Secretary-Director of the State Board of Elections is extended to May 15, 1977, unless removed for proper cause, and thereafter the Board shall appoint an Executive Secretary-Director for a term of four years with compensation to be determined by the Department of Personnel. He shall serve, unless removed for cause, until his successor is appointed. Such Executive Secretary-Director shall be responsible for staffing, administration, execution of the Board's decisions and orders and shall perform such other responsibilities as may be assigned by the Board. In the event of a vacancy, the vacancy shall be filled for the remainder of the term. (1973, c. 1409, s. 3.)

§ 163-28. State Board of Elections independent agency. — The State Board of Elections shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The State Board of Elections shall exercise its statutory powers, duties, functions, authority, and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10. (1973, c. 1409, s. 2.)

Editor's Note. — Session Laws 1973, c. 1409, s. 4, provides: "All funds budgeted to the Department of the Secretary of State for the State Board of Elections are hereby transferred to the State Board of Elections."

§ 163-29: Reserved for future codification purposes.

ARTICLE 4.

County Boards of Elections.

§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings. — In every county of the State there shall be a county board of elections, to consist of three persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the Tuesday following the first Monday in June, 1975, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall serve as a member of the county or State board of elections who holds any elective public office or who is a candidate for any office in the primary or election.

No person, while acting as a member of a county board of elections, shall serve as a State, district or county campaign manager or treasurer of any candidate

in a primary or election or as a chairman of any State, district or county political organization.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the Tuesday following the first Monday in June, 1975, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in June in the year of their appointment the members shall take the following oath of office:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the chairman of the board, and shall be paid the sum of twenty-five dollars (\$25.00) per day for attending each of those meetings. (1901, c. 89, ss. 6, 11; Rev., ss. 4303, 4304, 4305; 1913, c. 138; C. S., ss. 5924, 5925, 5926; 1921, c. 181, s. 1; 1923, c. 111, s. 1; c. 196; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, ss. 1, 2; 1949, c. 672, s. 1; 1953, c. 410, ss. 1, 2; c. 1191, s. 2; 1955, c. 871, s. 1; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1967, c. 775, s. 1; 1969, c. 208, s. 1; 1973, c. 793, s. 7; c. 1094; c. 1344, s. 4; 1975, c. 19, s. 66; c. 159, s. 1.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, added the last paragraph.

The second 1973 amendment substituted "State, district or county campaign manager or treasurer" for "county campaign manager" near the middle of the third paragraph and added to the third paragraph "or as a chairman of any State, district or county political organization."

The third 1973 amendment substituted "twenty-five (\$25.00)" for "fifteen dollars (\$15.00)" in the last paragraph.

The first 1973 amendment corrected errors by substituting "take" for "taking" preceding "the following oath of office" in the present sixth paragraph and by inserting "dollars" following "twenty-five" near the end of the last paragraph.

The second 1975 amendment substituted "Tuesday following the first Monday in June, 1975, and every two years thereafter" for "Friday before the tenth Saturday preceding

each primary election" in the second sentence of the first paragraph, inserted "or State" in the second paragraph, substituted "Tuesday following the first Monday in June, 1975, and each two years thereafter" for "tenth Saturday before the primary is to be held" in the fourth paragraph, deleted "other than removal by the State Board of Elections" following "any cause" near the beginning of the first sentence of the fifth paragraph and substituted "Tuesday following the third Monday in June in the year of their appointment" for "the Monday following the ninth Saturday before the primary" in the first sentence of the sixth paragraph. The amendment also made minor changes in wording in the sixth paragraph, in the form of oath and in the last paragraph.

Session Laws 1973, c. 1344, s. 6, provides: "All payments made in good faith by any county boards of elections or boards of county commissioners to any member of the board of elections that may have exceeded the authorized statutory rate are hereby authorized and the action of the county boards of elections or

boards of county commissioners in making those payments are hereby ratified.”

Session Laws 1975, c. 159, s. 5, provides: “The terms of office for all members of county boards of elections, serving at the time of ratification of this act, shall expire on June 17, 1975, at 12

o'clock noon.” The act was ratified April 23, 1975.

Member of County Board of Elections May Not Also Hold An Elective Office. — See opinion of Attorney General to Mr. John D. Mackie, 41 N.C.A.G. 793 (1972).

§ 163-31. Meetings of county boards of elections; quorum; minutes. — In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in June in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Tuesday following the first Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct registrars and judges of elections. The board may hold other meetings at such times as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business. The chairman shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the executive secretary to record and maintain the minutes under his supervision. (1901, c. 89, s. 11; Rev., ss. 4304, 4306; C. S., ss. 5925, 5927; 1921, c. 181, s. 2; 1923, c. 111, s. 1; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1969, c. 208, s. 2; 1975, c. 159, s. 2.)

Editor's Note. —

The 1975 amendment, in the first paragraph, substituted “Tuesday following the third Monday in June in the year of their appointment by the State Board of Elections” for “Monday following the ninth Saturday before each primary election” in the first sentence, substituted “Tuesday following the first Monday in August of the year in which they are appointed” for “Monday following the seventh Saturday before each primary election” in the second sentence, deleted “and places” following “times” near the beginning of the third sentence

and added the last sentence. In the second paragraph, the amendment substituted the language beginning “and it shall be the responsibility” for “if there be one, otherwise, the minute book shall remain in the custody of the secretary of the board” at the end of the second sentence and added the third sentence.

Session Laws 1975, c. 159, s. 6, provides: “The terms of office for all precinct election officials, serving at the time of ratification of this act, shall expire at 12 o'clock noon on August 5, 1975.” The act was ratified April 23, 1975.

§ 163-32. Compensation of members of county boards of elections. — In full compensation of their services, members of the county board of elections (including the chairman) shall be paid by the county twenty-five dollars (\$25.00) per day for the time they are actually engaged in the discharge of their duties, together with reimbursement of expenditures necessary and incidental to the discharge of their duties. The per diem payment shall be prorated if a board member is not actually engaged in the discharge of his duties for a full day. For the purposes of this section, a full day consists of five hours. In its discretion, the board of county commissioners of any county may pay the chairman and members of the county board of elections compensation in addition to the per diem and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay executive secretaries and special registration commissioners whatever compensation they may fix within budget appropriations. (1901, c. 89, s. 11; Rev., s. 4303; C. S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 843; c. 1191, s. 2; 1955, c. 800; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 1; 1973, c. 793, s. 8; c. 1344, s. 5.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, increased the per diem in the first paragraph from \$15.00 to \$25.00 and added the second and third sentences of the first paragraph.

The second 1973 amendment inserted "and members" in the last sentence of the first paragraph.

Session Laws 1973, c. 1344, s. 6, provides: "All payments made in good faith by any county boards of elections or boards of county commissioners to any member of the board of elections that may have exceeded the authorized statutory rate are hereby authorized and the action of the county boards of elections or boards of county commissioners in making those payments are hereby ratified."

§ 163-33. Powers and duties of county boards of elections. — The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

- (2) To appoint all registrars, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any registrar, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.
- (3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and to report violations to the State Board of Elections. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.
- (8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law. In addition, the county board of elections shall give notice at least 20 days prior to the date on which the registration books or records are closed that there will be a primary, general or special election, the date on which it will be held, and the hours the voting places will be open for voting in that election. The notice also shall describe the nature and type of election, and the issues, if any, to be submitted to the voters at that election. Notice shall be given by advertisement at least once weekly during the 20-day period in a newspaper having general circulation in the county and by posting a copy of the notice at the courthouse door. This subdivision shall not apply in the case of bond elections called under the provisions of Chapter 159.
- (13) Notwithstanding the provisions of any other section of this Chapter, to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as

amended, and any other voting equipment or similar records, books or lists in any precinct or municipality over whose elections it has jurisdiction or for whose elections it has responsibility. (1901, c. 89, s. 11; Rev., s. 4306; C. S., s. 5927; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1973, c. 793, ss. 9-11.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added the second sentence of subdivision (2), substituted "State Board of Elections" for "prosecuting authorities" in the first sentence of subdivision (3), eliminated, in that sentence, provisions authorizing boards to administer oaths, issue subpoenas, summon witnesses and compel the production of

evidence, added the second sentence of subdivision (3), added the second, third, fourth and fifth sentences of subdivision (8), and added subdivision (13).

Only the introductory paragraph and the subdivisions changed or added by the amendment are set out.

§ 163-35. Executive secretary to county board of elections; appointment; compensation; duties; dismissal. — (a) In the event a vacancy occurs in the office of county executive secretary in any of the county boards of elections in this State, the county board of elections shall submit the name of the person they recommend to fill the vacancy to the executive secretary-director of the State Board of Elections, and the procedure for employment thereafter shall be the same as the procedure hereinafter set out for termination of employment. Persons who shall not serve as an executive secretary include the following:

- (1) Any person who holds any elective public office.
- (2) Any person who is a candidate for any office in a primary or election.
- (3) Any person who holds any office in a political party or committee thereof.
- (4) Any person who is a campaign chairman or finance chairman for any candidate for public office, or who serves on any campaign committee for any candidate.
- (5) Any person who has been convicted of a felony in any court unless such person's citizenship has been restored pursuant to the provisions of Chapter 13 of the General Statutes of North Carolina.
- (6) Any person who has been removed by the State Board of Elections following a public hearing at any time.
- (7) Any person who is a spouse, child, spouse of child, sister, or brother of any member of the county board of elections by whom such person would be employed or any person who is a member of said board.

(b) Termination of Employment. — The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Secretary-Director of the State Board of Elections the termination of the employment of the county board's executive secretary. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Secretary-Director shall forward a copy of same by certified mail, return receipt requested, to the county executive secretary involved. The county executive secretary may reply to said petition within 15 days of receipt thereof. Within 20 days of receipt of the county executive secretary's reply or the expiration of the time period allowed for the filing of said reply, the State Executive Secretary-Director shall render a decision as to the termination or retention of the county executive secretary. The decision of the Executive Secretary-Director of the State Board of Elections shall be final unless such decision shall, within 20 days from the official date on which it was made, be deferred by the State Board of Elections, in which event a public hearing shall be conducted by said State Board or any single member designated by the remaining four members, in the county seat of the county involved. Following the conduct of such public hearing and

a decision by the State Board of Elections, the chairman of said Board shall notify the Executive Secretary-Director of the State Board of Elections, in writing, of the decision resulting from the public hearing. If the decision, rendered by the State Board of Elections, results in concurrence with the decision entered by the Executive Secretary-Director, the decision becomes final. If the decision rendered by the Board is contrary to that entered by the Executive Secretary-Director, then the Executive Secretary-Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections. The employment of any executive secretary presently employed or hereafter employed shall not be terminated except in compliance with the procedures herein prescribed. For the purposes of this subsection the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-22(c).

(c) Compensation. — The executive secretary shall be paid compensation as recommended by the county board of elections and approved by the respective boards of county commissioners. Beginning July 1, 1975, the board of county commissioners in every county shall compensate the executive secretary of the county board of elections with a minimum payment of twenty dollars (\$20.00) per day for each day the executive secretary is in attendance to her prescribed duties. For the purposes of this section not less than four hours nor more than eight hours shall constitute one day. In addition to the minimum compensation required herein, the executive secretary of the county board of elections shall be granted the same vacation leave, sick leave and petty leave as granted to all other county employees in similar positions. It shall also be the responsibility of the board of county commissioners to appropriate sufficient funds to compensate a replacement for the executive secretary when authorized leave is taken.

(d) Duties. — The executive secretary may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. In addition to any administrative duties the executive secretary shall be authorized to receive applications for registration and in pursuit of such authority shall be given the oath required of all registrars. In addition, the executive secretary may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its executive secretary so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to an executive secretary any of its quasi-judicial or policy-making duties and authority. Within the limitations imposed upon him by the resolution of the county board of elections, the acts of a properly appointed executive secretary shall be deemed to be the acts of the county board of elections, its officers and members. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 2; 1973, c. 859, s. 1; 1975, c. 211, ss. 1, 2; c. 713.)

Editor's Note. —

The 1973 amendment rewrote this section.

The first 1975 amendment rewrote subsection

(b).

The second 1975 amendment added all of subsection (c) following the first sentence.

ARTICLE 5.

Precinct Election Officials.

§ 163-41. Precinct registrars and judges of election; special registration commissioners; appointment; terms of office; qualifications; vacancies; oaths of office. — (a) Appointment of Registrar and Judges. — At the meeting required by G.S. 163-31 to be held on the Tuesday following the first Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as registrar and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the precinct for which appointed, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the registrar, provided, however, that in a primary election in which only one political party participates, only the judge and assistants, appointed pursuant to G.S. 163-42, of the political party participating in said primary shall serve, along with the registrar, for that particular primary. For purposes of this section, the second primary provided for in G.S. 163-111 shall be considered part of the first primary and not a separate primary election.

No person holding any office or place of trust or profit under the government of the United States, or of the State of North Carolina, or any political subdivision thereof, shall be eligible to appointment as a precinct election official: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, commissioners of public charities, or commissioners for special purposes.

No person who is a candidate for nomination or election shall be eligible to serve as a registrar or judge of election. No person who is a chairman, vice-chairman, secretary, treasurer, precinct chairman, committeeman or other officer of any political party in North Carolina that is officially recognized under the provisions of G.S. 163-96 shall be eligible to serve as a registrar or judge of election.

The chairman of each political party in the county where possible shall recommend three registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as registrar in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended.

If, at any time other than on the day of a primary or election, a registrar or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed.

If any person appointed registrar shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as registrar until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If a judge of election shall fail to be present at the voting place at the

hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the registrar shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

Before entering upon his duties each registrar shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as registrar of precinct, County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

Before the opening of the polls on the morning of the primary or election, the registrar shall administer the oath set out in the preceding paragraph to each judge of election and assistant, substituting for the word "registrar" the words "judge of elections in" or "assistant in," whichever is appropriate.

(b) Appointment of Special Registration Commissioners. — In counties which adopt full-time and permanent registration the county board of elections may, in its discretion, in addition to registrars, select persons of good repute to act as special registration commissioners. Persons appointed as special registration commissioners shall be appointed at the same time as required by G.S. 163-41 for the appointment of registrars and shall serve for two years, but the county board of elections may terminate their authority at any time without cause.

In counties authorized to appoint special registration commissioners the chairman of each political party shall have the right to recommend registered voters who are residents of the county for appointment as special registration commissioners. If such recommendations are received by the county board of elections at least five days prior to the date on which such appointments must be made the county board should make appointments from the names thus recommended, although it shall not be required to do so.

Before entering upon his duties each special registration commissioner shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as special registration commissioner for County without fear or favor, to the best of my knowledge and ability, according to law; so help me, God."

(c) Publication of Names of Precinct Officials. — Immediately after appointing registrars, judges, and special registration commissioners as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu

thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. (1901, c. 89, ss. 8, 9, 16; Rev., ss. 4307, 4308, 4309; C. S., ss. 5928, 5929, 5930; 1923, c. 111, s. 2; 1929, c. 164, s. 18; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 435; c. 1223, s. 2; 1975, c. 159, ss. 3, 4; c. 711; c. 807, s. 1.)

Editor's Note. —

The first 1973 amendment rewrote the fourth paragraph of subsection (a).

The second 1973 amendment rewrote the first sentence of the fourth paragraph of subsection (a).

The first 1975 amendment, in the first paragraph of subsection (a), substituted "Tuesday following the first Monday in August of the year in which they are appointed" for "seventh Saturday before each primary election" in the first sentence and substituted the language beginning "only the judge and assistants" for "all of the precinct officials shall be chosen from that party" at the end of the next-to-last sentence. In subsection (b), the amendment inserted "in its discretion" near the middle of the first sentence and rewrote the second sentence of the first paragraph and substituted "authorized to appoint special registration commissioners" for "which adopt

full-time and permanent registration" in the first sentence and "at least five days prior to the date on which such appointments must be made the county board should" for "before the seventh Saturday before the primary is to be held, that board may" in the second sentence of the second paragraph.

The second 1975 amendment substituted "no later than the fifth day preceding the date on which appointments are to be made" for "before the seventh Saturday before the primary is to be held" in the last sentence of the fourth paragraph of subsection (a).

The third 1975 amendment, effective July 1, 1975, added the second sentence of the third paragraph of subsection (a).

Session Laws 1975, c. 807, s. 2, provides: "This act shall not apply to persons previously appointed to serve as precinct registrars or judges of election for terms ending before the 1976 primary election."

§ 163-41.1. Certain relatives prohibited from serving together. — (a) The following categories of relatives are prohibited from serving as precinct officials of the same precinct: spouse, child, spouse of a child, sister or brother.

(b) **Temporary Prohibition. —** No precinct official who is the wife, husband, son or daughter of any candidate for nomination or election may serve as precinct official during any primary or election in which such candidate participates. The county board of elections shall temporarily disqualify any such official for the specific primary or election involved and shall have authority to appoint a substitute official, from the same political party, to serve only during the primary or election at which such conflict exists. (1975, c. 745.)

§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office. — Each county board of elections shall appoint at least two assistants for each precinct within the county, and in its discretion may appoint more than two, to aid the registrar and the judges. Assistants shall, in all cases, be qualified voters of the precinct for which appointed, and shall serve for the primary or election for which appointed and no longer. Each of the required two precinct assistants in each precinct shall be a registered voter of a different political party. Where there are more than two precinct assistants to be appointed in a precinct, no more than a majority of them shall be registered voters of the same political party, and if there is an odd number of precinct assistants to be appointed in that precinct. However, if these requirements cannot be met because there is an insufficient number of voters of the political parties available for appointment as precinct assistants, the county board of elections shall, nevertheless, secure as much bipartisan representation among precinct assistants as circumstances in the precinct permit, taking into account the recommendations received by it from the party chairmen and the number of precinct assistants to be appointed.

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it before the seventh Saturday before the primary is to be held, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended.

No person who is a candidate for nomination or election shall be eligible to serve as an assistant.

In all precincts, whether using voting machines or paper ballots, the county board of elections may appoint one precinct assistant for each 300 voters registered in that precinct in addition to the two required precinct assistants.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the registrar of the precinct for which the assistant is appointed. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 95; c. 1359, ss. 1-3; 1975, c. 19, s. 67.)

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

Section 12 of the first 1973 amendatory act purported to amend this section by adding to the first paragraph a new sentence, to read as follows:

"Where there are two precinct assistants in each precinct, each shall be a registered voter of a different political party than the other, and where there are more than two precinct assistants in each precinct, no more than a majority of them shall be registered voters of the same political party; provided, however, that if the requirements of this sentence cannot be met because there is an insufficient number of voters of the political parties available for appointment as precinct assistants, the county board of elections may, notwithstanding this statute, secure bi-partisan representation among precinct assistants."

By floor amendment, embodied in s. 95 of the first 1973 amendatory act, this section was rewritten in its entirety without the sentence quoted above.

The second 1973 amendment, effective July 1, 1974, added the third and fourth sentences of the first paragraph, substituted "10" for "five" in the first sentence and "precinct assistants for each precinct" for "two required precinct assistants" in the second sentence of the second paragraph and deleted, at the end of the second sentence of the second paragraph "making one such appointment from the recommended names of each of the two parties." The amendment also deleted the former third sentence of the second paragraph, authorizing the board to appoint additional precinct assistants, and rewrote the fourth paragraph, which formerly made separate provision for precincts using voting machines and precincts in which voting machines were not used.

The fourth sentence of the first paragraph in the section seems to be incomplete, but is set out exactly as it appears in the second 1973 act.

The 1975 amendment corrected an error in the first 1973 amendatory act by substituting "election" for "elections" in the third paragraph.

§ 163-44: Repealed by Session Laws 1973, c. 793, s. 13, effective July 1, 1973.

§ 163-45. Observers; appointment. — The chairman of each political party in the county shall have the right to appoint two observers to attend each voting place at each primary and election: Provided, that in a primary this right shall not extend to the chairman of a political party unless that party is participating in the primary. In any election in which an independent candidate is named on the ballot, he or his campaign manager shall have the right to appoint two observers for each voting place. Observers serve also as challengers. Persons appointed as observers must be registered voters of the precinct for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the registrar of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 a.m. on the fifth day prior to any primary or general election, submit in writing to

the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the registrar for each affected precinct. He shall retain the other copy. The chairman, or the registrar and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the registrar of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the registrar and judges of elections shall permit him to make such observation and take such notes as he may desire. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 14, 94.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added the second, third, fourth and sixth sentences of the second paragraph, and substituted "chairman, or the registrar and judges for each affected precinct"

for "registrar and judges of election for the precinct" in the present fifth sentence of the second paragraph. The amendment also substituted "observers" for "watchers" throughout the section.

§ 163-46. Compensation of precinct officials and assistants. — The precinct registrar shall be paid the sum of twenty-five dollars (\$25.00) per day for his services on the day of a primary, special or general election. Judges of election shall each be paid the sum of twenty dollars (\$20.00) per day for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the sum of fifteen dollars (\$15.00) per day for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five dollars (\$5.00) for their services on the day of a primary, general or special election.

Registrars shall be paid the sum of twenty dollars (\$20.00) per day and judges shall be paid the sum of fifteen [dollars] (\$15.00) per day for attendance at the county canvass, pursuant to G.S. 163-173; or for attending the polling place for the purpose of registering voters upon instruction from the chairman of the county board of elections.

The chairman of the county board of elections, along with the executive secretary, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each registrar and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars (\$15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay registrars, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as registrar or judge of election when a previously appointed registrar or judge fails to appear at the voting place or leaves his post on the day of an election or primary, shall be paid the same compensation as the registrar or judge appointed prior to that date. (1901, c. 89, s. 42; Rev., s. 4311; C. S., s. 5932; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505,

s. 11; 1951, c. 1009, s. 1; 1953, c. 843; 1955, c. 800; 1957, c. 182, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1969, c. 24; 1971, c. 604; 1973, c. 793, ss. 15, 16, 94.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, added the last sentence of the first paragraph and substituted "assistants, and ballot

counters" for "and assistants compensation" in the first sentence and "Observers" for "Ballot counters, watchers and markers" in the second sentence of the fourth paragraph.

§ 163-47. Powers and duties of registrars and judges of election. — (a) The registrars and judges of election shall conduct the primaries and elections within their respective precincts fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting. On the day of each primary and general and special election, the precinct registrar and judges shall remain at the voting place from the time fixed by law for the commencement of their duties there until they have completed all those duties, and they shall not separate nor shall any one of them leave the voting place except for unavoidable necessity.
(1973, c. 793, s. 17.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added the second sentence of subsection (a).

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

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 6.

Qualifications of Voters.

§ 163-55. Qualifications to vote; exclusion from electoral franchise. — Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct in which he offers to register and vote for 30 days next preceding the ensuing election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to register and vote in the precinct in which he resides: Provided, that removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which he has removed until 30 days after his removal.

The following classes of persons shall not be allowed to register or vote in this State:

- (1) Persons under 18 years of age.
- (2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law. (19th amendt. U. S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C. S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 18.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, deleted "for one year" following "North Carolina" in the first paragraph, deleted former subdivision (2) of the second paragraph, which read: "Idiots and lunatics," and rewrote former subdivision (3) of the second paragraph as present subdivision (2).

University Student's Voting Residence. —

The fact that one is a student in a university does not entitle him to vote where the university is situated, nor does it of itself prevent his voting there. He may vote at the seat of the university if he has his residence there and is otherwise qualified. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

A state may constitutionally continue the "historic exclusion" of felons from the franchise without regard to whether such exclusion can pass muster under the equal protection clause, because the Fourteenth Amendment of the United States Constitution expressly allows the exclusion of felons from the franchise without reduction of representation.

Fincher v. Scott, 352 F. Supp. 117 (M.D.N.C. 1972).

The argument that denial of right to vote for being a convicted felon is cruel and unusual punishment is without merit, especially considering the large number of states that do so. *Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972).

§ 163-56: Repealed by Session Laws 1973, c. 793, s. 19, effective July 1, 1973.

§ 163-57. Residence defined for registration and voting.

This section defines residence for registration and voting, and incorporates the case law on the subject of domicile. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

"Residence" Is Synonymous with Domicile. —

It is clear that residence, when used in the election law, means domicile. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Evidence of Domicile. — A person's testimony regarding his intention with respect to acquiring a new domicile or retaining his old one is competent evidence, but it is not conclusive of the question. All of the surrounding circumstances and the conduct of the person must be taken into consideration. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Rebuttable Presumption of Student's Domicile. — The presumption is that a student who leaves his parents' home to enter college is not domiciled in the college town to which he goes; however, this presumption is rebuttable. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

An adult student may acquire a domicile at the place where his university or college is

situated, if he regards the place as his home, or intends to stay there indefinitely, and has no intention of resuming his former home. If he goes to a college town merely as a student, intending to remain there only until his education is completed and does not change his intention, he does not acquire a domicile there. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Court Determines Domicile of Student. — A student's physical presence in the college town where he seeks to vote demonstrably fulfills the residency requirement of domicile. A court must rely upon both his words and his actions to determine whether the student has the requisite intent to make the town his home and to remain there indefinitely. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Student's Residence Is a Question of Fact. — Whether a student's voting residence is at the location of the college he is attending or where he lived before he entered college is a question of fact which depends upon the circumstances of each individual's case. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Applied in *Webb v. Nolan*, 361 F. Supp. 418 (M.D.N.C. 1972), *aff'd*, 484 F.2d 1049 (1973).

§ 163-59. Right to participate or vote in party primary. — No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

- (1) Is a registered voter, and
- (2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
- (3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election or regular municipal election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general or regular municipal election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than 21 days prior to the primary.

(1915, c. 101, s. 5; 1917, c. 218; C. S., s. 6027; 1959, c. 1203, s. 6; 1967, c. 775, s. 1; 1971, c. 1166, s. 4; 1973, c. 793, s. 20.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, rewrote the second paragraph.

ARTICLE 7.

Registration of Voters.

§ 163-65. Registration books and records.

(b) Repealed by Session Laws 1973, c. 793, s. 21, effective July 1, 1973.

(c) **Registration Records.** — The applicant's application to register, when approved by the county board of elections, as provided in G.S. 163-67, shall become an official registration certificate. All original registration certificates shall be kept by the county board of elections in a safe place to be provided by the board of county commissioners. The county board of elections shall place an exact duplicate or copy of each original registration certificate in the proper precinct registration book, and certify each such book as containing the registration certificates of all persons entitled to vote in that precinct. Duplicate registration certificates filed in the precinct registration books, when properly certified by the county board of elections, shall be used in the precincts for purposes of all primaries and elections; provided, however, that the original registration certificates shall at all times be the official and final evidence of registration, and the county board of elections shall have the power to correct the duplicates in the precinct registration books to conform to the original registration certificates at any time, including the day of any primary or election. (1939, c. 263, s. 1; 1949, c. 916, s. 1; 1953, c. 843; 1955, c. 800; 1961, c. 381; 1963, c. 303, s. 1; 1967, c. 761, ss. 1, 2; c. 775, s. 1; 1973, c. 793, s. 21.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, deleted subsection (b), relating to a special register in which the chairman of the board of elections was to register qualified persons prior to the regular registration, substituted "Records" for "Record" and deleted, in the catchline to subsection (c), "in County With Full-

Time and Permanent Registration or Loose-Leaf Registration Book System" and deleted, at the beginning of subsection (c), "In counties which adopt full-time and permanent registration or loose-leaf registration book system."

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

§ 163-66. Custody of registration records and pollbooks; access; obtaining copies. — In all counties the registration records, books, registration certificates, indexes, and other records of registration and voting shall be and remain in the possession of the county board of elections. The county board of elections shall keep these books in a safe and secure place where they may not be tampered with, stolen, or destroyed. If possible, the board shall keep them in a fireproof vault. The board may exercise supervision and control of these records through its properly designated officers and employees. It shall be the duty of the county board of elections, on application of any candidate, or the county chairman of any political party, or any other person, to furnish a list of the persons registered to vote in the county or in any precinct or precincts therein. No registrar shall furnish lists of registered voters or permit the registration records of his precinct to be copied. The county board of elections shall furnish such lists and, upon request, it may furnish selective lists according to party affiliation, sex, race, date of registration, or any other reasonable category. In all instances, however, the county board of elections shall require persons to whom any list is furnished to make full reimbursement for the

expense incurred in preparing it. Notwithstanding the above, however, the chairman of each political party, as defined in G.S. 163-96, shall be entitled biennially, upon request, to one free list of all registered voters in his county showing the name, address, sex, political affiliation and precinct of each registered voter. The free list furnished the chairman of each political party shall group the registered voters by precinct and shall be furnished as soon as practical but no later than 30 days after said request. (1901, c. 89, s. 83; Rev., s. 4382; C. S., s. 6016; 1931, c. 80; 1939, c. 263, s. 3½; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 22; 1975, c. 12.)

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

The 1975 amendment added the last sentence.

§ 163-67.1: Repealed by Session Laws 1973, c. 859, s. 2.

Cross Reference. — For present provisions covering the subject matter of the repealed section, see § 163-35.

Editor's Note. — The repealed section was amended by Session Laws 1973, c. 793, s. 23.

§ 163-68: Repealed by Session Laws 1973, c. 793, s. 24, effective July 1, 1973.

§ 163-69. Permanent registration. — The registration certificates shall be a permanent public record of registration and qualification to vote, and they shall not thereafter be cancelled except as otherwise provided in this Chapter. No new registration shall be ordered pursuant to G.S. 163-78 either by precinct, or countywide, unless the permanent registration certificates have been lost or destroyed by theft, fire, or other hazard.

In the event of any division of precincts or changes in precinct boundaries, the board of elections shall not cancel the existing registration or order a new registration, but it shall immediately correct the existing precinct registration certificates to conform to the division or change.

To the end that the permanent registration records shall be purged of the names of registrants who have died or who have become disqualified to vote since registration, the Department of Human Resources, on or before the fifteenth day of the months of March, June, September and December, shall furnish free of charge to each county board of elections a certified list of the names of deceased persons who were residents of that county, such certified list to be based upon the information supplied by death certificates received by the Department of Human Resources during the preceding quarter. Upon the receipt of such a certification from the health director, the county board of elections shall cause to be removed from its permanent registration records the name of any person appearing on the death certification.

In addition, beginning in the 12-month period following the presidential election in 1972 and thereafter in the period beginning no later than 30 days after each subsequent presidential election, the county board of elections shall remove from the permanent registration records the names of all persons who have failed to vote, according to the poll or other record of voting, for a period of four years. Also, at any other time, including the time required by this section for mandatory purging of persons who have not voted for a period of four years, the county board of elections may remove from the permanent registration records the names of all persons who have moved their residence from the county. Prior to removing any person's name from the registration records for failure to vote for four consecutive years or for removal of residence from the county as authorized by this section, the county board of elections shall cause

to be mailed to the person affected, at the address shown on the permanent registration records, a notice to show cause why his registration should not be voided. If such a person shall appear and show that his qualifications to register and vote remain as they were when he was first registered, his name shall not be removed from the permanent registration records. Any person whose name has been removed from these records for failure to vote for four consecutive years or for removal of residence from the county shall be permitted to reregister at any time he can demonstrate that he is qualified to register and vote.

Nothing in this section shall prohibit the county board of elections from restoring to the permanent registration records the name of any person upon proof that he is not dead, or that he has voted in the county within the four-year period, or has not removed his residence from the county. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 25; 1975, c. 395.)

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

The 1975 amendment, effective July 1, 1975, substituted "Department of Human Resources, on or before the fifteenth day of the months of March, June, September and December," for "register of deeds of the county" in the first sentence of the third paragraph, substituted the language beginning "certified list of the names"

at the end of that sentence for "certification of all death certificates as soon as they are recorded in his office," substituted "health director" for "register of deeds" and "death certification" for "register of deeds' death certificate certification" in the second sentence of the third paragraph and inserted "the" preceding "receipt" near the beginning of that sentence.

§ 163-70. Chairman to certify to State Board of Elections number of registered voters in county. — The chairman of a county or municipal board of elections shall certify to the State Board of Elections the number of registered voters in the county or municipality. The certification shall be made on such forms as the State Board may prescribe and at such times as the State Board may fix. (1967, c. 775, s. 1; 1971, c. 1166, s. 5; 1973, c. 793, s. 26.)

Editor's Note. —

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

§ 163-72. Registration procedure; oath. — (a) Before questioning any applicant for registration as to his qualifications, the registrar shall administer the following oath to him:

"You swear (or affirm) that the statements and information you shall give me with respect to your identity and qualifications to register to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After being sworn, the applicant shall state as accurately as possible his name, age, place of birth, place of residence, political party affiliation, if any, under the provisions of G.S. 163-74, the name of any municipalities in which he resides, and any other information which may be material to a determination of his identity and qualification to be admitted to registration. The applicant shall also present to the registrar written or documentary evidence that he is the person he represents himself to be. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the applicant's qualifications.

(b) If the registrar finds the applicant duly qualified and entitled to be registered, he shall administer the following registration oath to him, omitting the words in parentheses if the applicant does not claim residence in any municipality:

"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; that I have been or will have been a resident of the State of North Carolina and of this precinct for 30 days by the date of the next primary, special or general election; (that I am a resident of (municipal corporation)); that I am at least 18 years of age or will be by the date of the next general election; and that I have not registered to vote in any other precinct, county, or state, nor will I vote in any other precinct, county, or state, so help me, God."

If the registrar finds the applicant qualified and entitled to be registered, and if the applicant has taken the oath prescribed in the preceding paragraph, the registrar shall register him by recording his name, age, race, residence, place of birth, municipality in which entitled to vote, and the precinct, municipality, county, or state from which he has removed in the event of a removal, in the appropriate columns of the registration book or other registration record.

The registration book or other record containing the information required by the preceding paragraph shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration.

(c) No registered voter shall be required to reregister upon moving from one precinct to another in the same county. In lieu thereof, in accordance with regulations prescribed by the county board of elections, the voter, not less than 21 days before any primary or election in which the removing elector desires to vote, shall file with the county board of elections or with a registrar or judge of elections, or special library registration deputy or special registration commissioner an affidavit setting forth his former residence, and a statement that all his other qualifications to register and vote remain as they were at the time he was registered. If a registered voter by moving his place of residence from one place to another within the same county thereby affects his eligibility to vote in one or more municipalities, the affidavit also shall state the municipality in which he is now qualified to vote and/or those in which he is no longer qualified to vote. If the county board of elections finds the facts asserted in the affidavit to be true, it shall immediately transfer the voter's registration to the precinct of his new residence or shall correct his registration for municipal elections. Thereafter the voter shall be considered registered and qualified to vote in his new precinct of residence. (1901, c. 89, s. 12; Rev., s. 4319; C. S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, divided this section into subsections, inserted "the name of any municipalities in which he resides" and added the second sentence in the third paragraph of present subsection (a), added the language beginning "omitting the words" at the end of the introductory paragraph and rewrote the oath in subsection (b), inserted "municipality in which entitled to vote" and

"municipality" and made minor changes in wording in the next-to-last paragraph of subsection (b), and rewrote subsection (c).

The second 1973 amendment inserted "or special registration commissioner" near the middle of the second sentence of subsection (c).

The 1975 amendment inserted "or judge of elections, or special library registration deputy" near the middle of the second sentence of subsection (c).

§ 163-72.1. Cancellation of prior registration. — (a) After having accepted the application for registration, and after advising the applicant that he is still bound by the oath first administered pursuant to G.S. 163-72, the registrar shall ask the applicant whether he is, at that time, also registered to vote in any other county, municipality or state. If the applicant answers in the affirmative, the registrar shall obtain from him a signed authorization (in triplicate) to cancel all prior registrations. The authorization shall set forth the name under which the person previously was registered, his prior address (including state, county, street address, and precinct, if known), and the name under which he is applying to register. It shall be addressed to the appropriate election officials in the other county, municipality or state and shall request them to cancel his voting registration in that county or state. It also shall direct the county board of elections to which he is currently applying for registration to transmit a signed copy of the authorization to the appropriate election officials in the other county, municipality or state.

(b) The registrar shall deliver all copies of the signed authorization, together with the person's application for registration, to the county board of elections. If the person, having stated that he is registered in another county or state, refuses to sign the authorization, the registrar shall complete the authorization as completely as possible without obtaining the person's signature and shall transmit it, together with the person's application for registration, to the county board of elections, noting in the appropriate place on the authorization that the person refused to sign it after having stated that he is registered in another county or state.

(c) If the person's application for registration is rejected pursuant to G.S. 163-67, and upon exhaustion of any appeal from rejection that does not result in the granting of registration, the chairman of the county board of elections shall promptly destroy all copies of the person's authorization.

(d) If the person's application for registration is not rejected, the chairman of the county board of elections forthwith shall mail a signed copy of the authorization to the appropriate elections officials in the county, municipality or state where the person previously was registered.

(e) When a county or municipal board of elections in this State receives from another county or municipal board of elections in this State, or from appropriate elections officials of another state or political subdivision in another state, a signed authorization directing the removal of a person's name from the county's or municipality's permanent registration records, the board, 20 days after giving written notice of receipt of the authorization to the person at the local address shown in the county's registration records and in the authorization, shall remove the person's name from its registration records.

If within 10 days after giving notice to the person affected the board is notified by the person that he objects to the removal of his name from the records, the chairman of the board shall enter a challenge to the person's qualifications to remain registered or vote. The challenge may be based on the person's removal of residence from the county or municipality or any other sufficient ground for objecting to the right of the person to remain registered or vote, and the challenge shall be heard as provided in Chapter 163, Article 8.

(f) The board of elections is responsible for the safekeeping of the authorization and any other documents relating to the cancellation of prior registration pursuant to this section. Except as provided in subsection (c), the board shall retain them for a period of at least one year after obtaining the authorization.

(g) The authorization form and the form for written notice of receipt of authorization shall be prescribed or approved by the State Board of Elections. No county or municipality may use any other such forms.

(h) For the purposes of this section, the word "state" includes the District of Columbia. (1973, c. 793, s. 28; c. 1223, s. 4.)

Editor's Note. — Session Laws 1973, c. 793, s. 96, makes the act effective July 1, 1973. paragraph and "10 days" for "20 days" near the beginning of the second paragraph of subsection

The 1973 amendment substituted "20 days" for "ten days" near the end of the first (e).

§ 163-73: Repealed by Session Laws 1973, c. 793, s. 29, effective July 1, 1973.

§ 163-74. Record of political party affiliation; changing recorded affiliation; correcting erroneous record. — (a) Record of Party Affiliation. — When any person applies for registration prior to any primary or election, it shall be the duty of the registrar to request the applicant to state his political party affiliation and to record the affiliation in the registration book or appropriate record. Such recorded party affiliation shall thereafter be permanent unless, or until, the registrant changes it under the provisions of subsection (b) of this section.

If the applicant refuses to declare his party affiliation upon request, the registrar shall register his name, if he is otherwise qualified, without indicating any party affiliation opposite the name. The registrar shall then advise the applicant that, although registered, he cannot vote in any party primary but only in general elections held thereafter.

If the applicant states to the registrar that he is an independent indicating affiliation with no political party, the registrar shall register his name, if he is otherwise qualified, entering the designation "Independent" in the proper place on the registration record. The registrar shall then advise the applicant that, although registered, he cannot vote in any party primary but only in general elections held thereafter.

In all cases in which no party affiliation has been recorded in the registration book opposite the name of any registered elector, but not including those registered as independents, the registrant may, on primary election day, appear before the registrar of his precinct and have his political party affiliation recorded by taking the following oath to be administered by the registrar:

"I,, do solemnly swear (or affirm) that I desire in good faith to have my affiliation with the party recorded in the registration book of this precinct, so help me, God."

When the registrant has taken the prescribed oath, the registrar shall record his declared party affiliation opposite the registrant's name in the registration book and permit him to vote in the primary of the party with which he is affiliated.

(b) Change of Party Affiliation. — Any registered voter who desires to have his party affiliation changed on the registration records of the county shall, not less than 21 days prior to any primary, file an affidavit with the county board of elections, or a registrar, or judge of elections, or special library registration deputy, or special registration commissioner, in accordance with regulations to be adopted by the county board of elections, in the following form:

"I,, do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the party to the party, and that such change of affiliation be made on the registration records in the manner provided by law, so help me, God."

Upon receipt of the required oath, the county board of elections shall immediately change the record of the registrant's party affiliation to conform to that stated in the oath. Thereafter the voter shall be considered registered and qualified to vote in the primaries of the political party which he designated in the oath.

(1973, c. 793, ss. 30, 31; c. 1223, s. 5; 1975, c. 234, s. 2.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, deleted "during a regular registration period" following "applies for registration" in the first sentence of subsection (a), rewrote the introductory paragraph of subsection (b) and deleted the former first sentence of the last paragraph of subsection (b), which was similar to the introductory paragraph as rewritten by the amendment, but which was limited to "counties which adopt full-time and permanent registration."

The second 1973 amendment inserted "or special registration commissioner" near the middle of the first sentence of subsection (b).

The 1975 amendment inserted "or judge of elections, or special library registration deputy" near the end of the introductory paragraph of subsection (b).

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

§ 163-75. Appeal from denial of registration.

Applied in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-76. Hearing on appeal before county board of elections.

Applied in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-77. Appeal from county board of elections to superior court.

Applied in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-78. New registration; when permanent registration certificates lost or destroyed. — If all of the permanent registration certificates, required by G.S. 163-65, for any precinct, for the entire county, or for any municipality, are, prior to 30 days preceding any primary, general or special elections, lost or destroyed by theft, fire, or other hazard, the county or municipal board of elections shall promptly provide the precinct registrar of each affected precinct with new loose-leaf registration books and new applications for registration, and shall order a new registration of qualified persons in each affected precinct. The new registration shall be conducted at the times and places in the manner prescribed by G.S. 163-67(a). The board of elections shall give notice that a new registration is in process by advertisement in a newspaper having general circulation in the county and by posting notice at the courthouse door. The notice shall state that a new registration is in process, and the location of the voting place and the name of the registrar in each affected precinct.

If the destruction or mutilation of the precinct registration book occurs less than 30 days before any primary, general, or special election, the board of elections shall, insofar as time will permit, adhere to the provisions of the first paragraph of this section. If the time available makes it impossible to conduct a new registration in the affected precinct, each person presenting himself to vote in the precinct on the day of the ensuing general or special election shall be allowed to cast his ballot after signing and delivering to the registrar an affidavit in the following form:

"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; that I have been a resident of the State of North Carolina and of this precinct or municipality for 30 days; that I am at least

18 years of age; and that I have not registered to vote in any other precinct, county, municipality or state, so help me, God.”

If the ensuing election is a primary rather than a general or special election, the following affidavit shall be used:

“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; that I have been or will have been a resident of the State of North Carolina and of this precinct or municipality for 30 days by the date of the next general election; that I am at least 18 years of age or will be by the date of the next general election; and that I have not registered to vote in any other precinct, county, municipality, or state, so help me, God.”

Persons permitted to vote under this procedure may be challenged in accordance with the provisions of G.S. 163-87 and G.S. 163-88. The registrar shall deliver all affidavits deposited with him to the board of elections on canvass day. The affidavits shall not be deemed to constitute a new record of registration for the precinct, county or municipality for subsequent primaries and elections. (1901, c. 89, s. 18; 1905, c. 510; Rev., ss. 4314, 4323; 1909, c. 894; C. S., ss. 5935, 5947; 1921, c. 181, s. 3; 1923, c. 111, s. 3; 1933, c. 165, ss. 3, 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 3; 1961, c. 382; 1963, c. 303, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 32.)

Editor's Note. —

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

§ 163-79. Alternate oaths by voters and registrants. — In the event any person taking any of the oaths in G.S. 163-72, G.S. 163-74(a), G.S. 163-74(b), G.S. 163-74(c), and G.S. 163-78(b) objects to the phrase “so help me, God” appearing at the end of said oaths, the words “I do so affirm” may be substituted therefor. (1973, c. 184.)

Editor's Note. — Section 163-78, referred to in this section, no longer contains a subsection (b).

§ 163-80. Officers authorized to register voters. — (a) Only the following election officials shall be authorized to register voters:

- (1) Any member of a county board of elections who has been duly appointed pursuant to G.S. 163-22(c) and properly installed as required by G.S. 163-30 and 163-31.
- (2) The executive secretary of a county board of elections appointed pursuant to the provisions of G.S. 163-35.
- (3) Precinct registrars and judges of election appointed pursuant to the provisions of G.S. 163-41.
- (4) Special registration commissioners appointed pursuant to the authority and limitation contained in G.S. 163-41(b).
- (5) Full-time and salaried deputy executive secretaries employed by the county board of elections and who work under the direct supervision of the board's executive secretary appointed pursuant to the provisions contained in G.S. 163-35.
- (6) Local public library employees designated by the governing board of such public library to be appointed by the county board of elections as special library registration deputies. Persons appointed under this subsection shall be given the oath contained in G.S. 163-41(b), and shall be authorized to accept applications to register on those days and

during those hours said special deputies are on duty with their respective libraries.

(b) All election officials authorized to register voters under authority of this section shall not be authorized to register voters who reside outside the boundaries of their respective counties except in those specific instances involving municipalities which lie within the boundaries of two or more counties. The State Board of Elections shall have authority to promulgate rules for the processing of voters in such instances.

(c) All election officials authorized by this section to register voters shall register any qualified voter without regard to political party affiliation and without discrimination in any manner whatsoever.

(d) The State Board of Elections shall promulgate rules for the proper training of those persons qualifying under this section as registrars. (1975, c. 234, s. 1.)

§§ 163-81 to 163-83: Reserved for future codification purposes.

ARTICLE 8.

Challenges.

§ 163-84. **Time for challenge other than on day of primary or election.** — The registration records of each county shall be open to inspection by any registered voter of the county, including any registrar or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is open pursuant to G.S. 163-67. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 33.)

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

§ 163-85. **Challenge procedures other than on day of primary or election.** — (a) **Who May Challenge.** — Any registered voter of the county may challenge the right of any person to register, remain registered, or vote in the county.

(b) **To Whom Challenge Made; Form and Nature of Challenge.** — Challenges shall be made to the county board of elections. Each challenge shall be made separately. The burden of proof shall be on the challenger in each case. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the challenged voter is not entitled to be or remain registered or to vote. The challenge shall be signed by the challenger and shall set forth the challenger's address.

(c) **Recording Challenge.** — When a challenge is made, the official to whom it is made shall write the word "challenged" in pencil in the registration records beside the name of the person who is challenged. The official then shall prepare a written notice of the challenge, stating succinctly the grounds asserted. As soon as the challenge has been recorded, the official shall also set a time and place at which the merits of the challenge shall be heard. The official shall serve the notice of the time and place of the hearing on the challenged person either in person or by leaving a copy of the notice at the place of residence of the challenged person, as shown on the registration records. The official receiving the challenge shall also furnish the challenger with a copy of the notice either in person or by leaving it at the challenger's place of residence, as shown on the registration records.

(d) If the challenge is based on the challenged person's removal of his permanent residence to another county or state, the official receiving the challenge shall not set a time and place for the hearing to be held before the next ensuing primary or election day, but if the challenged person appears and seeks to vote on that day, the challenge shall be heard and decided as if it were held on that day. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972; 1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 34.)

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

§ 163-86. Challenge hearings other than on day of primary or election. — (a) Hearing on Challenge Made prior to Primary or Election Day. — A challenge entered on a day other than the day of a primary or election shall be heard and decided before the date of the next ensuing primary or election. Challenges shall be heard and decided by the county board of elections.

At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the county board of elections shall explain to the challenged registrant the qualifications for registration and voting in this State. The board chairman, or in his absence the board secretary, shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After swearing the challenged registrant, the board shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the board shall tender to him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of next general election; that you have or will have resided in this State and in the precinct for which registered for 30 days by the date of the next general election; that you are not disqualified from voting by the Constitution and laws of this State; that your name is, and that in such name you were duly registered as a voter of precinct; and that you are the person you represent yourself to be; so help you, God."

If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (b), below, the challenge shall be sustained and the board shall delete his name from the registration records. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge unless it is satisfied that the challenged registrant is a legal voter. If it is satisfied that he is a legal voter, it shall overrule the challenge and erase the word "challenged" which appears by the voter's name in the registration records.

The board, in conducting hearings on challenges, shall have authority to subpoena any witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the person challenged.

(b) Appearance by Challenged Registrant. — The challenged registrant shall appear in person at the challenge hearing. If he is unable to appear in person, he may be represented by another person and must tender to the county board of elections an affidavit that he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next general election, is not disqualified from voting by

the Constitution and laws of this State, is named and was duly registered as a voter of precinct in such name, and is the person represented to be by the affidavit. (1901, c. 89, s. 22; Rev., s. 4340; C. S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 35.)

Editor's Note. —

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

§ 163-88. Hearing on challenge made on day of primary or election. — A challenge entered on the day of a primary or election shall be heard and decided by the registrar and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by the sworn testimony of at least one registered voter of the precinct, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the registrar shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

“You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is, and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God.”

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the registrar or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word “sworn.”

Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged. (1901, c. 89, s. 22; Rev., s. 4340; C. S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 1223, s. 6.)

Editor's Note. —

The 1973 amendment substituted “resided in this State and in the precinct for which

registered for 30 days” for “resided in this State for one year, and in this precinct for 30 days” in the oath.

§ 163-89. Procedures for challenging absentee ballots. — (a) Time for Challenge. — The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00 P.M., or by the registrar at the time of closing of the polls as provided in G.S. 163-233 and G.S. 163-251(b).

(b) Who May Challenge. — Any registered voter of the same precinct as the absentee voter may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge. — Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the ballot does not comply with the provisions of this Article or why the absentee voter is not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered. — Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the registrar of the precinct in which the challenger and absentee voter are registered. If it is delivered to the registrar, the registrar shall personally deliver the challenge to the chairman of the county board of elections on the day of the county canvass.

(e) Hearing Procedure. — All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word "challenged" after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word "sustained" after the word "challenged" following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked "Challenge Sustained." All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the registrar of the precinct and was sustained, the board shall reopen the appropriate ballot boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1965, c. 871; 1967, c. 775, s. 1; 1973, c. 536, s. 4.)

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

SUBCHAPTER IV. POLITICAL PARTIES.

ARTICLE 9.

Political Party Definition.

§ 163-96. "Political party" defined; creation of new party.

(b) Petitions for New Political Party. — Petitions for the formation of a new political party must declare that the signers intend to organize a new political party on a statewide basis, that they intend to participate as a political party in the next succeeding general election, and that they intend to affiliate with the new party by voting for its nominees.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:

- (1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or
- (2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.

Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

- (1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.
- (2) To attach to the petition his signed certificate
 - a. Stating that the signatures on the petition have been checked against the registration records and
 - b. Indicating the number found qualified and registered to vote in his county.
- (3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall require a fee of five cents (5¢) for each signature appearing and shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented and the required fee received. (1901,

c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C. S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179.)

Editor's Note. —

The 1975 amendment rewrote the former last sentence of subsection (b), which merely required a fee of five cents per name, as the present last paragraph of the subsection. The amendatory act referred to the last paragraph of the section, but has been interpreted as intending to amend only the last sentence.

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

This section and §§ 163-98, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under § 163-107. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

§ 163-98. General election participation by new political party.

This section and §§ 163-96, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under § 163-

107. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

§ 163-97.1. Voters affiliated with expired political party. — The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "no party" designation by the State Board's order and all such registrants shall be entitled to declare a political party affiliation on primary election day, consistent with the provisions contained in G.S. 163-74(a). (1975, c. 789.)

§ 163-99. Use of schools and other public buildings for political meetings. — The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of biennial precinct meetings and county and district conventions. Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities. (1975, c. 465.)

§§ 163-100 to 163-103: Reserved for future codification purposes.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal. — (a) Notice and Pledge. — No one shall be voted for in a primary

election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

“Date

I hereby file notice as a candidate for nomination as
... in the party primary election to be held on
....., 19..... I affiliate with the party, (and I certify
that I am now registered on the registration records of the precinct in which
I reside as an affiliate of the party.)

I pledge that if I am defeated in the primary, I will not run for any office as
a write-in candidate in the next general election.

Signed
Name of candidate

Witness:

.....
.....
(Title of witness)”

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the seventh Saturday before the primary, at State expense, the State Board of Elections shall print and furnish to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(c) Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in April and no later than 12:00 noon on the last Friday in May preceding the primary:

- Governor
- Lieutenant Governor
- All State executive officers
- Justices of the Supreme Court, Judges of the Court of Appeals
- Judges of the superior courts
- Judges of the district courts
- United States Senators
- Members of the House of Representatives of the United States
- Districts attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in April and no later than 12:00 noon on the last Friday in May preceding the primary:

- State Senators
- Members of the State House of Representatives
- All county offices

All township offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina, or two or more vacancies for the office of superior court judge or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.

(1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2.)

Editor's Note. —

Session Laws 1973, c. 47, s. 2, substituted "District attorneys" for "Solicitors" in the first paragraph of subsection (c).

Session Laws 1973, c. 793, s. 36, effective July 1, 1973, deleted the former third paragraph of subsection (d), relating to primaries in senatorial or representative districts entitled to elect more than one State Senator or member of the State House of Representatives.

Session Laws 1973, c. 862, ratified Feb. 18, 1974, and effective Jan. 1, 1976, deleted, at the end of the first paragraph of the oath in subsection (a), "I pledge to abide by the result of the primary and to support in the next general election only candidates nominated by the party." The amendment also deleted "further" preceding "pledge" in the second paragraph of the oath.

Subsection (a) was also amended by Session Laws 1973, c. 1344, s. 1, ratified April 12, 1974, and effective on ratification. It is possible that c. 1344, having the later ratification date, could be interpreted as repealing c. 862, or that c. 862, having the later effective date, could be interpreted as repealing c. 1344 as of Jan. 1, 1976. Subsection (a) is set out in the text as amended by c. 862. The subsection as amended by c. 1344 is set out below.

The 1975 amendment rewrote subsection (c).

Attention is directed to an inconsistency between subsections (a) and (c) of this section. Subsection (a) requires the State Board of Elections to furnish notice-of-candidacy forms to county boards of elections "prior to the seventh Saturday before the primary," which date must fall in July, while subsection (c) requires candidates to file their notices of candidacy "no later than 12:00 noon on the last Friday in May preceding the primary."

Subsection (a) as Amended by Session Laws 1973, c. 1344, s. 1. — Session Laws 1973, c. 1344,

s. 1, ratified April 12, 1974, and effective on ratification, amended subsection (a) to read as follows:

"(a) Notice and Pledge. — No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

'Date

"I hereby file notice as a candidate for nomination as in the party primary election to be held on, 19. . . . I affiliate with the party, [and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the party.] I pledge to abide by the results of the primary and to support in the next general election only candidates nominated by the party.

"I further pledge that if I am defeated in the primary I will not run for any office as a write-in candidate in the next general election.

Signed

Name of candidate

Witness:
.
(Title of witness)

"Each candidate shall sign his notice of candidacy at the office of the appropriate board of elections in the presence of any member or the executive secretary of the board of elections, State, county, or municipal, with which he files. In the alternative, a candidate may have his

signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver his notice of candidacy to the appropriate board of elections. A notice of candidacy shall be deemed to have been filed with the appropriate board of elections when it is received by that board.

"In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known.

"A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

"Prior to the seventh Saturday before the primary, at State expense the State Board of Elections shall print and furnish to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections."

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

Numbering of Seats Impossible. — Since § 163-117 (now repealed) is unconstitutional the seats may not be numbered and it will thus be impossible for candidates to comply with subsection (d) of this section. *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

Action against County Board Improper. — Action challenging refusal to place candidate on primary election ballot against a county board of elections and its individual members was dismissed on the ground that they were not proper parties to action because the State statute requires that candidates for Congress file with the State Board of Elections and county board has no authority to accept or reject such applications. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

§ 163-107. Filing fees required of candidates in primary; refunds. — (a) Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and Solicitors of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars (\$10.00)
Members of county board of education, if compensated entirely by fees	Five dollars (\$5.00)

Office Sought

Amount of Filing Fee

Sheriff, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Register of deeds, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Any other county office, if compensated entirely by fees	Twenty dollars (\$20.00), plus one percent (1%) of the income of the office above two thousand dollars (\$2,000)
All county offices compensated partly by salary and partly by fees (1973, c. 793, s. 37.)	One percent (1%) of the first annual salary to be received (exclusive of fees)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, deleted in the table in subsection (a) provisions for "All township offices not compensated by fees," "Constable, if compensated entirely by fees," and "Justice of the peace, if compensated entirely by fees." The amendment also deleted "and township" following "All county" in the last item of the first column of the table in subsection (a).

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

Constitutionality. — Since there were no alternative means of access to the primary ballot in North Carolina, this section, was held constitutionally invalid. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975), decided under this chapter as it stood before the enactment of § 163-107.1.

In the absence of reasonable alternative means of ballot access, a state may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot

pay. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

By requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the State erected a system that utilized the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975), decided under this Chapter as it stood before the enactment of § 163-107.1.

For section providing for filing of a petition in lieu of payment of filing fee, see § 163-107.1.

Sections 163-96, 163-98, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under this section. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

§ 163-107.1. Petition in lieu of payment of filing fee. — (a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, any State executive officer, Justice of the Supreme Court or Judge of the Court of Appeals, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall

be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) County, Municipal and District Primaries. — If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, judge of the District Court and judge of the Superior Court, or members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(d) Nonpartisan Primaries and Elections. — Any qualified voter who seeks to be a candidate in any nonpartisan primary or election may, in lieu of payment of the filing fee required, file a written petition signed by ten percent (10%) of the registered voters in the election area in which the office will be voted for with the appropriate board of elections. Any qualified voter may sign the petition. The petition shall state the candidate's name, address and the office which he is seeking. The petition must be filed with the appropriate board of elections no later than 60 days prior to the filing deadline for the primary or election, and if found to be sufficient, the candidate's name shall be printed on the ballot. (1975, c. 853.)

§ 163-108. Certification of notices of candidacy.

(c) In representative districts composed of more than one county and in multi-county senatorial districts the chairman or secretary of the county board of elections in each county shall, within three days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, certify to the State Board of Elections (i) the names of all candidates who have filed notice of candidacy in his county for member of the State Senate, or, if such is the fact, that no candidates have filed in his county for that office, and (ii) the names of all candidates who have filed notice of candidacy in his county for the office of member of the State House of Representatives or, if such is the fact, that no candidates have filed in his county for that office. The chairman of the county board of elections shall forward a copy of this report to the chairman of the board of elections of each of the other counties in the representative or senatorial district. Within 10 days after the time for filing notices of candidacy for those offices has expired the chairman or secretary of the State Board of Elections shall certify to the chairman of the county board of elections in each county of each multi-county representative or senatorial district the names of all candidates for the House of Representatives and Senate which must be printed on the county ballots.

(1973, c. 793, s. 38.)

Editor's Note.—The 1973 amendment, effective July 1, 1973, deleted "in which there is no rotation agreement as provided in G.S. 163-116," following "multi-county senatorial districts" in the first sentence of subsection (c).

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

Cited in *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

§ 163-109. Primary ballots; printing and distribution. — (a) General. — In primary elections there shall be as many kinds of official State, district, and county ballots as there are legally recognized political parties, members of which have filed notice of their candidacy for nomination. The ballots for each political party shall be printed to conform to the requirements of G.S. 163-140(c) and to show the party's name, the name of each party member who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy and pledge with the proper board of elections, and who have paid the required filing fee, shall have their names printed on the official ballots of the political party with which affiliated.

(b) Ballots to Be Furnished by State Board of Elections. — It shall be the duty of the State Board of Elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

United States Senator,

Member of the House of Representatives of the United States Congress,
Governor, and

All other State offices, except superior court judge, district court judge, and solicitor.

In its discretion, the State Board of Elections may print separate primary ballots for each of these offices, or it may combine some or all of them on a single ballot.

At least 30 days before the date of the primary, the State Board of Elections shall deliver a sufficient number of these ballots to each county board of elections. The chairman of the county board of elections shall furnish the chairman of the State Board of Elections with a written receipt for the ballots delivered to him within two days after their receipt.

(c) Ballots to Be Furnished by County Board of Elections. — It shall be the duty of the county board of elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

Superior court judge,

District court judge,

Solicitor,

State Senator,

Member of the House of Representatives of the General Assembly, and

All county offices.

In printing primary ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

In its discretion, the county board of elections may print separate primary ballots for the district and county offices listed in this subsection, or it may combine some or all of them on a single ballot. In a primary election, if there shall be 10 or more candidates for nomination to any one office, the county board of elections in its discretion may prepare a separate ballot for said office.

Three days before the primary election, the chairman of the county board of elections shall distribute official State, district, and county ballots to the registrar of each precinct in his county, and the registrar shall give him a receipt for the ballots received. On the day of the primary it shall be the registrar's duty to have all the ballots delivered to him available for use at the precinct voting place.

(d) District Solicitors' Ballots. — In all primary elections for the nomination of candidates to the office of solicitor, the State or county board of elections

responsible under this section for preparing ballots for that office shall cause to be printed after the title "Solicitor" on the ballot the words "District Attorney" and shall cause the initial letter of those words to be capitalized and the words to be put in parentheses and in quotation marks. (1915, c. 101, ss. 8, 17; 1917, c. 218; C. S., ss. 6028, 6037; 1927, c. 260, s. 22; 1933, c. 165, s. 16; 1966, Ex. Sess., c. 5, ss. 8, 10; 1967, c. 775, s. 1; c. 1063, s. 3; 1973, c. 793, ss. 39-41.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "district, and county" for "district, county and township" in the first sentence of subsection (a), deleted "All township offices" from the list of offices in the first paragraph of subsection (c), substituted "district and county" for "district, county, and township" in the first sentence of the third paragraph in subsection (c), deleted the former fourth paragraph of subsection (c), relating to ballots in senatorial and representative districts entitled to more than one seat in the Senate or House of Representatives, substituted "district, and county" for "district, county, and township" in the last paragraph of subsection (c) and added subsection (d).

The one man, one vote rule does not apply to the State judiciary, and therefore a mere showing of a disparity among the voters or in the population figures of the district would not be sufficient to strike down the election procedure for superior court judges. A showing of an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

Validity of Superior Court Election and Rotation Procedure. — A superior court judge is a hybrid official with both local and statewide functions and authority. The requirement that he reside in the district from which he is elected is a matter of convenience, making him available to hear emergency matters, and convenience is an essential factor in arranging an effective judicial system. He rotates among the districts of his division, and may be assigned beyond his division by the Chief Justice. Thus, there is a reasonable basis for the election procedure requiring him to be nominated in the primary election and elected in the general election by statewide vote and it serves and achieves a legitimate state purpose and is not arbitrary and capricious. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

Requiring regular superior court judges to be nominated in the primary election by districts and elected in the general election by statewide vote does not deny equal protection of the laws. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

§ 163-110. Sole candidate declared nominee. — If only one aspirant files notice of candidacy for nomination for a given office by the party with which he affiliates, the appropriate board of elections shall, upon the expiration of the time fixed by G.S. 163-106 for filing notice of candidacy for that office, declare him the nominee of his party. For the following offices, this declaration shall be made by the county board of elections with which the aspirant filed notice of candidacy: All county offices, State Senators in single-county senatorial districts, and members of the State House of Representatives in single-county representative districts. For all other offices, this declaration shall be made by the State Board of Elections. When the sole aspirant has been declared his party's nominee for an office as provided in this section, his name shall not be printed on the primary ballot, but it shall be printed on the ballot to be voted at the general election as his party's candidate for that office. (1915, c. 101, ss. 13, 19; 1917, c. 218; C. S., ss. 6033, 6039; 1966, Ex. Sess., c. 5, ss. 9, 11; 1967, c. 775, s. 1; 1973, c. 793, s. 42; 1975, c. 19, s. 68.)

Editor's Note. — Session Laws 1973, c. 793, s. 42, effective July 1, 1973, purported to amend this section by deleting "all township offices" following "All county offices." The amendment was not given effect in the 1973 and 1974 Supplements because the act called for making

the deletion in the first sentence and the words to be deleted appeared in the second sentence.

The 1975 amendment deleted "all township offices" following "All county offices" in the second sentence.

§ 163-111. Determination of primary results; second primaries.**(c) Procedure for Requesting Second Primary. —**

- (1) An aspirant entitled to demand a second primary for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections by 12:00 noon, on the second day after the result of the first primary has been officially declared:

Governor,
 Lieutenant Governor,
 All State executive officers,
 Justices, Judges, or District Attorneys of the General Court of Justice,
 United States Senators,
 Members of the United States House of Representatives,
 State Senators in multi-county senatorial districts, and
 Members of the State House of Representatives in multi-county representative districts.

- (2) An aspirant entitled to demand a second primary for one of the offices listed below, and desiring to do so, shall file a written request for a second primary with the board of elections in the county in which he filed notice of candidacy by 12:00 noon, on the fifth day after the result of the first primary has been officially declared:

State Senators in single-county senatorial districts,
 Members of the State House of Representatives in single-county representative districts, and
 All county officers.

(d) Tie Votes; How Determined. —

- (1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.
- (2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this

subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

- (3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a majority, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(1973, c. 47, s. 2; c. 793, ss. 43, 44; 1975, c. 844, s. 3.)

Editor's Note. —

The first 1973 amendment substituted "District Attorneys" for "Solicitors" in subdivision (c)(1).

The second 1973 amendment, effective July 1, 1973, substituted "and" for "not having rotation agreements" following "multi-county senatorial districts" in subdivision (c)(1) and deleted "State Senators in multi-county senatorial districts having rotation agreements" and "All township officers" in subdivision (c)(2). In subsection (d), the amendment deleted "township" following "a single county" and "(or for the State Senate in

a multi-county district having a rotation agreement)" in the first sentence of subdivision (1) and deleted "having no rotation agreement" following "multi-county senatorial district" and inserted "solely" in the first sentence of subdivision (2).

The 1975 amendment inserted "the Executive Secretary-Director of" and substituted "second day" for "third day" in the first paragraph of subdivision (c)(1).

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

§ 163-114. Filling vacancies among party nominees occurring after nomination and before election. — If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position Any elective State office United States Senator	}	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of superior court Judge of district court Solicitor State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	}	Appropriate district executive committee of political party in which vacancy occurs

<p>State Senator in a single-county senatorial district</p> <p>Member of State House of Representatives in a single-county representative district</p> <p>Any elective county office</p>	}	<p>County executive committee of political party in which vacancy occurs, but if the vacancy arises from a cause other than death, the vacancy shall not be filled unless the board of elections in the county in which the vacancy occurs issues an order to that effect</p>
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The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1973, c. 793, s. 45.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, deleted "not having a rotation agreement" following "State Senator in a multi-county senatorial district" in the second section of the tabulation and deleted "State Senator in a multi-county senatorial district having a rotation agreement" and "Any elective township office" in the third section of the tabulation.

§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices. — If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots, unless the ballots have already been printed when the nominations are made, in which case the provisions of G.S. 163-139 shall apply. (1915, c. 101, s. 33; 1917, c. 179, s. 3; c. 218; C. S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242; 1966, Ex. Sess., c. 5, s. 14; 1967, c. 775, s. 1; 1973, c. 793, s. 46.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote the first paragraph.

§ 163-116: Repealed by Session Laws 1973, c. 793, s. 47, effective July 1, 1973.

§ 163-117: Repealed by Session Laws 1973, c. 793, s. 48, effective July 1, 1973.

§ 163-118: Repealed by Session Laws 1973, c. 793, s. 49, effective July 1, 1973.

ARTICLE 11.

Nomination by Petition.

§ 163-122. **Independent candidates nominated by petition.** — Any qualified voter who seeks to have his name printed on the general election ballot as an independent or nonpartisan candidate shall:

- (1) On or before the last Saturday in May preceding the general election, file with the appropriate board of elections, State or county, written petitions requesting him to be a candidate for a specified office, signed by qualified voters of the political division in which the office will be voted for equal in number to ten percent (10%) of those who, in the last gubernatorial election in the same political division, voted for Governor.
- (2) At the time of filing the petitions referred to in subdivision (1) of this section, file with the chairman or secretary of the appropriate board of elections his affidavit that he seeks to become an independent or nonpartisan candidate for the office specified and that he does not affiliate with any political party.

When the provisions of this section have been complied with, the board of elections with which the petitions and affidavit have been filed shall cause the independent candidate's name to be printed on the general election ballots in accordance with the provisions of G.S. 163-140. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50.)

Editor's Note. — The 1973 amendment substituted "ten percent (10%)" for "twenty-five percent (25%)" in subdivision (1).

This section and §§ 163-96, 163-98 and 163-151(2) are not available to candidate denied

access to primary election ballot under § 163-107. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12.

Precincts and Voting Places.

§ 163-128. **Election precincts and voting places established or altered.** — Each county shall be divided into a convenient number of precincts for the purpose of voting, and there shall be at least one precinct encompassed within the territory of each township; provided, however, that upon a resolution adopted by the county board of elections and approved by the Secretary-Director of the State Board of Elections voters from a given precinct within a township may be temporarily transferred, for the purpose of voting, to a precinct in an adjacent township. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one township to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the township in which such voters reside. There shall be at least one voting place in each precinct.

The county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 20 days' notice thereof prior to the date on which the registration books or records next close pursuant to G.S. 163-67. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door, and by mailing a copy of the resolution to the chairman of every political party in the county. (Rev., s. 4313; 1913, c. 53; C. S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3; 1967, c. 775, s. 1; 1969, c. 570; 1973, c. 793, ss. 51-53; 1975, c. 798, s. 2.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, added the last sentence of the first paragraph, deleted the former second paragraph, relating to precincts existing at the time of enactment of the section, and rewrote the present second paragraph.

The 1975 amendment deleted "registration and" preceding "voting" near the beginning of

the first sentence of the first paragraph and substituted the language beginning "and approved by the Secretary-Director" for "a precinct may encompass territory from more than one township" at the end of that sentence and added the second sentence of that paragraph.

§ 163-129. Structure at voting place; marking off limits of voting place. — At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the registrar and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place. (1929, c. 164, s. 17; 1967, c. 775, s. 1; 1973, c. 793, s. 54.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote the second paragraph.

ARTICLE 13.

General Instructions.

§ 163-135. Applicability of Article.

(e) **Municipal Primaries and Elections. —** This Article shall apply to and control all elections held in and for cities, towns, incorporated villages and all special districts, whether conducted by the county board of elections or a duly appointed municipal board of elections. (1901, c. 89, s. 75; Rev., s. 4341; C. S., s. 5975; 1929, c. 164, ss. 2, 4, 34, 42; 1967, c. 775, s. 1; 1975, c. 798, s. 1.)

Editor's Note. — The 1975 amendment rewrote subsection (e).

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

§ 163-136. Preparation, distribution and financing of ballots.

(b) **Printing and Distribution.** — The printing and distribution of ballots shall be arranged, handled, and paid for as follows:

- (1) For municipal elections, primaries, and referenda, by the municipal authorities conducting the election, primary, or referendum, at the expense of the municipality.
- (2) For county, single-county district, and legislative district elections, primaries, and referenda, by the responsible county board of elections, at the expense of the county.
- (3) For all elections, primaries, and referenda not specified in the two preceding subdivisions, by the State Board of Elections, at the expense of the State.

Provided, that the State Board of Elections, in its discretion, may direct some or all counties to print the ballots required by this subdivision under the supervision of the State Board of Elections. If the State Board of Elections prints and distributes the ballots required by this subdivision at the expense of the State, the State Board shall have the authority to negotiate for the ballots to be printed and distributed on a regional or centralized basis, and the State Board shall be exempt from securing competitive bids for printing and distribution of all ballots, abstracts and precinct return forms.

(d) Each kind of official ballot as defined in G.S. 163-140 used in a primary election shall have a distinct and separate color, and each such ballot used in a general election shall have a distinct and separate color. In both a primary and general election, the color of each kind of official ballot as defined in G.S. 163-140 shall be determined by the board of elections responsible for printing the ballots. (1929, c. 164, s. 3; 1963, c. 457, s. 9; 1967, c. 775, s. 1; c. 952, s. 2; 1973, c. 793, s. 55; c. 1135; 1975, c. 844, s. 4.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, deleted "township" following "county" in subdivision (2) of subsection (b).

The second 1973 amendment, effective July 1, 1974, added subsection (d).

The 1975 amendment added the second paragraph of subdivision (b)(3).

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

§ 163-137. General, special and primary election ballots; names and questions to be printed thereon; distribution.

(b) The ballots prepared for use in general and special elections under the provisions of this Article by the State Board of Elections shall be printed and delivered to the county boards of elections at least 30 days prior to the date of any election in which absentee voting is permitted and at least 30 days prior to the date of any election in which absentee voting is not permitted.

(c) In a primary election the names of all candidates of the same political party for the same office shall be printed on the ballot either vertically or horizontally, and in no event shall both arrangements of names be used concurrently for candidates on the same ballot for the same office. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1; 1973, c. 536, s. 3; 1975, c. 149, s. 1; c. 844, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "60 days" for "45 days" near the middle of subsection (b).

The first 1975 amendment, effective July 1, 1975, added subsection (c).

The second 1975 amendment substituted "30 days" for "60 days" near the middle of subsection (b). As the rest of the section was not changed by the amendments, only subsections (b) and (c) are set out.

§ 163-140. Kinds of ballots; what they shall contain; arrangement. — (a) Kinds of General Election Ballots; Right to Combine. — For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot
- (6) Repealed by Session Laws 1973, c. 793, s. 56, effective July 1, 1973
- (7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used.

(b) General Election Ballots. —

- (1) Ballot for Presidential Electors: On the ballot for presidential electors there shall be printed, under the titles of the offices, the names of the candidates for President and Vice-President of the United States nominated by each political party qualified under the provisions of G.S. 163-96. A separate column shall be assigned to each political party with candidates on the ballot, and the party columns shall be separated by distinct black lines. At the head of each column the party name shall be printed in large type and below it a circle, one-half inch in diameter, and below the circle the names of the party's candidates for President and Vice-President in that order. On the face of the ballot, above the party column division, the following instructions shall be printed in heavy black type:

"a. To vote this ballot, make a cross (X) mark in the circle below the name of the political party for whose candidates you wish to vote.

b. A vote for the names of a political party's candidates for President and Vice-President is a vote for the electors of that party, the names of whom are on file with the Secretary of State.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

The official ballot for presidential electors shall not be combined with any other official ballots.

- (2) Ballot for United States Senator: Beneath the title and general instructions set out in this subsection, the ballot for United States Senator shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to independent candidates, if any. At the head of each party column the

party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." The name of each political party's candidate for United States Senator shall be printed in the appropriate party column, and the names of independent candidates for the office shall be printed in the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

- "a. Vote for only one candidate.
- b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for United States Senator is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot to the top above the party and independent column division:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. If you tear or deface or wrongly mark this ballot, return it and get another."

(3) Ballot for Member of the United States House of Representatives:

Beneath the title and general instructions set out in this subsection, the congressional district ballot for member of the United States House of Representatives shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." The name of each political party's candidate for member of the United States House of Representatives from the congressional district shall be printed in the appropriate party column, and the names of independent candidates for the office shall be printed in the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

- "a. Vote for only one candidate.
- b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for member of the United States House of Representatives is combined with a ballot for another office, below the

party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot at the top above the party and independent column division:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
 - b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
 - c. If you tear or deface or wrongly mark this ballot, return it and get another."
- (4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for State officers (including judges of the superior court) shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instructions: "For a straight ticket, mark within this circle." With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of independent candidates shall be printed in the appropriate office section of the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.

d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

- (5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for county officers (including solicitor for the solicitorial district in which the county is situated, district judge for the district court district in which the county is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated) shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of independent candidates shall be printed in the appropriate office section of the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.
- d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections.

- (6) Repealed by Session Laws 1973, c. 793, s. 56, effective July 1, 1973.
- (7) Ballot for Constitutional Amendments and Other Propositions Submitted to the People: The form of ballot used in submitting a constitutional amendment or other proposition or issue to the voters of the entire State shall be prepared by the State Board of Elections and

approved by the Attorney General. The form of ballot used in submitting propositions and issues to the voters of a single county or subdivision shall be prepared by the county board of elections. In a referendum the issue presented to the voters with respect to each constitutional amendment, question, or proposition, shall be printed in the form laid down by the General Assembly or other body submitting it. If more than one amendment, question, or proposition is submitted on a single ballot, each shall be printed in a separate section, and the sections shall be numbered consecutively. On the face of the ballot, above the issue or issues being submitted, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible board of elections, State or county.

(c) Primary Election Ballots. —

- (1) Kinds of Primary Ballots; Right to Combine: For the purposes of primary elections, there shall be five kinds of official ballots, entitled:
- a. Primary ballot for United States Senator
 - b. Primary ballot for member of the United States House of Representatives
 - c. State primary ballot
 - d. County primary ballot
 - e. Repealed by Session Laws 1973, c. 793, s. 56, effective July 1, 1973

Use of official primary ballots shall be limited to the purposes indicated by their titles. The printing on all primary ballots shall be plain and legible but, unless large type is specified by this Chapter, type larger than 10-point shall not be used in printing primary ballots.

Primary ballots shall be prepared in accordance with the provisions of G.S. 163-109 and the provisions of this section as modified by the provisions of this subsection.

- (2) Separate Ballots for Each Political Party: For each political party conducting a primary election separate ballots shall be printed, and the paper used for each party's ballots shall be different in color from that used for the ballots of other parties. Primary ballots shall not provide for voting a straight-party ticket, but a voting square shall be printed to the left of the name of each candidate appearing on the ballot.
- (3) Rotation of Positions on Ballots Among Candidates: The board of elections, State or county, responsible for printing and distributing primary election ballots shall have them printed so that the names of opposing candidates for any office shall, as far as practicable, occupy alternate positions upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots; and the ballots shall be distributed among the precinct voting places impartially and without discrimination.
- (4) Facsimile Signatures: On the bottom of each primary ballot shall be printed an identified facsimile of the signature of the chairman of the board of elections, State or county, responsible for its preparation.
- (d) Municipal Primary and Election Ballots. — In all municipal elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the municipality. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the

signature of the chairman of the county or municipal board of elections, as appropriate.

(e) District Solicitors' Ballots. — In all general elections for the election of nominees to the office of solicitor, the State or county board of elections responsible for preparing ballots for that office shall cause to be printed after the title "Solicitor" on the ballot the words "District Attorney" and shall cause the initial letter of those words to be capitalized, and the words to be put in parentheses and in quotation marks. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1; 1947, c. 505, s. 9; 1949, c. 672, s. 2; 1955, c. 812, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 56, 57.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, deleted former subdivision (6) of subsection (a), which read "Township ballot," deleted former subdivision (6) of subsection (b), relating to township ballots, and deleted former paragraph e of subdivision (c)(1), which read "Township primary ballot." The amendment also rewrote subsection (d) and added subsection (e).

The one man, one vote rule does not apply to the State judiciary, and therefore a mere showing of a disparity among the voters or in the population figures of the district would not be sufficient to strike down the election procedure for superior court judges. A showing of an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

Validity of Superior Court Election and Rotation Procedure. — A superior court judge is a hybrid official with both local and statewide

functions and authority. The requirement that he reside in the district from which he is elected is a matter of convenience, making him available to hear emergency matters, and convenience is an essential factor in arranging an effective judicial system. He rotates among the districts of his division, and may be assigned beyond his division by the Chief Justice. Thus, there is a reasonable basis for the election procedure requiring him to be nominated in the primary election and elected in the general election by statewide vote and it serves and achieves a legitimate state purpose and is not arbitrary and capricious. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

Requiring regular superior court judges to be nominated in the primary election by districts and elected in the general election by statewide vote does not deny equal protection of the laws. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

§ 163-140.1. Political party alignment on ballots. — All ballots printed for use in general elections in the State, district, county or any other political subdivision, shall be aligned with the number of political party columns required pursuant to instructions contained in G.S. 163-140(b) and the columns shall be assigned in strict alphabetical order, beginning with the left column, to the political parties entitled to ballot position provided such political parties reflect at least five percent (5%) of the total statewide voter registration, according to the latest statistical report published by the State Board of Elections. Political parties having less than five percent (5%) of the total statewide voter registration, but otherwise eligible for ballot position shall be assigned column alignment to the right of all other qualified political parties. The State Board of Elections shall be responsible for implementing the procedures required by this section and shall issue instructions to those counties using voting machines so as to accomplish the effect of this section whether such counties utilize voting machines that list party columns in a horizontal or vertical alignment. Every county board of elections shall follow the column alignment prescribed by the State Board of Elections. (1975, c. 809.)

§ 163-146. Voting enclosure at voting place; furnishings; arrangement. — At each precinct voting place as described in G.S. 163-129, there shall be a room or area set apart as the voting enclosure. The limits of the voting enclosure shall be defined by walls, guardrails, or other boundary markers which at no point stand nearer than 10 feet nor farther than 20 feet from each ballot box or voting machine. This enclosure shall be arranged so that a single door or opening (not more than three feet wide) can be used as the entrance for persons seeking to vote.

Within the voting enclosure and in plain view of the qualified voters present at the voting place shall be placed:

- (1) A table or desk on which the registrar shall place and use the precinct registration books and records.
- (2) A table or desk on which the responsible judge shall place and superintend the ballots for distribution and the box for spoiled ballots.
- (3) A table or desk on which the responsible judge shall place and maintain the pollbook.
- (4) The ballot boxes.
- (5) The voting booths.

All voting booths and ballot boxes shall be placed in plain view of the registrar and judges as well as of the qualified voters present at the voting place.

The registrar's table shall be placed near the entrance to the voting enclosure.

Each voting booth shall be located and arranged so that it is impossible for a voter in one booth to see a voter in another booth in the act of marking his ballots. Each voting booth shall be kept properly lighted and provided with pencils or pens for marking ballots.

In precincts in which voting machines are used, ballot boxes and voting booths shall not be used. Within the voting enclosure at the voting place in such a precinct, each machine shall be placed so that the exterior from all its sides is visible and so that whenever it is not in use by a voter the ballot labels on its face may be plainly seen by the precinct officials and assistants, and by observers appointed under the provisions of G.S. 163-45. Precinct election officials and assistants shall not place themselves, nor shall they permit any other person to place himself, in any position that will permit one to see or ascertain how a voter votes on a voting machine except when the voter obtains assistance as provided in this Chapter.

No political banner, poster, or placard shall be allowed in or upon the voting place during the day of a primary or election. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1973, c. 793, ss. 58, 94.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "walls, guardrails, or other boundary markers" for "walls or guardrails" and "each ballot box or voting machine" for "the ballot boxes or voting machines" in the second sentence and deleted

"both" preceding "the entrance" and "and exit" following "the entrance" in the third sentence of the first paragraph. The amendment also substituted "observers" for "watchers" in the second sentence of the next-to-last paragraph.

§ 163-147. No loitering or electioneering at voting place.

Local Modification. — By virtue of Session Laws 1973, c. 491, Cumberland, Durham,

Franklin, Guilford, Vance and Warren should be stricken from the bound volume.

§ 163-148. Procedures at voting place before polls are opened. — At least one-half hour before the time set for opening the polls for each primary and election, the judges of elections and assistants, shall meet the registrar at the precinct voting place, at which time the registrar shall administer to them the appropriate oaths set out in G.S. 163-41(a) and G.S. 163-42.

The registrar and judges shall arrange the voting enclosure according to the requirements of G.S. 163-146 and the instructions of the county board of elections. They shall then unlock the official ballot boxes, see that they are empty, allow authorized observers and other voters present to examine the boxes, and then they shall relock them while still empty. They shall open the sealed packages of ballots, and one of the judges, at the registrar's request, shall announce that the polls are open and state the hour at which they will be closed.

If voting machines are used in the precinct, immediately before the polls are opened the registrar and judges shall open each voting machine, examine the ballot labels, and check the counters to see that they are set to indicate that no votes have been cast or recorded; at the same time, the precinct officials shall allow authorized observers and other voters present to examine the machines. If found to be in order and the ballot labels in proper form, the precinct officials shall lock and seal each machine, and it shall remain locked until after the polls are closed. (1929, c. 164, s. 18; 1967, c. 775, s. 1; 1973, c. 793, ss. 59, 94.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, inserted "and" preceding "assistants" and deleted "and, if allowed, official markers" following "assistants" near

the middle of the first paragraph and deleted, at the end of the first paragraph a reference to § 163-44. The amendment also substituted "observers" for "watchers" in two places.

§ 163-150. Voting procedures.

(c) **Act of Voting.** — When a person is given official ballots by the judge, he shall be deemed to have begun the act of voting, and he shall not leave the voting enclosure until he has deposited his ballots in the ballot boxes or returned them to the precinct officials. When he leaves the voting enclosure, whether or not he has deposited his ballots in the ballot boxes, he shall not be entitled to enter the voting enclosure again for the purpose of voting. On receiving his ballots, the voter shall immediately retire alone to one of the voting booths unless he is entitled to assistance under the provisions of G.S. 163-152, and without undue delay he shall mark his ballots in accordance with the provisions of G.S. 163-151.

(f) **Maintenance of Pollbook or Other Record of Voting.** — At each primary, general or special election, the precinct registrar shall appoint two precinct assistants (one from each political party as recommended by the county chairman thereof), one to be assigned to keep the pollbook or other voting record used in the county as approved by the State Board of Elections, and the other to keep the registration books under the supervision of the precinct officials. The names of all persons voting shall be checked on the registration records and entered on the pollbook or other voting record. In a primary election each voter's party affiliation shall be entered in the proper column of the book or other approved record opposite his name. The precinct assistant shall make each entry at the time the ballots are handed to the voter. As soon as the polls are closed, the registrar and judges of election shall sign the pollbook or other approved record immediately beneath the last voter's name entered therein. The registrar or the judge appointed to attend the county canvass shall deliver the pollbook or other approved record to the chairman of the county board of elections at the time of the county canvass, and the chairman shall remain responsible for its safekeeping.

(g) Subject to the provisions of G.S. 163-152 and G.S. 163-152.1, no voter shall be allowed to occupy a voting booth or voting machine already occupied by another voter, provided, however, husbands and wives may occupy the same

voting booth if both wish to do so. No voter shall be allowed to occupy a voting booth or voting machine more than five minutes if all the booths or machines are in use and other voters are waiting to obtain booths or machines. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, ss. 20, 22, 23, 25; 1931, c. 254, ss. 13, 14; 1939, c. 263, s. 312; 1953, c. 1040; 1955, c. 767; 1959, c. 1203, s. 7; 1967, c. 775, s. 1; 1973, c. 793, ss. 60, 61; c. 1223, s. 7; c. 1344, ss. 2, 3.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, deleted the former last sentence of subsection (c), which covered the same subject matter as present subsection (g), rewrote subsection (f) and added subsection (g).

The second 1973 amendment substituted "husbands and wives may occupy the same voting booth if both wish to do so" for "that this prohibition shall not apply to husbands and wives" at the end of the first sentence of subsection (g).

The third 1973 amendment, in subsection (f), rewrote the first and second sentences, substituted "precinct assistant" for "judge" in the fourth sentence and deleted "and the names of absentee voters have been entered as required by G.S. 163-234" following "polls are closed" in the fifth sentence.

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

§ 163-151. Method of marking ballots in primary and election. — The voter shall adhere to the following rules in marking his ballots:

(1) In Both Primaries and Elections. —

- a. A voter may designate his choice of candidate by making a cross (X) mark, a check mark, or some other clear indicative mark in the appropriate voting square or circle.
- b. A voter should not mark more names for any office than there are positions to be filled by election.
- c. A voter should not affix a sticker to a ballot, mark a ballot with a rubber stamp, attach anything to a ballot, wrap or fold anything in a ballot, or do anything to a ballot other than mark it properly with pencil or pen.
- d. A voter should follow the instructions printed on the ballot.

(2) In an Election But Not in a Primary. —

- a. If a voter desires to vote for all candidates of one political party (a straight ticket) he shall either:
 1. Make a cross (X) mark in the circle printed below the name of the party at the top of the ballot; or
 2. Make a cross (X) mark in the voting square at the left of the name of every candidate of the party printed on the ballot.
- b. If a voter desires to vote for candidates of more than one political party (a split ticket), he shall not mark in the circle printed below the name of any party on the ballot; instead, he shall make a cross (X) mark in the voting square at the left of the name of each candidate for whom he desires to vote without regard to the party column in which the names are printed.
- c. If a voter desires to vote for a person whose name is not printed on the ballot, he shall write the name of the person for whom he wishes to vote in the space immediately beneath the name of a candidate printed in the section of the ballot assigned to the particular office. In such a situation, the voter shall write the name himself unless he is receiving assistance to which he is entitled under the provisions of G.S. 163-152, in which case the person rendering assistance may write the name for the voter under his direction.

d. Repealed by Session Laws 1973, c. 793, s. 62, effective July 1, 1973.

- (3) In a Primary. — A voter shall not write the name of any person on the official ballot. (1929, c. 164, ss. 21, 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, ss. 8, 9; 1961, c. 451; 1963, cc. 152, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1; c. 1016; 1969, cc. 190, 917, 1253; 1971, c. 807; 1973, c. 793, s. 62.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, deleted paragraph d of subdivision (2) and rewrote subdivision (3) so as to eliminate former paragraph b of that subdivision. Both of the deleted paragraphs prohibited "single-shot voting" in elections for county and municipal offices in specified municipalities and counties.

Constitutionality. — Former § 163-117 and former subdivisions (3)b and (2)d of this section were unconstitutional, and their enforcement was permanently enjoined. *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

Selective and arbitrary application of the anti-single shot law, former paragraphs d of subdivision (2) and b of subdivision (3) of this section, in some districts and not in others, denied to the voters of North Carolina the equal protection of the laws and was unconstitutional. The state had shown no justification or even rationale for discriminating between voters of covered and exempted areas. Such an unexplained classification was inherently suspect and failed even the ordinary test of equal protection. *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

The anti-single shot law, contained in former

paragraphs d of subdivision (2) and b of subdivision (3) of this section, denied to voters in North Carolina the equal protection of the laws because it allowed voters to single shot vote in some areas of the state while prohibiting this manner of voting in others, and the state had shown no justification for this discrimination. *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

Effect of Voting Rights Act. — Every amendment to the anti-single shot law contained in former paragraphs d of subdivision (2) and b of subdivision (3) of this section, whether an addition or deletion, which affected any part of one or more of the 39 counties covered by the Voting Rights Act of 1965 should have been submitted to the Attorney General of the United States or been the subject of a declaratory judgment action as outlined by 42 U.S.C. § 1973c. *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

Subdivision (2) of this section and §§ 163-96, 163-98 and 163-122 are not available to candidate denied access to primary election ballot under § 163-107. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

§ 163-152. Assistance to voters in primaries and general elections. — (a) In Primaries or General Election. —

- (1) Who Is Entitled to Assistance: In a primary or general election, a registered voter qualified to vote in the primary or general election shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:
- a. Any voter shall be entitled to assistance from a near relative of his choice.
 - b. If no near relative of the voter's choice is present at the voting place, a voter in any of the following three categories shall be entitled to assistance from any voter of the precinct who has not given aid to another voter at the same primary or general election; or, if no such person be present at the voting place, from the registrar or one of the judges of election:
 1. One who, on account of physical disability, is unable to enter the voting booth without assistance.
 2. One who, on account of physical disability, is unable to mark his ballots without assistance.
 3. One who, on account of illiteracy, is unable to mark his ballots without assistance.

(2) Procedure for Obtaining Assistance: A person seeking assistance in a primary or general election shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or other voter of the precinct he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or other voter indicated to render the requested aid. If no near relative or other voter of the voter's choice is present, the voter entitled to assistance may request and obtain aid from the registrar or one of the judges.

(b) Repealed by Session Laws 1973, c. 793, s. 63, effective July 1, 1973.

(c) Conduct of Persons Rendering Assistance. — Anyone rendering assistance to a voter in a primary or general election or election under the provisions of this section shall be admitted to the voting booth with the person being assisted and shall be governed by the following rule:

- (1) He shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way.
- (2) Except when going to or returning from a voting booth with a voter as authorized by this section, he shall remain within the voting place but shall not come within 10 feet of the voting enclosure.
- (3) Immediately after rendering assistance, he shall vacate the voting booth and withdraw to his place in the voting place outside the voting enclosure.
- (4) He shall not accompany the voter from the voting booth to the ballot box unless the voter requires and requests assistance on account of physical disability; if assistance is rendered in this way, he shall not converse with the voter prior to the time he deposits his ballots in the ballot boxes.
- (5) He shall not make or keep any memorandum of anything which occurs within the voting booth.
- (6) He shall not, directly or indirectly, reveal to any person how, in any particular, the assisted voter marked his ballots, unless he or they are called upon to testify in a judicial proceeding for a violation of the election laws.

(d) Meaning of "Near Relative". — As used in this section, the words "near relative" shall include the voter's husband, wife, brother, sister, parent, child, grandparent, and grandchild, but no other relative.

(e) Violation of Section. — It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary or general election or election to any voter otherwise than as is allowed by this section. (1929, c. 164, ss. 26, 27; 1933, c. 165, s. 24; 1939, c. 352, ss. 1, 2; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 6; 1959, c. 616, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 63.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, deleted subsection (b), relating to general elections, and inserted "or General Election" in the catchline to subsection (a) and "or general election" throughout subsection (a), in the opening paragraph of subsection (c) and in subsection (e). The

amendatory act provides that the section is amended "by adding the words 'or general election' after the words 'primary' or 'primaries' wherever they appear," and this provision has been followed literally in the section as set out above, notwithstanding the awkwardness of the language resulting in some instances.

§ 163-152.1. Assistance to blind voters in primaries and elections. — Any blind voter shall be permitted to select assistance of his own choosing in any primary or election without regard to residency within the voting precinct provided, such voter has recorded at the time of registration or prior to the date of the election, a certificate issued by the Department of Human Resources, by an optometrist or by a physician, stating that the named individual should be entitled to assistance as a blind voter. Upon receipt of such certification the registrar or special registration commissioner shall enter on the voter's registration record the words "blind voter" so as to establish such fact and so as to entitle such voter to the same assistance in subsequent primaries and elections whether such voter resides in a county with full-time registration or regular registration. The certification presented to the precinct registrar or special registrar shall be forwarded to the chairman of the county board of elections to be filed as a permanent record with the voter's duplicate registration record as required by G.S. 163-65. (1969, c. 175; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" in the first sentence.

§ 163-153. Access to voting enclosure. — In all counties, only the following persons shall be allowed within the voting enclosure while the polls are open to voting:

- (1) Officers of election, that is, members of the State Board of Elections, members of the county board of elections, and the precinct registrar, precinct judges of election, and assistants appointed for the precinct under the provisions of G.S. 163-42.
- (2) Voters in the act of voting.
- (3) A near relative of a voter, but only while assisting the voter as authorized in G.S. 163-152.
- (4) Any voter of the precinct called upon to assist another voter, but only while assisting him as authorized in G.S. 163-152.
- (5) Municipal policemen assigned by the municipal authorities to keep the peace at a voting place located within the municipality, but only when requested to come within the voting enclosure by the registrar and judges for the purpose of preventing disorder; at the request of the registrar and judges, they shall withdraw from the voting enclosure and remain at least 10 feet from its entrance.
- (6) Any voter of the precinct while entering and explaining a challenge.
- (7) Observers appointed under the provisions of G.S. 163-45. (1929, c. 164, s. 24; 1955, c. 871, s. 7; 1967, c. 775, s. 1; 1969, c. 1280, s. 1; 1973, c. 793, ss. 64, 94.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, rewrote this section so as to eliminate special provisions for counties which had not adopted full-time and permanent registration. The amendment also substituted "Observers" for

"Watchers" in present subdivision (7), formerly subdivision (2)g.

Session Laws 1969, c. 1280, s. 3, cited in this note in the original, was repealed by Session Laws 1973, c. 100.

§ 163-155. Aged and disabled persons allowed to vote outside voting enclosure. — In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote between the hours of 9:00 A.M. and 5:00 P.M. only either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions:

- (1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct registrar which shall be in the following form:

"Affidavit of person voting outside voting place or enclosure.

State of North Carolina

County of

I do solemnly swear (or affirm) that I am a registered voter in precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure.

I understand that a false statement as to my condition will subject me to a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months, or both.

..... Date Signature of Voter Address Signature of assistant who administered oath."

- (2) The registrar shall designate one of the assistants, appointed under G.S. 163-42 to attend the voter. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by the assistant. The ballots shall then be delivered to the voter who shall mark the ballots and hand them to the assistant. The ballots shall then be delivered to one of the judges of elections who shall deposit the ballots in the proper boxes. The affidavit shall be delivered to the other judge of election.
(3) The voter shall be entitled to the same assistance in marking the ballots as is authorized by G.S. 163-152.
(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section.
(5) If there is no assistant appointed under G.S. 163-42 to perform the duties required by this section, the precinct registrar or one of the precinct judges, to be designated by the voter, if he chooses, or, if he does not, by the precinct registrar, shall perform those duties.

A violation of this section shall be a misdemeanor and upon conviction punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months, or both, in the discretion of the court. (1971, c. 746, s. 1; 1973, c. 793, s. 65.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added subdivision (5).

ARTICLE 14.

Voting Machines.

§ 163-160. Voting machines; approval; rules and regulations. — The State Board of Elections shall have authority to approve types and kinds of voting machines for use in primaries and elections held in this State. The use of voting machines which have been approved by the State Board of Elections in any primary or election held in any county or municipality shall be as valid as the use of paper ballots by the voters.

The State Board of Elections shall prescribe rules and regulations for the adoption, handling, operation, and honest use of voting machines, including, but not limited to, rules and regulations governing:

- (1) Types of voting machines approved for use in this State;
- (2) Form of ballot labels to be used on voting machines;
- (3) Operation of and manner of voting on voting machines;
- (4) Instruction of precinct election officials in the use of voting machines;
- (5) Instruction of voters in the use of voting machines;
- (6) Assistance to voters using voting machines;
- (7) Duties of custodians of voting machines;
- (8) Examination of voting machines before use in a primary election; and
- (9) Use of paper ballots where voting machines are used as set out in G.S. 163-162. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1; 1975, c. 149, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subdivision (9) of the second paragraph.

§ 163-162. Use of paper ballots where voting machines used. — In counties in which voting machines are used in some or all precincts the county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting machines for use by:

- (1) Persons required to sign their ballots under the provisions of G.S. 163-150(e) and 163-155, and
- (2) Persons who wish to write in names of candidates who are not on the ballot, if it is not practical to use voting machines to record write-in votes in particular precincts because of the horizontal or vertical printing limitations of G.S. 163-137. (1967, c. 775, s. 1; 1973, c. 793, s. 66; 1975, c. 149, s. 2.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added "and G.S. 163-155" at the end of the section.

The 1975 amendment, effective July 1, 1975,

designated the language beginning "Persons required" as subdivision (1), added "and" at the end of that subdivision, and added subdivision (2).

ARTICLE 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§ 163-168. Proceedings when polls are closed. — At the time set by G.S. 163-2 for closing the polls on the day of a primary, general or special election, the precinct registrar shall announce that the polls are closed, but any qualified voters who are then in the process of voting or who are in line at the voting place waiting to vote, whether or not they are within the voting enclosure or voting place boundaries, shall be allowed to vote.

At closing time, the registrar, or a judge designated by the registrar, shall enter into the pollbook, on a separate page labeled "Persons Waiting to Vote at Closing Time in the Primary Election Held the Day of, 19.," the names of all persons then in line at the voting place waiting to vote, beginning with the person last in line and proceeding to the person first in line at closing time. No persons shall be allowed to vote after closing time unless their names are so listed. (1933, c. 165, s. 8; 1955, c. 891; 1961, c. 487; 1967, c. 775, s. 1; 1973, c. 793, s. 67.)

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

§ 163-169. Counting ballots at precincts; unofficial report of precinct vote to county board of elections.

(c) **Right to Witness Precinct Count.** — The counting of the ballots in each box shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots.
(1973, c. 793, s. 94.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "observers" for "watchers" in the first sentence of subsection (c).

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

§ 163-170. Rules for counting ballots. — No ballot shall be counted which is marked contrary to law, but no ballot shall be rejected for a technical error unless it is impossible to determine the voter's choice. In applying this general principle, all election officials shall be governed by the following rules:

(7), (8) Repealed by Session Laws 1973, c. 793, s. 68, effective July 1, 1973. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, ss. 8, 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 891; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, s. 9; 1961, cc. 451, 487; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 68.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, deleted subdivision (7), relating to failure to comply with former paragraph d of § 163-151(2), and subdivision (8),

relating to failure to comply with former paragraph b of § 163-151(3).

As subdivisions (1) through (6) were not changed by the amendment, they are not set out.

§ 163-172. State Board of Elections to prepare and distribute abstract forms; printing by counties. — The State Board of Elections shall prepare and print appropriate abstract of returns forms and, at least 30 days before the time for holding any primary or election, send copies of them to the chairman of the county board of elections and clerk of superior court of each county. At the same time, the State Board of Elections shall furnish directions for completing, certifying, signing, and transmitting abstracts of returns to the State Board of Elections and Secretary of State as required by this Chapter after each primary and election.

Provided, that the State Board of Elections, in its discretion, may direct some or all counties to print the abstracts and precinct return forms as designed by the State Board and required for any primary or election. If the State Board prints and distributes the abstracts and precinct return forms required for any primary or election, at the expense of the State, the State Board shall have the authority to negotiate for the abstracts and precinct return forms to be printed and distributed on a regional or centralized basis, and the State Board shall be exempt from securing competitive bids for printing and distribution. (1967, c. 775, s. 1; 1975, c. 844, s. 6.)

Editor's Note. — The 1975 amendment added the second paragraph.

§ 163-177. Disposition of duplicate abstracts. — Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

- President and Vice-President of the United States
- Governor, Lieutenant Governor, and all other State executive officers
- United States Senators
- Members of the House of Representatives of the United States Congress
- Justices, Judges, and District Attorneys of the General Court of Justice
- State Senators in multi-county senatorial districts
- Members of the State House of Representatives in multi-county representative districts
- Constitutional amendments and other propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

- All county offices
- All township offices
- State Senators in single-county senatorial districts
- Members of the State House of Representatives in single-county representative districts
- Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a misdemeanor and subject to a fine of one thousand dollars (\$1,000): Provided, that the penalty shall not

apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay. (1933, c. 165, s. 8; 1966, Ex. Sess., c. 5, s. 3; 1967, c. 775, s. 1; 1969, c. 44, s. 86; c. 971, s. 2; 1973, c. 47, s. 2; c. 793, s. 69; 1975, c. 844, s. 7.)

Editor's Note. —

The first 1973 amendment substituted "District Attorneys" for "Solicitors" in the first paragraph.

The second 1973 amendment, effective July 1, 1973, substituted "Within 24 hours after the returns of a primary or election have been canvassed and the results judicially determined" for "Within five days after a primary or election is held" at the beginning of the section.

The 1975 amendment substituted "six hours" for "24 hours" near the beginning of the first paragraph and substituted "mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts" for "mail to the chairman of the State Board of Elections the duplicate abstracts" in that paragraph.

§ 163-177.1. Responsibility of chairman. — The chairman of the county board of elections shall be responsible for prompt delivery of the abstracts required in G.S. 163-177 to the State Board of Elections. If the chairman of the county board of elections is notified by the State Board, by telephone or otherwise, that the abstracts from his county have not been received and therefore the State canvass cannot proceed, then the chairman of the county board shall deliver immediately, or have delivered, the office copy of all abstracts due.

The North Carolina State Highway Patrol, in cooperation with the State Board of Elections and county boards of elections, may, upon request, be responsible for the delivery of the abstracts from each county to the office of the State Board of Elections. (1975, c. 844, s. 8.)

§ 163-179. Who declared elected by county board. — In a general election, the person having the greatest number of legal votes for a county office or for membership in one of the houses of the General Assembly in a representative or senatorial district composed of only one county shall be declared elected by the county board of elections. If two or more candidates for a county office, having the greatest number of votes, shall have an equal number, the county board of elections shall determine by lot which shall be elected. If two or more candidates for membership in one of the houses of the General Assembly in a representative or senatorial district composed of only one county, having the greatest number of votes, shall have an equal number, the determination of which of the candidates is elected shall be governed by the provisions of G.S. 163-191. (1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1; 1973, c. 793, s. 70.)

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

§ 163-181. When election contest stays certification of election. — (a) If an election contest is properly pending before a county board of elections or on appeal from a county board to the State Board of Elections, after a general election, the chairman of the county board of elections shall not issue a certificate of election for the office in controversy until the contest has been finally decided by the county or State Board of Elections.

(b) No election protest shall be filed by a candidate involved in a county, district or statewide primary election with the county or State Board of Elections. The candidate shall file his protest with the Superior Court of Wake

County with respect to a statewide primary election, and with the superior court of the county of the candidate's residence in other primary elections, not later than five days after the board of elections certifies the nominee for the office involved in the protest. Filing of the protest shall not stay the certification of the nominee by the board of elections. A resident superior court judge or a superior court judge then presiding in the county shall immediately hear the protest without a jury. If the court finds that the nominee certified by the Board of Elections should not be certified, the court shall issue an order directing the county or State Board of Elections what action should be taken. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1; 1975, c. 844, s. 9.)

Editor's Note. — The 1975 amendment substituted "after a general election" for "after either a primary or election," deleted "in the case of an election" preceding "issue a certificate" and deleted "or in the case of a primary, certify

the nominee" preceding "for the office in controversy" in the first paragraph, designated that paragraph as subsection (a) and added subsection (b).

ARTICLE 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-188. Meeting of State Board of Elections to canvass returns of primary and election. — Following each primary and election held in this State under the provisions of this Chapter, the State Board of Elections shall meet in the Hall of the House of Representatives in the City of Raleigh to canvass the votes cast in all the counties of the State for all national, State, and district offices, to determine by the count who is nominated or elected to the respective offices, and to declare the results and prepare abstracts as required by G.S. 163-192. The time and date of the general election canvass shall be 11:00 A.M., on the Tuesday following the third Monday after the general election. The time and date of the primary canvass shall be fixed by the State Board, but in no event shall the canvass be later than the eighth day after the primary election and the State Board shall accept and record the totals reflected on the abstracts received from the counties and it shall be the responsibility of each county to accurately record the correct totals for each office.

At the meeting required by the preceding paragraph, if the abstracts of returns have not been received from all of the counties, the Board may adjourn for not more than 10 days for the purpose of securing the missing abstracts. In obtaining them, the Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties. The State Board of Elections is authorized to enforce the penalties provided in G.S. 163-177 and 163-178 for failure of a county elections board chairman or clerk of superior court to comply with the provisions of this Chapter in making returns of a primary or election.

At the meeting required by the first paragraph of this section (or at any adjourned session thereof), the State Board of Elections shall examine the county abstracts when they have all been received and shall proceed with the canvass publicly. (1933, c. 165, s. 9; 1967, c. 775, s. 1; 1975, c. 844, s. 10.)

Editor's Note. — The 1975 amendment rewrote the last sentence of the first paragraph.

ARTICLE 17.

*Members of United States House of Representatives.***§ 163-201. Congressional districts specified.****Constitutionality.** —

Because the United States District Court considered the variance between the enacted legislative plan and a rejected alternative plan to be insubstantial and de minimis, and because it found that the legislature made a good faith

effort to equitably reapportion, it held this section to be constitutional and not in violation of the equal protection clause of the Fourteenth Amendment. *Drum v. Scott*, 337 F. Supp. 588 (M.D.N.C. 1972).

ARTICLE 18A.

Presidential Preference Primary Act.

§ 163-213.1. Short title. — This Article may be cited as the “Presidential Preference Primary Act.” (1971, c. 225; 1975, c. 744.)

Editor’s Note. — The 1975 amendment inserted “Preference.”

§ 163-213.2. Presidential preference primary, date of election. — Beginning with the fourth Tuesday in March, 1976, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party. (1971, c. 225; 1975, c. 744; c. 844, s. 18.)

Editor’s Note. — The two 1975 amendments, which were identical, substituted “Beginning with the fourth Tuesday in March, 1976, and every four years thereafter” for “Beginning

with the primary elections to be conducted in 1972 and every four years thereafter, as directed in G.S. 163-1(b)” at the beginning of the section.

§ 163-213.3. Conduct of election. — The presidential preference primary election shall be conducted and canvassed by the same authority and in the manner provided by law for the conduct and canvassing of the primary election for the office of Governor and all other offices enumerated in G.S. 163-187 and under the same provisions stipulated in G.S. 163-188. The State Board of Elections shall have authority to promulgate reasonable rules and regulations, not inconsistent with provisions contained herein, pursuant to the administration of this Article. (1971, c. 225; 1975, c. 744.)

Editor’s Note. — The 1975 amendment inserted “preference” near the beginning of the section.

§ 163-213.4. Nomination by State Board of Elections. — The State Board of Elections shall convene in Raleigh on the Tuesday following the first Monday in February preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended. Immediately upon completion of

these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with. (1971, c. 225; 1975, c. 744.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 163-213.5. Nomination by petition. — Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the date the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163-96(b)(1) and (2) as they relate to the chairman of the county board of elections.

The group of petitioners shall pay to the chairman of the county board of elections a fee of ten cents (10¢) for each signature he is required to examine under the provisions of this section.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections. (1971, c. 225; 1975, c. 744.)

Editor's Note. — The 1975 amendment inserted "shall be presented to the county board of elections 10 days before the filing deadline and" near the beginning of the second sentence of the first paragraph, substituted "on the date"

for "on the fifteenth day following the date on which" near the end of that sentence and deleted "and verify" following "required to examine" near the end of the third paragraph.

§ 163-213.6. Notification to candidates. — The State Board of Elections shall forthwith contact each person who has been nominated by the Board or by petition and notify him in writing that, upon his written request, to be filed with the Board within 15 days of the notice to him by the Board, his name will be printed as a candidate of a specified political party on the North Carolina presidential preference primary ballot. A candidate who participates in the North Carolina presidential preference primary of a particular party shall have his name placed on the general election ballot only as a nominee of that political party. The board shall send a copy of the "Presidential Preference Primary Act" to each candidate with the notice specified above. (1971, c. 225; 1975, c. 744.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 163-213.7. Voting in presidential preference primary; ballots. — The names of all candidates in the presidential preference primary shall appear at an appropriate place on the ballot or voting machine. In addition the State Board of Elections shall provide a category on the ballot or voting machine allowing voters in each political party to vote an “uncommitted” or “no preference” status. The voter shall be able to cast his ballot for one of the presidential candidates of a political party or for an “uncommitted” or “no preference” status, but shall not be permitted to vote for candidates or “uncommitted” status of a political party different from his registration. Persons registered as “Independents” or “No Party” shall not participate in the presidential preference primary except upon changing such affiliation in accordance with law. (1971, c. 225; 1975, c. 744.)

Editor's Note. — The 1975 amendment inserted “preference” near the beginning of the first sentence, deleted “with the names of the candidates for other offices of their respective parties” following “shall appear” in that sentence, added the second sentence, rewrote the third sentence, inserted “preference” in the

fourth sentence and deleted the former last sentence, which read: “The State Board of Elections shall have authority, in its sole discretion, to print a separate ballot for presidential candidates or to combine it with some or all of the ballots presently authorized under the provisions of G.S. 163-109(b).”

§ 163-213.8. Political parties and delegates bound by results of primary on first ballot. — Upon completion and certification of the primary results by the State Board of Elections, the Secretary of State shall certify the results to the State chairman of each political party.

Each political party and its delegates from North Carolina shall be bound on the first ballot at the national convention by the results of the primary. Each political party at the State level shall adopt rules for the allocation of delegate votes on the first ballot which reflect the actual division of votes in the results of the party primary as much as possible, consistent with the national party rules of that political party.

After the vote on the first ballot at a national convention, all responsibility imposed by this Article shall terminate and further balloting shall be consistent with the rules of the political party.

In the event of the death or the withdrawal of a candidate prior to the first ballot, any delegate votes which would otherwise be allocated to him, shall be considered uncommitted. (1971, c. 225; 1975, c. 744.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 163-213.9. National committee to be notified of provisions under this Article. — It shall be the responsibility of the State chairman of each political party, qualified under the laws of this State, to notify his party's national committee no later than January 30 of each year in which such presidential preference primary shall be conducted of the provisions contained under this Article. (1971, c. 225; 1975, c. 744.)

Editor's Note. — This section was formerly § 163-213.10. It was redesignated § 163-213.9 by Session Laws 1975, c. 744, which repealed former § 163-213.9. The 1975 act also inserted

“preference” and deleted “herein relating to the automatic vote on the first ballot as required” preceding “under this Article” near the end of the present section.

§ 163-213.10: Transferred to § 163-213.9 by Session Laws 1975, c. 744.

Editor's Note. — Session Laws 1975, c. 744, redesignated former § 163-213.10 as present § 163-213.9 and repealed former § 163-213.9.

SUBCHAPTER VII. ABSENTEE VOTING.

ARTICLE 20.

Absentee Ballot.

§ 163-226. **Who may vote an absentee ballot.** — (a) Any qualified voter of the State, whether or not in the armed forces of the United States, may vote by absentee ballot in a statewide primary or general election in the manner provided in this Article if:

- (1) He expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the statewide primary or general election in which he desires to vote; or
- (2) He is unable to be present at the voting place to vote in person on the day of the statewide primary or general election in which he desires to vote because of his sickness or other physical disability.

(b) Any qualified voter of a county who is qualified to vote by absentee ballot under this section in a statewide primary or general election is authorized to vote by absentee ballot in any county bond election in accordance with the provisions of this Article.

(c) Any qualified voter who has been convicted of a misdemeanor and who is incarcerated, whether in his county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of his residence in any election in which he otherwise would be entitled to vote under the provisions of subsections (a) and (b), above. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is a misdemeanant, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to adopt and promulgate rules and regulations to carry out the intent and purpose of this subsection.

(d) A qualified voter may vote by absentee ballot in a statewide primary of his political party only if, at the time he makes application for absentee ballots for that primary, he is affiliated with that political party. The official registration records of the county in which the voter is registered shall be proof of whether he is affiliated with a political party and of the party, if any, with which he is affiliated.

(e) Any qualified voter of the State, qualified to vote an absentee ballot under this section may vote an absentee ballot in any statewide election on constitutional amendments, referenda or other propositions or issues except statewide bond issues submitted to the people. (1939, c. 159, s. 1; 1963, c. 457, s. 1; 1967, c. 775, s. 1; c. 952, s. 1; 1973, c. 536, s. 1; c. 1018.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, inserted "primary or" in three places in subsection (a) and in one place in subsection (b) and added subsections (c) and (d).

The second 1973 amendment added subsection (e).

Session Laws 1973, c. 536, s. 6, provides: "This act shall take effect July 1, 1973. No absentee

voting shall be allowed in any county bond election between the date of ratification of this bill and July 1, 1973, in order that the State Board of Elections and county boards of elections may prepare for the new system provided in this act."

Cited in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-227. Application for absentee ballot; forms of application. — A voter falling in either of the categories defined in G.S. 163-226 may apply for absentee ballots not earlier than 30 days prior to the statewide primary or general election or county bond election in which he seeks to vote and not later than 6:00 P.M. on the Wednesday before that election. Subject to the provisions of G.S. 163-227.2 and except as provided in the following paragraph, the voter or a near relative shall apply for absentee ballots under the provisions of subdivision (1) or subdivision (2) of this section.

If a voter unexpectedly becomes ill or physically disabled to the extent defined in G.S. 163-226 after 6:00 P.M. on the Wednesday before the primary or general election and before 10:00 A.M. on the day before the election, he or a near relative may apply for absentee ballots under the provisions of subdivision (3) of this section.

(1) Expected Absence from County on Election Day. — A voter expecting to be absent from the county in which registered during the entire period that the polls will be open on primary or general election day, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 30 days nor later than 6:00 P.M. on the Wednesday before the election. The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The applicant shall sign his application personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the executive secretary of the county board of elections.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

Application for Ballots by Voter Who Expects to Be Absent from County in Which Registered on Primary or General Election Day.

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. issued to
(This line shall be filled out before application is issued.)
State of
County of

I,, certify that I am a registered voter residing in precinct, township, in the County of, North Carolina, and that I am lawfully entitled to vote in that precinct at the primary, general or bond election to be held thereon on the day of, 19; that I expect to be absent from the county of my residence during the entire period that the polls will be open on the day of the election, and that I will have no opportunity to vote in person on that day.

I hereby make application for an official ballot or ballots on which I may vote at the primary, general or bond election specified. I will return the ballot or ballots by mail or will deliver them in person to the chairman or executive secretary of the board of elections of the county of my residence prior to 6:00 P.M. on the day before the election in which they shall be cast.

This day of, 19

.....
(Voter's name and signature; if application is requested by other person than voter, that person should write the voter's name on the above line)

.....
(Address to which ballots are to be delivered)

.....
(Name and signature of near relative of voter if application sought by near relative)

.....
(Relationship of near relative to voter)

.....
(Signature of person witnessing application)

.....
(Address of witness)

(The above application for absentee ballots may be completed and signed on behalf of the voter applying for absentee ballots by any one of his or her near relatives as follows: spouse, parent, child, grandparent, grandchild, brother, or sister.)

I, the undersigned, certify that I am the (fill in appropriate box with cross "X" mark):

[] Spouse

[] Parent

[] Child

[] Grandparent

[] Grandchild

[] Brother

[] Sister

of the voter applying for absentee ballots and that I have been authorized by that person to make application on his or her behalf for absentee ballots for the primary or election identified in the application.

..... (Date) (Signature)

(2) Absence for Sickness or Physical Disability Occurring before 6:00 P.M. on the Wednesday prior to the Primary or General Election. — A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of his sickness or other physical disability, or his near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 30 days nor later than 6:00 P.M. on the Wednesday before the election. The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or executive secretary of the county board of elections of the county in which the applicant is registered.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

Application for Ballots by Voter Who Expects to Be Unable to Go to Voting Place on Primary or General Election Day because of Sickness or Physical Disability Occurring prior to 6:00 P.M. on the Wednesday before the Primary or General Election.

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. issued to

(This line shall be filled out before application is issued.)

State of North Carolina

County of

I,, certify that I am a registered voter residing in precinct, township, in the County of, North Carolina, and that I am lawfully entitled to vote in that precinct at the primary, general or bond election to be held therein on the day of, 19; that by reason of sickness or physical disability, to wit: (Insert here statement of nature of illness or disability.)

I will be unable to travel from my home or place of confinement to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots on which I may vote at the primary, general or bond election specified. I will return the ballot or ballots by mail or will deliver it in person or cause it to be delivered as authorized by law to the chairman or executive secretary of the board of elections of the county of my residence prior to 6:00 P.M. on the day before the election in which they shall be cast.

This day of, 19

(Voter's name and signature; if application is requested by other person than voter, that person should write the voter's name on the above line) (Address to which ballots are to be delivered)

(Name and signature of near relative of voter if application sought by near relative) (Relationship of near relative to voter)

(Signature of person witnessing application) (Address of witness)

(The above application for absentee ballots may be completed and signed on behalf of the voter applying for absentee ballots by any one of his or her near relatives as follows: spouse, parent, child, grandparent, grandchild, brother, or sister.)

I, the undersigned, certify that I am the (fill in appropriate box with cross "X" mark):

[] Spouse

[] Parent

[] Child

[] Grandparent

[] Grandchild

[] Brother

[] Sister

of the voter applying for absentee ballots and that I have been authorized by that person to make application on his or her behalf for absentee ballots for the primary or election identified in the application.

(Date)

(Signature)

- (3) Absence for Sickness or Physical Disability Occurring after 6:00 P.M. on the Wednesday prior to Primary or General Election. — A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of sickness or other disability occurring after 6:00 P.M. on the Wednesday before the election, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 10:00 A.M. on the day preceding the election.

The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 10:00 A.M. on the day preceding the primary or general election in which the voter seeks to vote.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.

The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.

The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman or executive secretary of the board of elections of the county in which the applicant is registered, or it may be delivered to the chairman or executive secretary in person by the applicant or by his near relative.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

Application for Ballots by Voter Who Expects to Be Unable to Go to Voting Place on Primary or General Election Day because of Sickness or Physical Disability Occurring after 6:00 P.M. on the Wednesday before the Election and Certificate of Attending Physician.

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. issued to
(This line shall be filled out before application is issued.)
State of North Carolina
County of

I,, certify that I am a registered voter residing in precinct, township, in the County of, North Carolina, and that I am lawfully entitled to vote in that precinct at the primary, general or bond election to be held therein on the day of, 19; that by reason of sickness or physical disability occurring since 6:00 P.M. on the Wednesday before that election, I will be unable to travel from my home or place of confinement to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots on which I may vote at the primary, general or bond election specified. I will transmit the ballot or ballots to the chairman or executive secretary of the board of elections of the county of my residence prior to 6:00 P.M. on the day prior to the election.

This day of, 19

(Voter's name and signature; if application is requested by other (Address to which ballots are person than voter, that person to be delivered) should write the voter's name on the above line)

(Name and signature of near relative of voter if application sought by near relative)

(Relationship of near relative to voter)

(Signature of person witnessing application)

(Address of witness)

(The above application for absentee ballots may be completed and signed on behalf of the voter applying for absentee ballots by any one of his or her near relatives, as follows: spouse, parent, child, grandparent, grandchild, brother, or sister.)

I, the undersigned, certify that I am the (fill in appropriate box with cross "X" mark):

[] Spouse

[] Parent

[] Grandparent

[] Brother

[] Child

[] Grandchild

[] Sister

of the voter applying for absentee ballots and that I have been authorized by that person to make application on his or her behalf for absentee ballots for the primary or election identified in the application.

(Date)

(Signature)

Physician's Certificate

State of
County of

I,, certify that I am a physician, duly licensed to practice medicine in the State of that I have examined (insert applicant's name) on (insert date) for an illness or physical disability occurring since 6:00 P.M. on the Wednesday prior to the primary or general election to be held on the day of, 19, and that I believe that he (or she) will be physically incapable of being at the voting place at that election for the following reasons: (insert reasons in space provided).

This day of, 19

(Signature of physician)

(Address of physician)

Witness:
(Signature of person witnessing signing of certificate)

(Address of witness)

(4) Application Forms Issued by Chairman of County Board of Elections. — The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms, but he, the secretary of the board or the executive secretary of the board, in accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

- a. The chairman, secretary or executive secretary may deliver the form to a voter personally or to his near relative at the office of the county board of elections for the voter's own use; or
- b. The chairman, secretary or executive secretary may mail the form to a voter for his own use upon receipt of a written request from the voter or his near relative.

At the time he issues an application form, the chairman, secretary or executive secretary of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, secretary or executive secretary shall insert the name of the voter and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. If the application is requested by the voter's near relative, the chairman, secretary or executive secretary also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or executive secretary shall issue only one application form to a voter or his near relative unless a form previously issued is returned to the chairman, secretary or executive secretary and marked "Void" by him. In such a situation, the chairman, secretary or executive secretary may issue another application form to the voter or a near relative, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative, the chairman, secretary or executive secretary shall write the name of the near relative on the index of near relatives applying for applications for absentee ballots; the index shall be in such form as may be prescribed or approved by the State Board of Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.

- (5) Applications for Absentee Ballots Transmitted by Mail or in Person. — An application for absentee ballots shall be made and signed only by the voter desiring to use them or the voter's near relative and shall be valid only when transmitted to the chairman or executive secretary of the county board of elections by mail or delivered in person by the voter or his near relative.
- (6) Who Is Authorized to Request Applications for Absentee Ballots. — A voter may personally request an application for absentee ballots or may cause such request to be made through a near relative. For the purpose of this Article, "near relative" means spouse, brother, sister, parent, grandparent, child, or grandchild.
- (7) The form of application for person applying to vote in a primary under the provisions of this section shall be the same as the application now required under the provisions of this section for persons applying to vote in a general or county bond election except that the chairman or executive secretary of each county board of elections shall cause to be printed or stamped on the margin of the application the phrase "I certify that I am now registered as an affiliate of the party." A line or space for the signature of the voter shall be provided. No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the primary of the political party with which he is affiliated. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.
- (8) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed: "This application is issued for absentee ballots to be voted in the (primary or general or county bond election) to be held in County on the day of , 19" The county board of elections shall not issue any applications unless they bear the completed legend and it shall not issue any absentee ballots on the basis of any application that does not bear the completed legend. (1939, c. 159,

s. 2; 1943, c. 751, s. 1; 1963, c. 457, s. 2; 1967, c. 775, s. 1; c. 952, s. 3; 1971, c. 947, ss. 1-5; 1973, c. 536, s. 1; c. 1075, ss. 1-3; 1975, c. 19, s. 69; c. 844, s. 11.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, rewrote this section, inserting provisions as to primary elections, and authorizing application for absentee ballot to be made by a near relative of the voter, changing the time within which application must be made from 45 days to 60 days before the election, and making numerous other changes.

The second 1973 amendment deleted "Affidavit and" at the beginning of the caption of the form in subdivision (1). In subdivision (4), the amendment combined the former two sentences of the introductory paragraph into one and inserted "but he, the secretary of the

board or the executive secretary of the board" near the middle of the paragraph and substituted "The chairman, secretary or executive secretary" for "He" at the beginning of paragraphs a and b.

The first 1975 amendment corrected an error in the second 1973 amendatory act by deleting "the board's" preceding "application" in the second sentence of the second paragraph of subdivision (4) and substituting "the board's" for "his" preceding "records" in the second sentence of the third paragraph of subdivision (4).

The second 1975 amendment substituted "30 days" for "60 days" in subdivisions (1) and (2).

§ 163-227.1. Second primary; applications for absentee ballots for voting in second primary. — When a second primary is called, each county board of elections shall mail applications for absentee ballots for the second primary to all voters who voted by absentee ballot in the first primary. The board shall take this action automatically and no action on the part of any voter shall be first required by the board. The board shall complete this action within three days after a second primary is called. It shall mail the application for absentee ballots for the second primary to the address of the voter given in the application for absentee ballots for the first primary or to the voter's residence address if the person voted the absentee ballot pursuant to G.S. 163-227.2.

In addition, a voter entitled to absentee ballots under the provisions of this Article may apply for absentee ballots for a second primary not earlier than the day a second primary is called and not later than 6:00 P.M. on the Wednesday immediately preceding the second primary election date.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary unless otherwise provided by this section. (1973, c. 536, s. 1.)

Editor's Note. — Session Laws 1973, c. 536, s. 6, makes the act effective July 1, 1973.

§ 163-227.2. Alternate procedures for requesting application for absentee ballot, completing application for absentee ballot, and voting absentee ballot. — (a) A person expecting to be absent from the county in which he is registered during the entire period that the polls are open on the day of a statewide primary or general election or county bond election may request an application for absentee ballots, complete the application, receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered under the provisions of this section.

(b) Not earlier than 30 days before a primary or general election or county bond election in which he seeks to vote and not later than 6:00 P.M. on the Wednesday before that election, the voter shall appear in person at the office of the county board of elections and request that the chairman, a member, or the executive secretary of the board furnish him with the application for absentee ballots called for under G.S. 163-227(1). The voter shall complete the

application in the presence of the chairman, member or executive secretary of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member or executive secretary shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member or executive secretary immediately after making and subscribing the affidavit printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection (c) shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, a member or the executive secretary of the county board of elections are authorized to administer the oath required for the affidavit on the container-return envelope; in such case, no seal shall be required, but the chairman, board member or executive secretary shall sign and indicate the official title held by him or her, and shall charge no fee of any voter for taking the acknowledgment required under this section.

(d) The chairman, member or executive secretary shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and G.S. 163-230(2)b and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at his residence address or at the address shown in the application for absentee ballots; and the board chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots. (1973, c. 536, s. 1; 1975, c. 844, s. 12.)

Editor's Note. — Session Laws 1973, c. 536, s. 6, makes the act effective July 1, 1973.

The 1975 amendment substituted "30 days"

for "60 days" near the beginning of the first sentence of subsection (b).

§ 163-227.3. Date by which absentee ballots must be available for voting in primary elections. — Notwithstanding provisions contained in Article 20 and Article 21 to the contrary, the State Board of Elections may, if necessary, provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 40 days prior to the date on which the primary shall be conducted. This section is applicable only to primary election ballots. (1973, c. 1275.)

§ 163-228. Register of absentee ballot applications and ballots issued; a public record. — The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article.

The register of absentee ballot applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 60 days before and 30 days after a statewide primary, general election or county bond election, or at any other time when good and sufficient reason may be assigned for its inspection. (1939, c. 159, ss. 3, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 4; 1973, c. 536, s. 1.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "60 days" for "30 days," inserted "primary," and inserted "or" between "general election" and "county," all in the second paragraph.

§ 163-229. Absentee ballots, container-return envelopes, and instruction sheets. — (a) Absentee Ballot Form. — In accordance with the provisions of G.S. 163-230(3), persons entitled to vote by absentee ballot shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used.

(b) Container-Return Envelope. — In time for use not later than 30 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the chairman of the county board of elections. Each container-return envelope shall be printed in accordance with the following instructions:

- (1) On one side shall be printed an identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:

"Certification of Election Official

The undersigned election official does by his hand and seal certify that is a registered and qualified voter of County Precinct # and has made proper application to vote under the Absentee Ballot Law of North Carolina.

.....(SEAL)
Chairman-Member"

- (2) On the other side shall be printed the return address of the chairman of the county board of elections and the following affidavit:

"Affidavit of Absentee or Sick Voter

State of
County of

I,, do solemnly swear that I am a resident and registered voter in precinct, County, North Carolina; that on the day of the primary, general or bond election,, 19, (Check whichever of the following statements is correct.)

- [] I will be absent from the county in which I reside.
- [] Due to sickness or physical disability, or incarceration as a misdemeanor, I will be unable to travel to the voting place in the precinct in which I reside.

I further swear that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions.

.....
(Signature of voter)

Sworn to and subscribed before me thisday
of, 19

.....
(Signature and seal of officer
administering oath)

My commission (if any) expires
.....
.....

(Title of officer)"

Note: The acknowledgment of a member of the armed forces of the United States may be taken before any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces.

(c) Instruction Sheets. — In time for use not later than 30 days before a statewide primary, general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the chairman of the county board of elections. (1929, c. 164, s. 39; 1939, c. 159, ss. 3, 4; 1943, c. 751, s. 2; 1963, c. 457, ss. 3, 4; 1965, c. 1208; 1967, c. 775, s. 1; c. 851, s. 1; c. 952, s. 5; 1973, c. 536, s. 1; 1975, c. 844, s. 13.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted "60 days" for "45 days" and inserted "primary," in the first sentence of subsection (b), inserted "primary," and "or incarceration as a misdemeanor" in the form of affidavit in subsection (b) and made

certain other changes in the form, and substituted "60 days" for "45 days," inserted "primary," and deleted "election" preceding "or county" near the beginning of subsection (c).
The 1975 amendment substituted "30 days" for "60 days" in subsections (b) and (c).

§ 163-230. Consideration and approval of applications and issuance of absentee ballots. — The procedure to be followed in receiving applications for absentee ballots, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

- (1) Record of Applications Received and Ballots Issued. — Upon receipt of a voter's written application for absentee ballots the chairman of the county board of elections shall promptly enter in the register of absentee ballot applications and ballots issued so much of the following information as he has not already entered there under the provisions of G.S. 163-227(4):
 - a. Name of voter applying for absentee ballots, and, if applicable, the name and address of the voter's near relative who applied for the application for absentee ballots.
 - b. Number of assigned voter's application when issued.
 - c. Precinct in which applicant is registered.
 - d. Address to which ballots are to be mailed, or that the voter voted pursuant to G.S. 163-227.2.
 - e. Reason assigned for requesting absentee ballots.
 - f. Date application for ballots is received by chairman.
 - g. The voter's party affiliation.
- (2) Determination of Validity of Applications for Absentee Ballots. — The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received

in the county; this function shall not be performed by the chairman or any other member of the board individually.

- a. Required meetings of county board of elections. — During the period opening 30 days before a statewide primary, general election or county bond election and closing at 6:00 P.M. on the Wednesday before the election, the county board of elections shall hold public meetings on Monday and Friday of each week at 10:00 A.M., and it shall also hold public meetings at 10:00 A.M. on the seventh, fifth, third and first days immediately preceding election day. These meetings shall be held at the county courthouse or at the elections board's office at the hour fixed by law. At these meetings the county board of elections shall pass upon applications for absentee ballots.

Upon a majority vote, the county board of elections may hold the required public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each Monday and Friday it is required to meet and may set the hours of any additional sessions. If the board desires to exercise either or both of the options granted by the preceding sentence, it shall do so prior to the date on which it is required to hold its first public meeting under the provisions of this subdivision and in time to give the notice required by the fourth paragraph of this lettered portion of this subdivision; thereafter, no change shall be made in the hours fixed for the board's public meetings on absentee ballot applications.

It shall not be necessary for the chairman of the county board of elections to give notice to other board members of weekly meetings of the board which are fixed as to time and place by this section.

If the county board of elections changes the time of holding its Monday and Friday meetings or provides for additional meetings on Mondays and Fridays in accordance with the terms of this subdivision, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county, and a notice thereof shall be posted at the courthouse door of the county, at least one week prior to the time fixed for holding the first meeting under this subdivision.

The county board of elections shall not be required to hold any of the meetings prescribed by this subdivision unless, since its last preceding meeting, it actually has received one or more applications for absentee ballots which it has not passed upon. When no meeting is to be held for this reason, the chairman shall notify each of the other members of the county board of elections that the scheduled public meeting will not be held and state the reasons for its cancellation.

- b. Procedure at required meeting; making determination. — At each public meeting of the county board of elections the chairman shall present for consideration, and the board shall pass upon, the validity of all applications for absentee ballots received since its last preceding public meeting held for that purpose. In connection with each application received by mail the chairman shall also present the container envelope in which the application was received. At each such meeting any registered voter of the county shall be heard and allowed to present evidence in opposition to, or in favor of, the issuance of absentee ballots to any voter making application for them.

The county board of elections may consider the registration records as evidence of the voter's signature, if available, and as any other evidence that may be necessary to pass upon such an application, including the party affiliation of a voter seeking to vote in a primary.

If the board finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, and that his application is in proper form, it shall approve his application for absentee ballots.

- c. Record of board's determination; decision final. — At the time the county board of elections makes its decision on an application for absentee ballots, the chairman shall enter in the appropriate column in the register of absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved." The decision of the board on the validity of an application for absentee ballots shall be final, subject only to such review as may be necessary in the event of an election contest.
- (3) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the county board of elections approves an application for absentee ballots, the chairman shall promptly issue and transmit them to the voter only, and not to his near relative, in accordance with the following instructions:
- a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No." and insert in the blank space the number assigned the applicant's application in the register of applications for absentee ballots and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.
 - b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, his application number, and the designation of the precinct in which the voter is registered. The chairman shall leave the container-return envelope holding the ballots unsealed.
 - c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post-office address stated in his application, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the applicant in person: Provided, that in case of approval of an application received after 6:00 P.M. on the Wednesday before the election under the provisions of G.S. 163-227(3), in lieu of transmitting the ballots to the applicant in person or by mail, the chairman may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative of the voter. (1939, c. 159, s. 3; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 6; 1973, c. 536, s. 1; c. 1075, s. 4; 1975, c. 844, ss. 14, 19.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, added to paragraph a of subdivision (1) the language beginning "and, if applicable," added "or that the voter voted pursuant to G.S. 163-227.2" to paragraph d of

subdivision (1), and added paragraph g of subdivision (1). In subdivision (2), the amendment substituted "60 days" for "45 days" and inserted "primary," near the beginning of paragraph a, substituted "the seventh, third and

first days" for "Thursday and Monday" near the end of the first sentence of the first paragraph of paragraph a, and added "including the party affiliation of a voter seeking to vote in a primary" at the end of the second paragraph of paragraph b. In subdivision (3), the amendment substituted "voter only, and not to his near relative" for "applicant" in the introductory paragraph and "a near relative of the voter" for "applicant's husband, wife, brother, sister, parent, or child" at the end of paragraph c.

The second 1973 amendment substituted "in which the voter is registered" for "in which his ballots are to be voted" at the end of the first sentence of subdivision (3)b.

The 1975 amendment substituted "30 days" for "60 days" near the beginning of the first sentence of the first paragraph of subdivision (2)a and inserted "fifth" near the end of that sentence.

§ 163-231. Voting absentee ballots and transmitting them to chairman of county board of elections. — (a) Procedure for Voting Absentee Ballots. — In the presence of an officer authorized to administer oaths, having an official seal, the voter shall:

- (1) Mark his ballots, or cause them to be marked in his presence according to his instructions.
- (2) Fold each ballot separately, or cause each of them to be folded in his presence.
- (3) Place the folded ballots in the container-return envelope and securely seal it, or to have this done in his presence.
- (4) Make and subscribe the affidavit printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The officer administering the oath shall then complete the form on the container-return envelope and affix his seal, if any, in the place indicated. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots.

In the case of voters who are members of the armed forces of the United States, as defined in G.S. 163-245, the signature of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces, as a witness to the execution of any certificate required by this or any other section of this Article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with absentee ballots.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections. — The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the chairman of the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail, at the voter's expense, or delivered in person, or by the voter's spouse, brother, sister, parent, grandparent, child, or grandchild not later than 6:00 P.M. on the day before the statewide primary or general election or county bond election. If such ballots are received later than that hour, they shall not be accepted for voting. (1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1; 1971, c. 1247, s. 3; 1973, c. 536, s. 1.)

Editor's Note. — The 1971 amendment expired by its own terms July 1, 1972.

The 1973 amendment, effective July 1, 1973, inserted "if any" in the first sentence of the

second paragraph of subsection (a) and rewrote the part of subsection (b) following the colon.

§ 163-232. **Certified list of approved applications to be transmitted to State Board of Elections and posted; original applications to accompany list.** — The chairman of the county board of elections shall prepare a list, in quadruplicate, of all applications for absentee ballots received by him which have been approved by the county board of elections. At the end of the list he shall execute the following certificate under oath:

“State of North Carolina
County of

I,, chairman of the county board of elections, do hereby certify that the foregoing is a list of all applications filed with me for absentee ballots to be voted in the primary or general election or county bond election on the day of, 19. . . . , which have been approved by the county board of elections. I further certify that I have issued ballots to no other persons than those listed herein, whose original applications or original applications made by near relatives are enclosed to be filed with the State Board of Elections; and I further certify that I have not delivered ballots for absentee voting to any person other than the voter himself, by mail or in person, except as provided by law in the case of approved applications received after 6:00 P.M. on the Wednesday before the election.

This the day of, 19. . . .

.....
(Signature of chairman of county board of elections)

Sworn to and subscribed before me this day of , 19. . . . Witness my hand and official seal.

.....
(Signature of officer administering oath)

.....
“Title of officer”

Before noon on the day before a statewide primary, general election or county bond election, the chairman of the county board of elections shall send one copy of the list required by this section, together with the original of all applications for absentee ballots received by him, by registered mail to the chairman of the State Board of Elections, at Raleigh, North Carolina. He shall post one copy of the list at a conspicuous place at the county courthouse door, he shall deliver one copy to the registrar of each precinct for posting in a conspicuous place in the voting enclosure immediately upon the opening of the polls on the day of a statewide primary, general election or county bond election, and he shall retain the fourth copy for himself. (1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6; 1967, c. 775, s. 1; 1973, c. 536, s. 1.)

Editor’s Note. — The 1973 amendment, effective July 1, 1973, substituted “quadruplicate” for “triplicate” in the first sentence of the first paragraph, inserted “primary or general election or county bond” in the first sentence of the oath and “or original applications made by near relatives” in the

second sentence of the oath, inserted “primary,” and “or county bond election” in the first sentence of the last paragraph and rewrote the second sentence of the last paragraph so as to require the delivery of one copy of the list to the registrar of each precinct for posting.

§ 163-233. Lists of absentee ballots; distribution. — On the day of election, the chairman of the county board of elections shall prepare for each precinct a list, in quadruplicate, of all executed absentee ballots he has received. He shall cause two copies of the appropriate list to be delivered to the registrar of the precinct no later than 4:00 P.M. on election day. The county board of elections may call upon the sheriff of the county to distribute the list to the precincts.

The registrar shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89. On election day the chairman shall mail to the State Board of Elections, Raleigh, North Carolina, one copy of each of the lists prepared under this section, and he shall retain one copy for his use.

After the last person has voted, the registrar shall call the name of each person recorded on the list and enter an "A" in the appropriate place on the voter's permanent registration record. If such person is already recorded as having voted in that election, the registrar shall enter a challenge. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7; 1967, c. 775, s. 1; 1973, c. 536, s. 1; c. 1075, s. 5.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, rewrote this section. The second 1973 amendment substituted "A"

for "X" in the first sentence of the third paragraph.

§ 163-233.1. Withdrawal of absentee ballots not allowed. — No person shall be permitted to withdraw an absentee ballot after such ballot has been mailed to or returned to the county board of elections. (1973, c. 536, s. 1.)

Editor's Note. — Session Laws 1973, c. 536, s. 6, makes the act effective July 1, 1973.

§ 163-234. Counting absentee ballots by county board of elections. — All absentee ballots returned to the chairman or executive secretary of the county board of elections in the container-return envelopes shall be retained by the chairman to be counted by the county board of elections as herein provided.

- (1) Only those absentee ballots returned to the county board of elections no later than 6:00 P.M. on the day before election day in a properly executed container-return envelope shall be counted.
- (2) The county board of elections shall meet at 5:00 P.M. on the election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 P.M. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided he shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 P.M. and 5:00 P.M. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolution shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable

necessity. The board shall not announce the result of the count before 7:30 P.M.

- (3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and such fact is publicly declared and entered in the official minutes of the county board.
- (4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.
- (5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot.

After all ballots have been placed in the boxes, the counting process shall begin.

If a challenge transmitted to the board on canvass day by a registrar is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The chairman shall be responsible for the safekeeping of the pollbook of absentee voters.

- (6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract provided by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections, Raleigh, North Carolina.
- (7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.
- (8) In the event a political party does not have a member of the county board of elections present at the 5:00 P.M. meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."
- (9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1967, c. 775, s. 1; c. 851, s. 2; 1973, c. 536, s. 1; 1975, c. 798, s. 3.)

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

The 1975 amendment added the second paragraph of subdivision (2).

§ 163-235: Repealed by Session Laws 1973, c. 536, s. 5, effective July 1, 1973.

ARTICLE 21.

Military Absentee Registration and Voting in Primary and General Elections.

§ 163-245. **Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(b) The provisions of this Article shall apply to the following persons:

- (1) Persons serving in the armed forces of the United States, including (but not limited to) the army, the navy, the air force, the marine corps, the coast guard, the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, the Marine Corps Women's Reserve, the Women's Army Corps, the Merchant Marine, and members of the national guard and military reserve who on the day of a primary or general election are absent on active duty.
- (2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
- (3) Disabled war veterans in United States government hospitals.
- (4) Civilians attached to and serving outside the United States with the armed forces of the United States.
- (5) Members of the Peace Corps. (1941, c. 346, ss. 1, 1a; 1943, c. 503, s. 1; 1945, c. 758, s. 4; 1953, c. 908; 1963, c. 457, s. 16; 1967, c. 775, s. 1; 1973, c. 793, s. 71.)

Editor's Note. —

The 1973 amendment, effective July 1, 1973, substituted "Spouses of persons" for "Wives of men" and "spouses'" for "husbands'" in subdivision (b)(2).

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

§ 163-248. **Register, ballots, container-return envelopes, and instruction sheets.**

(b) Absentee Ballot Form. — Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 30 days before the primary or election.

(c) Container-Return Envelope. — The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 30 days before the primary or election. Each container-return envelope shall be printed in accordance with the following instructions:

- (1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which his ballots are to be voted.
- (2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

“Certificate of Absentee Voter

I,, do hereby certify that I am a resident and qualified voter in precinct, County, North Carolina, and that I am [check whichever of the following statements is correct]

- [] Serving in the armed forces of the United States
[] The spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence
[] A disabled war veteran in a United States government hospital
[] A civilian attached to and serving outside the United States with the armed forces of the United States
[] A member of the Peace Corps

I further certify that I am affiliated with the Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]
[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]
[Street number, APO, or FPO number]
[City, postal zone, State, and zip code]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction.

Witness my hand in the presence of [Insert name and rank of witnessing officer] this day of, 19

(Signature of voter)

Witness:

(Signature of witnessing officer)

Rank or title of witnessing officer:

Unit to which witnessing officer is assigned:

Note: This certificate may be witnessed by any commissioned officer or any noncommissioned officer of the rank of sergeant in the Army, petty officer in the Navy, or equivalent rank in other branches of the armed forces of the United States.”

(d) Instruction Sheets. — The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than 30 days before the primary or election. (1929, c. 164, s. 39; 1941, c. 346, ss. 2, 3, 4, 5, 6; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13, 14; 1967, c. 775, s. 1; 1973, c. 793, s. 72; 1975, c. 844, ss. 15-17.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted “spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence” for “wife of a member of the armed forces of the United States residing outside the county of my husband's residence” in the certificate in subdivision (c)(2).

The 1975 amendment inserted “absentee” in the second sentence of subdivision (b), substituted “not later than 30 days before the primary or election” for “not later than, in the case of a primary election, 10 days after the time has expired for the filing of candidacy for county office, and in the case of a general election, the first day of September immediately prior

thereto" at the end of that sentence and rewrote the second sentence in both subsections (c) and (d).

As subsection (a) was not changed by the amendments, it is not set out.

§ 163-251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration. —

(a) Preparation of List. — Before noon on the day of a statewide primary or general election, the chairman of the county board of elections shall prepare for each precinct a list, in quadruplicate, of all applications for military absentee ballots which he has received, entered in the register of military absentee ballot applications and ballots issued, and approved. This list shall be entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued." By the name of each applicant whose executed military absentee ballots have been returned to him the chairman shall enter the notation "Ballots Returned." At the end of the list the chairman shall execute the following certificate under oath:

"State of North Carolina
County of

I,, chairman of the county board of elections, do hereby certify that the foregoing is a list of all applications filed with me for absentee ballots under the provisions of the Military Absentee Ballot Law to be voted in the [insert either 'primary' or 'general,' whichever is appropriate] election on the day of, 19. . . I further certify:

1. That I have issued military absentee ballots to no other persons than those listed therein, whose original applications are herewith filed with the State Board of Elections;
2. That I have not delivered military absentee ballots to any person other than the voter himself, by mail or in person;
3. That I have received executed ballots from those absentee voters whose names are marked on this list with the notation 'Ballots Returned,' whose unopened container-return envelopes have been delivered to the county board of elections;
4. That this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the day of, 19. . .

.....
(Signature of chairman of county board of elections)

Sworn to and subscribed before me this day of, 19. . .

Witness my hand and official seal.

.....
(Signature of officer administering oath)

.....
(Title of officer)"

(b) Distribution of List. — Before noon on the day of the primary or general election in which the military absentee ballots are to be cast, the chairman of the county board of elections shall send one copy of the list required by this section together with the original of all applications for military absentee ballots received by him, by registered mail to the chairman of the State Board of Elections at Raleigh, North Carolina. The chairman shall deliver two copies of the list to the appropriate precinct registrar and retain one copy for the county board. The registrar shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After the last person has voted, the registrar shall call the name of each person recorded on the list and enter an "A" in the appropriate place on the

voter's permanent registration record, if any. If such person is already recorded as voting in that election, the registrar shall enter a challenge.

(c) List Constitutes Registration. — The "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prescribed by this section, when delivered to the registrars of the various precincts, shall constitute the only precinct registration of the military absentee voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Registrars shall not add the names of persons listed on the military absentee list to the regular registration books of their precincts.

(d) Counting Ballots, Hearing Challenges. — The county board of elections shall count military ballots as provided for civilian absentee ballots in G.S. 163-234, and shall hear challenges as provided in G.S. 163-89. (1941, c. 346, ss. 7-10, 12, 13; 1943, c. 503, ss. 4, 5; 1963, c. 457, s. 15; 1967, c. 775, s. 1; 1973, c. 536, s. 2.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted, in paragraph 3 of the certificate in subsection (a), "county board of elections" for "appropriate precinct

registrars for voting," rewrote all of subsection (b) following the first sentence of the first paragraph and added subsection (d).

§ 163-252: Repealed by Session Laws 1973, c. 536, s. 5, effective July 1, 1973.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

ARTICLE 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§§ 163-259 to 163-268: Repealed by Session Laws 1975, c. 565, s. 8.

§ 163-278. Duty of investigating and prosecuting violations of this Article.

— It shall be the duty of the State Board of Elections and the district attorneys to investigate any violations of this Article, and the Board and district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation. The State Board of Elections and the district attorneys are authorized to call upon the Attorney General to furnish assistance by the State Bureau of Investigation in making the investigations of such violations. The State Board of Elections shall furnish the district attorney a copy of its investigation. The district attorney shall initiate prosecution and prosecute any violations of this Article. The provisions of G.S. 163-278.28 shall be applicable to violations of this Article. (1931, c. 348, s. 12; 1967, c. 775, s. 1; 1975, c. 565, s. 7.)

Editor's Note. — The 1975 amendment rewrote this section, which formerly made it the duty of the Attorney General and solicitors and

prosecuting attorneys to prosecute violations of this Article.

§§ 163-278.1 to 163-278.5: Reserved for future codification purposes.

ARTICLE 22A.

*Regulating Contributions and Expenditures
in Political Campaigns.*§ 163-278.6. **Definitions.** — When used in this Article:

- (1) The term “board” means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county board of elections with respect to all candidates for single-county district, county and municipal offices.
- (2) The term “broadcasting station” means any commercial radio or television station or community antenna radio or television station.
- (3) The term “business entity” means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.
- (4) The term “candidate” means any individual who has filed a notice of candidacy for public office listed in G.S. 163-278.6(18) with the proper board of elections.
- (5) The term “communications media” or “media” means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences.
- (6) The terms “contribute” or “contribution” mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee, or political party. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods notwithstanding the foregoing meanings of “contribution,” the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee.
- (7) The term “corporation” means any corporation doing business in this State under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer.
- (8) The term “election” means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term “election” shall not include any local or statewide referendum or bond election unless the act calling for such local or statewide referendum or bond election specifically states that such statewide bond election or referendum shall be covered by the terms and provisions of this Article.
- (9) The terms “expend” or “expenditure” mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment,

gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, in support of or in opposition to any candidate, political committee, or political party.

- (10) The term "individual" means a single individual or more than one individual.
- (11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.
- (12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.
- (13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.
- (14) The term "political committee" means a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election. The term includes, without limitation, any political party's State, county or district executive committee.
- (15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96.
- (16) The term "political purpose" means any purpose in aid of seeking to influence an election or a political party or candidate.
- (17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.
- (18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than 50,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article.
- (19) The term "treasurer" means an individual appointed by a candidate or political committee as provided in G.S. 163-278.7. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6.)

Editor's Note. — Session Laws 1973, c. 1272, s. 5, provides: "This act shall become effective July 1, 1974, and the first report required under this act shall be filed no later than September 1, 1974, prior to the November, 1974 General Election and shall include all contributions received and all expenditures made commencing

with the period 10 days following the 1974 primary elections."

The 1975 amendment rewrote subdivisions (1) and (18).

Session Laws 1973, c. 1272, s. 2, contains a severability clause.

§ 163-278.7. Appointment of political treasurers. — (a) Each candidate and political committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

- (1) The name, address and purpose of the candidate or political committee;
- (2) The names, addresses, and relationships of affiliated or connected candidates, political committees, political parties, or similar organizations;
- (3) The territorial area, scope, or jurisdiction of the candidate or political committee;
- (4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;
- (5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;
- (6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political committee or political party;
- (7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used;
- (8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and
- (9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate or political committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate or political committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment. (1973, c. 1272, s. 1.)

§ 163-278.8. Detailed accounts to be kept by political treasurers. — (a) The treasurer of each candidate and political committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee.

(b) Accounts kept by the treasurer of a candidate or political committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) A treasurer may not accept a contribution of more than one hundred dollars (\$100.00) from a nonresident of this State unless the contribution is

accompanied by a written statement setting forth the name and address of each contributor.

(d) A treasurer shall not be required to report the name of any resident of this State who makes a total contribution of fifty dollars (\$50.00) or less but he shall instead report the fact that he has received a total contribution of fifty dollars (\$50.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of fifty dollars (\$50.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds fifty dollars (\$50.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed fifty dollars (\$50.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed fifty dollars (\$50.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.

(e) All expenditures for media expenses shall be made by check only. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than twenty-five dollars (\$25.00) shall be made by check only. All expenditures for nonmedia expenses of twenty-five dollars (\$25.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than twenty-five dollars (\$25.00) shall be accounted for and reported individually and separately, but expenditures of less than twenty-five dollars (\$25.00) may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of less than twenty-five dollars (\$25.00) each, the amounts, dates, and the purposes for which made. (1973, c. 1272, s. 1.)

§ 163-278.9. Statements filed with Board. — (a) The treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

- (1) **Organizational Report.** — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files his notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first.
- (2) **Preprimary Report.** — The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.
- (3) **Postprimary Report(s).** — The treasurer shall file a report with the Board no later than the tenth day after the primary election. If there is a second primary or runoff election, a report shall be filed no later than the tenth day after the second primary or runoff election by candidates or committees involved therein.
- (4) **Preelection Report.** — The treasurer shall file a report with the Board not later than the tenth day preceding the general election.
- (5) **Final Report.** — The treasurer shall file a final report no later than the tenth day after the general election. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental

final report shall be filed no later than January 7, after the general election, and shall be current through December 31 after the general election.

(6) **Annual Reports.** — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) In addition to the primary reports required above, a final report shall be filed by the treasurer of each candidate and the treasurer of each committee supporting only candidates eliminated in primary elections. Such report of contributions and expenditures shall be filed with the Board no later than 45 days after the primary election in which the candidate or candidates are eliminated. (1973, c. 1272, s. 1; 1975, c. 565, s. 1.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 163-278.10. Procedure for inactive candidate or committee. — If no contribution is received or expenditure made by or on behalf of a candidate or political committee during a period described in G.S. 163-278.9, the treasurer shall file with the Board, at the time required by G.S. 163-278.9, a statement to that effect and it shall not be required that any inactive candidate or committee so filing a report of inactivity file any additional reports required by G.S. 163-278.9 so long as the candidate or committee remains inactive. (1973, c. 1272, s. 1.)

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures. — (a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) **Contributions** — A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate or political committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(2) **Expenditures** — A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate or political committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. (1973, c. 1272, s. 1.)

§ 163-278.12. Contributions and expenditures by an individual other than a candidate. — Subject to G.S. 163-278.16(e) and 163-278.14, it shall be permissible for an individual other than a candidate to make contributions or expenditures in support of, or in opposition to, any candidate or political committee other than by contribution to a candidate or political committee. In the event an individual makes contributions or expenditures, other than by contribution to a candidate or political committee, in excess of one hundred dollars (\$100.00), then, within 10 days after making such a contribution or expenditure, he shall file a statement of such contribution or expenditure with the Board in accordance with the terms and conditions of G.S. 163-278.11. (1973, c. 1272, s. 1.)

§ 163-278.13. Limitation on contributions. — (a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of three thousand dollars (\$3,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of three thousand dollars (\$3,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of three thousand dollars (\$3,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election.

(e) This section shall not apply to any State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(f) Any individual, candidate or political committee who violates the provisions of this section is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or be both fined and imprisoned. (1973, c. 1272, s. 1.)

§ 163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of one hundred dollars. — (a) No candidate, political committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously except as provided in G.S. 163-278.8(d). If a candidate, political committee, political party, or treasurer receives any such contributions, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the general fund of the State of North Carolina.

(b) No individual or person shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars (\$100.00) unless such contribution be in the form of a check, draft, or money order. (1973, c. 1272, s. 1.)

§ 163-278.15. **No acceptance of contributions made by corporations, foreign and domestic.** — No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina. (1973, c. 1272, s. 1.)

§ 163-278.16. **Regulations regarding contributions, expenditures and media advertising.** — (a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate or political committee:

- (1) Until the candidate or political committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and
- (2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate or political committee.

(b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

(f) No advertisement of any kind may be made by a treasurer, candidate, political committee or individual in the case of the media unless it bears the legend or includes the statement (Paid for or sponsored) by (Name of candidate, political committee, individual). (1973, c. 1272, s. 1; 1975, c. 565, s. 2.)

Editor's Note. — The 1975 amendment combined the substance of those subsections in repealed subsections (b), (c), (d) and (e) and present subsection (f).

§ 163-278.17. **Statements of media receiving campaign expenditures.** — (a) Each media shall file a report with the Board, no later than the tenth day after the first primary, and within 10 days after a second primary. Each media shall file a report with the Board no later than the tenth day after the general election, and, additionally, shall file a supplemental report no later than January 7 after the general election which shall be current as of December 31 after the general election. Each report shall show all expenditures not shown on any prior report required to be filed by the media under this Article, and each report shall include the following information:

- (1) The name and address of each candidate, treasurer or individual making or authorizing an expenditure for media purposes;
- (2) The candidate, political committee or political party on whose behalf the expenditure was made or authorized and the political office(s) with respect to which the candidate, treasurer or individual made the expenditure; and
- (3) With respect to each candidate, treasurer or individual making or authorizing an expenditure, the amount and date of each expenditure and the total amount of all expenditures from each candidate, treasurer or individual.

Except as otherwise provided, the media reports shall be current within seven days of the date the report is due. No report shall be necessary if no expenditures have been made in the period for which the report is due.

(b) Each media shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure.

A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of said authorizations shall be available for inspection during normal business hours at the office(s) of the media making the publication or broadcast nearest to the place(s) of publication or broadcast. (1973, c. 1272, s. 1; 1975, c. 565, s. 3.)

Editor's Note. — The 1975 amendment rewrote the introductory language and added the last paragraph in subsection (a) and added the second paragraph of subsection (b).

§ 163-278.18. Normal commercial charges for political advertising. — No media and no supplier of materials or services shall charge or require a candidate, treasurer, political party, or individual to pay a charge for advertising, materials, space, or services purchased for or in support of or in opposition to any candidate, political committee, or political party that is higher than the normal charge it requires other customers to pay for comparable advertising, materials, space, or services purchased for other purposes. (1973, c. 1272, s. 1.)

§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies. — (a) Except as provided in G.S. 163-278.19(b), it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

- (1) To make any contribution or expenditure (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) in aid or in behalf of or in opposition to any candidate or political committee in any election or for any political purpose whatsoever;
- (2) To pay or use or offer, consent or agree to pay or use any of its money or property for or in aid of or in opposition to any candidate or political committee or for or in aid of any person, organization or association organized or maintained for political purposes, or for or in aid of or in opposition to any candidate or political committee or for any political purpose whatsoever; and
- (3) To reimburse or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a misdemeanor as hereinafter set out, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, except as provided in G.S. 163-278.20, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of

employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section shall be punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000), or imprisonment of not more than one year, or by both fine and imprisonment. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be unlawful and the defendant shall be subject to the same punishment as set forth in this subsection.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section. (1973, c. 1272, s. 1; 1975, c. 565, s. 6.)

Editor's Note. — The 1975 amendment added subsection (d).

§ 163-278.20. Disclosure before soliciting contributions. — (a) It shall be unlawful for one or more individuals acting in concert, or for any group, committee, club or organization, of any type or nature, of two or more individuals, to solicit, attempt to solicit, or receive contributions for the purpose of supporting a candidate, political committee, or political party without first clearly advising those solicited as follows:

- (1) The name of the candidate(s) for whom the contribution will be used;
or
- (2) The name of the political committee or party for which the funds will be used; or
- (3) That a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported and that the contributions solicited will be expended in a manner and for a purpose to be determined at a future date but no later than 20 days prior to the pending primary or general election.

(b) A violation of this section shall be punishable by a fine not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000), or imprisonment of not more than one year, or by both fine and imprisonment. (1973, c. 1272, s. 1.)

§ 163-278.21. Promulgation of policy and administration through State Board of Elections. — The State Board of Elections shall have responsibility, adequate staff, equipment and facilities, for promulgating all necessary regulations, and for the administration of this Article. The State Board of Elections shall empower the Executive Secretary-Director with the responsibility for the administrative operations required to administer this Article and may delegate or assign to him such other duties from time to time by regulations or orders of the State Board of Elections. (1973, c. 1272, s. 1; 1975, c. 798, s. 7.)

Editor's Note. — The 1975 amendment inserted "equipment" in the first sentence, substituted "and for the administration" for "and the administration" in that sentence, substituted "shall empower" for "may empower" near the beginning of the second

sentence, substituted "to administer" for "to effect" near the middle of that sentence, substituted "State Board of Elections" for "Board" throughout the section and deleted the

former last sentence, which read: "However, the Board shall not delegate the making of regulations to the Executive Secretary-Director or other staff personnel."

§ 163-278.22. Duties of Board. — It shall be the duty and power of the Board:

- (1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices of candidacy a manual setting forth the provisions of this Article and a prescribed uniform system for accounts required to file statements by this Article;
- (2) To accept and file any information voluntarily supplied that exceeds the requirements of this Article;
- (3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article;
- (4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying;
- (5) To preserve such statements and other information for a period of five years from date of receipt;
- (6) To prepare and publish such reports as it may deem appropriate;
- (7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article, and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article; and
- (8) After investigation, to report apparent violations by candidates, political committees, individuals or persons to the proper solicitor (district attorney) as provided in G.S. 163-278.27.
- (9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.
- (10) To instruct the chairman and executive secretaries of each county board as to their respective duties and responsibilities relative to the administration of this Article.
- (11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163-278.27.
- (12) To assist county boards of elections in resolving questions arising from the administration of this Article.
- (13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article. (1973, c. 1272, s. 1; 1975, c. 798, s. 8.)

Editor's Note. — The 1975 amendment added subdivisions (9) through (13).

§ 163-278.23. Duties of Executive Secretary-Director of Board. — The Executive Secretary-Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 10 days after the date it is filed. The Executive Secretary-Director shall advise, or cause to be advised, no more than 15 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, or media required to file a statement under this Article if:

- (1) It appears that the individual, candidate, treasurer, political committee or media has failed to file a statement as required by law or that a statement filed does not conform to this Article; or
- (2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee or media has failed to file a statement required by this Article.

The Executive Secretary-Director of the Board of Elections shall issue written rulings to candidates and may issue written rulings to the communications media and political committees, upon request, regarding filing procedures and compliance with this Article. Any such ruling so issued shall specifically refer to this paragraph. If the candidate, communications media, or political committees rely on and comply with the ruling of the Executive Secretary-Director of the Board of Elections, then prosecution on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Secretary-Director of the Board of Elections issued to the candidate involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. (1973, c. 1272, s. 1; 1975, c. 334; c. 565, s. 4.)

Editor's Note. — The first 1975 amendment added the second paragraph.

The second 1975 amendment added the second sentence of the first paragraph.

§ 163-278.24. Statements examined within three months. — Within three months after the date of each election, the Executive Secretary-Director shall examine or cause to be examined each statement filed with the Board under this Article, and, referring to the election, determine whether the statement conforms to law and to the truth. Such examination shall include a comparison of reports and statements submitted by a treasurer and those required from media pursuant to G.S. 163-278.17. (1973, c. 1272, s. 1.)

§ 163-278.25. Issuance of declaration of nomination or certificate of election. — No declaration of nomination and no certificate of election shall be granted to any candidate until the candidate or his treasurer has filed the statements referring to the election he is required to file under this Article. Within 24 hours after reaching a decision that a declaration of nomination or certificate of election should not be granted, the Board shall give written notice of that decision, by telegraph or certified mail, to the candidate and the candidate's treasurer. Failure to grant certification shall not affect a successful candidate's title to an office to which he has been otherwise duly elected. (1973, c. 1272, s. 1.)

§ 163-278.26. Appeals from State Board of Elections; early docketing. — Any candidate for nomination or election who is denied a declaration of nomination or certificate of election, pursuant to G.S. 163-278.25, may, within five days after the action of the Board under that section, appeal to the Superior Court of Wake County for a final determination of any questions of law or fact which may be involved in the Board's action. The cause shall be entitled "In the Matter of the Candidacy of" It shall be placed on the civil docket of that court and shall have precedence over all other civil actions. In the event of an appeal, the chairman of the Board shall certify the record to the clerk of that court within five days after the appeal is noted.

The record on appeal shall consist of all reports filed by the candidate or his treasurer with the Board pursuant to this Article, and a memorandum of the Board setting forth with particularity the reasons for its action in denying the candidate a declaration of nomination or certificate of election. Written notice of the appeal shall be given to the Board by the candidate or his attorney, and may be effected by mail or personal delivery. On appeal, the cause shall be heard de novo. (1973, c. 1272, s. 1.)

§ 163-278.27. Penalty for violations; duty to report and prosecute. — (a) Any individual, candidate, political committee, treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, or 163-278.18, is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000) if an individual, and not more than five thousand dollars (\$5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

- (1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the solicitor (district attorney) of the solicitorial district in which the candidate for nomination or election resides;
- (2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and solicitor (district attorney) of the superior court: report to the solicitor (district attorney) of the solicitorial district in which Wake County is located;
- (3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees or treasurers: report to the solicitor (district attorney) of the solicitorial district in which the individual resides; and
- (4) In the case of a person or any group of individuals: report to the solicitor (district attorney) or solicitors (district attorneys) the solicitorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate solicitor (district attorney) shall prosecute the individual or persons alleged to have violated a section or sections of this Article. (1973, c. 1272, s. 1.)

§ 163-278.28. Issuance of injunctions; special prosecutors named. — (a) The superior courts of this State shall have jurisdiction to issue injunctions or grant any other equitable relief appropriate to enforce the provisions of this Article upon application by any registered voter of the State.

(b) If the Board makes a report to a solicitor (district attorney) under G.S. 163-278.27 and no prosecution is initiated within 45 days after the report is made, any registered voter of the solicitorial district to whose solicitor (district attorney) a report has been made, or any board of elections in that district, may, by verified affidavit, petition the superior court for that district for the appointment of a special prosecutor to prosecute the individuals or persons who have or who are believed to have violated any section of this Article. Upon receipt of a petition for the appointment of a special prosecutor, the superior court shall issue an order to show cause, directed at the individuals or persons alleged in the petition to be in violation of this Article, why a special prosecutor should not be appointed. If there is no answer to the order, the court shall appoint a special prosecutor. If there is an answer, the court shall hold a hearing on the order, at which both the petitioning and answering parties may be heard, to determine whether a prima facie case of a violation and failure to prosecute exists. If there is such a prima facie case, the court shall so find and shall thereupon appoint a special prosecutor to prosecute the alleged violators. The special prosecutor shall take the oath required of assistant solicitors (district attorneys) by G.S. 7A-63, shall serve as an assistant solicitor (district attorney) pro tem of the appropriate district, and shall prosecute the alleged violators. (1973, c. 1272, s. 1.)

§ 163-278.29. Compelling self-incriminating testimony; individual so testifying excused from prosecution. — No individual shall be excused from attending or testifying or producing any books, papers, or other documents before any court upon any proceeding or trial of another for the violation of any of the provisions of this Article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but such individual may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this Article; but such individual shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be compelled to testify or produce evidence, documentary or otherwise, and no compelled testimony so given or produced shall be used against him upon any criminal proceeding, but such individual so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof. (1973, c. 1272, s. 1.)

§ 163-278.30. Candidates for federal offices to file information reports. — Candidates for nomination in a party primary or for election in a general or special election to the offices of United States Senator, member of the United States House of Representatives, President or Vice-President of the United States shall file with the Board all reports they or political committee treasurers or other agents acting for them are required to file under the Federal Election Campaign Act of 1971, P.L. 92-225, as amended (T. 2, U.S.C. section 439). Those reports shall be filed with the Board at the times required by that act. The Board shall, with respect to those reports, have the following duties only:

- (1) To receive and maintain in an orderly manner all reports and statements required to be filed with it;
- (2) To preserve such reports and statements for a period of five years from date of receipt, except that reports and statements relating solely to candidates for the offices of United States Senator or President or Vice-President of the United States shall be preserved for 10 years from the date of receipt;

- (3) To make the reports and statements filed with it available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which they were received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any individual, at the expense of such individual; and
- (4) To compile and maintain a current list of all statements or parts of statements pertaining to each candidate. (1973, c. 1272, s. 1.)

§ 163-278.31. Limitation on media expenses in certain statewide races. — No political treasurers shall make or authorize any expenditure that will cause the total amount expended for media as defined in G.S. 163-278.6 to exceed ten cents (10¢) multiplied by the voting-age population of North Carolina, estimated for that election by the U.S. Department of Commerce and published in the Federal Register. For the purpose of this section the first primary, the second primary, and general election shall be deemed separate elections or election time segments whether or not the candidate has opposition in the respective elections. The amount expended for media for the purpose of this section shall include time and space costs and costs of production.

This section shall apply only to the following officers: Governor, Lieutenant Governor, and Council of State. Any political treasurer who violates this section shall be guilty of a misdemeanor and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than one year, or both. (1973, c. 1272, s. 1; 1975, c. 565, s. 9.)

Editor's Note. — The 1975 amendment added the last sentence of the first paragraph.

§ 163-278.32. Statements under oath. — Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be verified by the oath or affirmation of the individual, media, candidate, treasurer or others filing the statement, taken before any officer authorized to administer oaths; provided further that the candidate shall certify as true and correct to the best of his knowledge each report filed by a treasurer appointed by him or by his principal campaign committee. (1973, c. 1272, s. 1.)

§ 163-278.33. Applicability of Article 22. — Sections 163-271 through 163-278 shall be applicable to the offices covered by this Article and G.S. 163-269 through 163-278 shall be applicable to all elective offices not covered by this Article. (1973, c. 1272, s. 3; 1975, c. 50; c. 565, s. 10.)

Cross Reference. — As to offices covered by this Article, see § 163-278.6, subdivision (18).

Editor's Note. — The first 1975 amendment inserted "with the exceptions of G.S. 163-271, 163-273, 163-274, 163-275, 163-276, 163-277 and 163-278" in this section as enacted by Session Laws 1973, c. 1272, s. 3.

The second 1975 amendment rewrote this

section, which formerly provided that Article 22 of this Chapter, with the exceptions inserted by the first 1975 amendment, should not be applicable to any of the offices covered by this Article.

The section is set out above as rewritten by the second 1975 amendatory act.

§ 163-278.34. Filings; penalty for late filings. — (a) All reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by certified or registered mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee or treasurer responsible for filing shall pay to the State Board of Elections a late penalty of twenty dollars (\$20.00) per day for each day the filing is late not to exceed five days. The Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section. If the penalty has not been paid to or the report has not been filed with the Board within five days after receipt of the notification, then the Board shall report the late filing or failure to file to the appropriate district attorney who shall indict and prosecute the offender as required in G.S. 163-278.27. No criminal penalty shall be imposed if the penalty required by this section is paid and the delinquent report is filed within five days after notification by the Board.

(b) When a report, statement or other document, required by this Article is not apparently due (i.e., media, inactive candidate, individual, no organizational report filed, supplementary final report or annual report), the Board shall notify, as set forth above, the person or persons responsible for filing if information is presented indicating that the report, statement, or other document was in fact due. No criminal penalties shall be imposed if the late penalty is paid and the delinquent report is filed within five days after notification. (1973, c. 1272, s. 1; 1975, c. 565, s. 5.)

Editor's Note. — The 1975 amendment added the designation "(a)" at the beginning of the section, substituted "to or by certified or registered mail" for "or by registered mail, return receipt requested" in the first sentence

of subsection (a), added "Timely" and inserted "if postmarked" and "to be" in the second sentence of subsection (a), and added the remainder of subsection (a) and all of subsection (b).

§ 163-278.35. Preservation of records. — All reports, records and accounts required by this Article to be made, kept, filed, or maintained by any individual, media, candidate or treasurer shall be preserved and retained by the individual, media, candidate or treasurer for at least two years counting from the date of the election to which such reports, records and accounts refer. (1973, c. 1272, s. 1.)

§§ 163-278.36 to 163-278.40: Reserved for future codification purposes.

ARTICLE 22B.

Appropriations from the North Carolina Election Campaign Fund.

§ 163-278.41. Appropriations in general election and off election years. — (a) In a general election year, not later than 60 days nor earlier than 120 days before the general election, each chairman of a State political committee of a political party on behalf of which funds have been deposited in the North Carolina Election Campaign Fund, may apply to the State Treasurer for such funds. Upon receipt of such application, the State Treasurer shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by him on behalf of said chairman's political party, but provided that all such payments shall cease five days after the Secretary of State has certified the

election returns of that general election. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until the next general election year at which time application therefor may again be made in the same manner and according to the same rules of distribution as hereinabove provided.

(b) In an off election year, each chairman of a State political committee of a political party on behalf of which funds have been deposited in the North Carolina Election Campaign Fund, may, on or between August 1 and September 1 thereof, apply to the State Treasurer for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to his party's account. The remainder of said funds shall be held by the State Treasurer until the next general election year at which time application therefor may be made as prescribed in subsection (a) herein. (1975, c. 775, s. 2.)

Editor's Note. — Session Laws 1975, c. 775, after January 1, 1975, and shall expire on s. 3, provides: "This act shall become effective December 31, 1977." with respect to taxable years beginning on or

§ 163-278.42. Distribution of campaign funds; legitimate campaign expenses permitted. — (a) Every State political committee chairman shall distribute all funds received from the North Carolina Campaign Election Fund as directed by his party, but only those party candidates with opposition for Governor, Lieutenant Governor, United States Senate, United States House of Representatives, North Carolina Supreme Court and Court of Appeals, and Council of State, shall be eligible therefor, and no such funds may be expended for or on behalf of primary election expenses, or for expenses relating to the selection of a candidate at a political convention or at a party's executive committee. No candidate who is opposed in the general election for the office of United States Senator and House of Representatives, Supreme Court, Court of Appeals and Council of State, shall receive more funds authorized herein than are distributed to any other opposed same party candidate for that particular category of public office. Provided, however, that any such candidate may elect to decline in whole or in part any funds he would be otherwise entitled to receive hereunder. No funds shall be distributed to any candidate or political committee unless it is to the actual political treasurer thereof within the meaning of Article 22A of Chapter 163 of the General Statutes.

(b) Funds distributed from the North Carolina Campaign Election Fund shall only be expended for legitimate campaign expenses which shall be expenses proximately promoting the candidacy of individuals seeking public office. By way of illustration but not by way of limitation, the following are examples of legitimate campaign expenses:

- (1) Radio, television and newspaper advertising for and on behalf of a political party or candidate;
- (2) Leaflets, fliers, buttons, and stickers;
- (3) Campaign staff salaries, provided each staff member is listed by name and by the amount paid as salary and the amount paid as campaign expense reimbursement;
- (4) Travel expenses, lodging and food for candidate and staff;
- (5) Party headquarter operations directly related to upcoming elections, including the establishment and updating thereof of computer file systems of voter registration lists, and the organizing of voter registration, fund raising, and get-out-the-vote programs at the county level when conducted by State party personnel. (1975, c. 775, s. 2.)

§ 163-278.43. Report each year to Secretary of State and Executive Secretary of State Board of Elections; suspension of disbursements; willful violation a misdemeanor. — (a) The chairman of each State political party receiving any funds from the North Carolina Campaign Election Fund shall maintain a full and complete record of their receipts, as well as of any subsequent disbursement thereof, and such shall be substantiated by any records, receipts, and information that the Executive Secretary of the State Board of Elections shall require. Such record shall be centrally located and shall be readily available at reasonable hours for public inspection. State political committees shall maintain all such funds in a separate account, and shall not allow same to be commingled with any funds from any other source.

(b) By December 31 each year, the chairman of every State political committee receiving funds from the North Carolina Campaign Election Fund shall verify to the Executive Secretary of the State Board of Elections and to the Secretary of State, in such manner and on such forms that the Executive Secretary shall require, that all such funds received were expended for legitimate campaign expenses as prescribed within this Article. If the executive secretary determines and finds as a fact that any such funds have been used for any noncampaign purposes, he shall order that State political party to reimburse the amount thereof to the general fund of the State, and such political party shall not receive further disbursements from the North Carolina Campaign Election Fund until such reimbursement has been accomplished in full. A copy of any such order shall be forwarded to the State Treasurer, which shall constitute notice to him to suspend further disbursements from the campaign fund.

(c) Any individual, candidate, political committee, treasurer, or person who willfully and intentionally violates any of the provisions of this Article shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000) if an individual, and not more than five thousand dollars (\$5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned. (1975, c. 775, s. 2.)

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

ARTICLE 23.

Municipal Election Procedure.

§ 163-279. Time of municipal primaries and elections. — (a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

- (1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.
- (2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the sixth Tuesday before the election, and the second primary, if required, shall be held on the third Tuesday before the election.
- (3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.
- (4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(1973, c. 1115.)

Editor's Note.—

The 1973 amendment inserted "or four" and "as provided by municipal charter" near the end of the introductory paragraph of subsection (a).

Session Laws 1973, c. 470, ss. 1 and 2, provide:

"Section 1. The terms of municipal officers elected during the calendar year 1970 for terms to expire at any time during the calendar year 1974 are hereby reduced to expire at such time during the calendar year 1973 as their successors in office are elected and qualified pursuant to Article 23 of Chapter 163 of the

General Statutes. The terms of municipal officers elected during the calendar year 1972 for terms to expire during the calendar year 1976 are hereby reduced to expire at such time during the calendar year 1975 as their successors in office are elected and qualified pursuant to Article 23 of Chapter 163 of the General Statutes.

"Sec. 2. The provisions of this act shall not apply to the City of Winston-Salem."

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

§ 163-280. Municipal boards of elections. — (a) In each city that is authorized and elects to conduct its own elections in the manner provided by G.S. 163-285, there shall be a municipal board of elections consisting of three persons of good moral character who are registered voters of the city. Members of the municipal board of elections shall be appointed by the city council at its regularly scheduled meeting held next before July 1 in each year preceding each regular municipal primary or election, and their terms of office shall be for two years beginning July 1 and until their successors are appointed and qualify. In municipalities where there are registered voters of more than one party, not more than two members of the municipal board of elections shall belong to the same political party, if the municipal officers are elected on a nonpartisan or partisan basis.

No person shall serve as a member of a municipal board of elections who holds any elective office, who is a candidate for any elective public office, who is a member of a county board of elections, or who is serving as campaign manager for any candidate in any election.

(c) On the Monday following the seventh Saturday before each regular municipal primary or election, the municipal board of elections shall meet and appoint precinct registrars and judges of elections. The municipal board of elections may then or at any time thereafter appoint an executive secretary, who shall have all of the powers and duties of an executive secretary to a county board of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of business.

(g) No municipal, county, State or national chairman of any political party shall have the right to recommend to the city council the names of any person for appointment to membership on a municipal board of elections.

(h) Whenever a vacancy occurs in the membership of any municipal board of elections for any cause, the appointing city council shall fill the vacancy within 30 days of when it occurs.

(i) The city council with power to appoint a member of a municipal board of elections or the State Board of Elections may remove a member of a municipal board of elections for incompetency, neglect or failure to perform duties, fraud, or any other satisfactory cause. Before exercising this removal power, the city council or the State Board of Elections shall notify the municipal board member affected and give him an opportunity to be heard. (1971, c. 835, s. 1; 1973, c. 793, ss. 75-79; c. 1223, s. 8; 1975, c. 19, s. 70.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, rewrote the first paragraph of subsection (a), added the second sentence of subsection (c) and added subsections (g), (h) and (i).

The second 1973 amendment inserted "nonpartisan or" near the end of the first paragraph of subsection (a).

The 1975 amendment corrected an error in the first 1973 amendatory act by substituting

“officers” for “offices” in the last sentence of the first paragraph of subsection (a).

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

§ 163-281. Municipal precinct election officials. — (a) Registrars and Judges. — At the meeting required by G.S. 163-280(c), the municipal board of elections shall appoint one person to act as registrar and two other persons to act as judges of election for each precinct in the city. Not more than one judge in each precinct where there are registered voters of more than one political party shall belong to the same political party as the registrar, if the municipal elections are on a nonpartisan or partisan basis. If the city and county precincts are identical and the board so chooses, it may decline to exercise its power to appoint precinct registrars and judges, in which event the persons appointed by the county board of elections as precinct registrars and judges in each precinct within the city shall serve as such for municipal elections under authority and subject to the supervision and control of the municipal board of elections. Nothing herein shall prohibit a municipal board of elections from using the registrars and judges of election appointed by the county board of elections in those precincts which are not identical provided the county board of elections agrees, in writing, to such arrangement. Registrars and judges shall be appointed for terms of two years. Except as modified by this Article, municipal precinct registrars and judges shall meet all of the qualifications, perform all the duties, and have all of the powers imposed and conferred on county precinct registrars and judges by G.S. 163-41(a), G.S. 163-47, and G.S. 163-48. Municipal precinct registrars and judges shall not have the powers and duties with respect to registration of voters prescribed by G.S. 163-47(b). Immediately after appointing registrars and judges as herein provided, the municipal board of elections shall publish the names of the persons appointed in some newspaper having a general circulation in the city, or in lieu thereof, by posting at the city hall or some other prominent place within the city, and shall notify each person appointed of his appointment.

(e) Observers. — In cities holding partisan municipal elections, the chairman of each political party in the county shall have the same authority to appoint observers for municipal elections as he has for county elections under G.S. 163-45.

(g) No municipal, county, State or national chairman of any political party shall have the right to recommend to the municipal board of elections the name of any person for appointment as a precinct registrar, judge of elections, assistant or ballot counter.

(h) The municipal board of elections may designate the precinct in which each registrar, judge, assistant, ballot counter, or observer or other officers of elections shall serve; and, after notice and hearing, may remove any registrar, judge, assistant, ballot counter, observer, executive secretary or other officers of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause.

(i) Except as otherwise provided in this Chapter, precinct assistants, ballot counters, observers, and executive secretary and other officers of elections appointed by the municipal board of elections shall have the same powers and duties with respect to municipal elections as precinct assistants, ballot counters, observers, and executive secretaries and other officers of elections appointed by county boards of elections. (1971, c. 835, s. 1; 1973, c. 793, ss. 80-83, 94; c. 1223, s. 9.)

Editor's Note. — The first 1973 amendment, effective July 1, 1973, added the second sentence of subsection (a), substituted “observers” for

“watchers” in subsection (e) and added subsections (g), (h) and (i).

The second 1973 amendment inserted "nonpartisan or" near the end of the second sentence of subsection (a).

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

§ 163-284. Mandatory administration by county boards of elections. — (a) No later than 30 days after January 1, 1973, every municipality which conducts its elections on a partisan basis, and every special district shall deliver its registration books to the county board of elections which shall, forthwith, assume the responsibility for administration of the registration and election process in such municipalities and special districts. The county boards of elections shall have authority to compare the registration books of such municipalities and special districts with the county registration books. Any person found to be registered for municipal or special district elections but not registered on the county registration records shall be required to register with the county board of elections in order to maintain his municipal or special district registration. The county board of elections shall forthwith notify any such person by mail to the address appearing on the municipal or special district registration records that he must reregister. The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting such municipality or special district and shall be immediately advised of any change or relocation of such boundaries.

(1973, c. 793, s. 84.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, inserted "forthwith" in the fourth sentence of subsection (a).

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

§ 163-285. Administration by county board of elections; optional by municipality. — Any city, town or incorporated village which conducts its elections on a nonpartisan basis may conduct its own elections, or it may request the county board of elections of the county in which it is located to conduct its elections. A county board of elections shall conduct the elections of each city, town or incorporated village so requesting and the city, town or incorporated village shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the city council. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are bound, or, in its discretion, the State Board of Elections shall have authority to instruct the county board of elections to decline the administration of the elections for such city, town or incorporated village.

- (1) The elections of cities, towns or incorporated villages which lie in more than one county shall be conducted either (i) by the county in which the greater number of the city's citizens reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such city, town or incorporated village is located, as may be mutually agreed upon by the county boards of elections so affected, or (iii) by a municipal board of elections appointed by the governing body of the municipality. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal elections by county or municipal boards of elections for cities situated in more than one county.
- (2) Any city, town or incorporated village electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the

effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any city, town or incorporated village to exercise the options under this Article subsequent to the deadline stated in this section.

- (3) If any city, town or incorporated village, operating under this section, shall decide that a full-time registration office is needed in such city, then it shall be the duty of the county board of elections to appoint such registration commissioner who shall be attendant to the duties of registration of voters or other such duties as might be assigned by the county board of elections. Such registration commissioner shall be titled "city registrar" and shall be provided office space and equipment by the city, town or incorporated village requesting such "city registrar." Persons appointed by the county board of elections to such positions shall be paid by the city, town or incorporated village at the rate of not less than twenty dollars (\$20.00) per day and such persons shall be appointed by the county board of elections to be in attendance at the prescribed duties not less than one nor more than five days each week. (1971, c. 835, s. 1; 1973, c. 171.)

Editor's Note. — The 1973 amendment added "municipal" in the second sentence of subdivision clause (iii) to the first sentence and inserted "or" (1).

§ 163-286. Conduct of municipal and special district elections; application of Chapter 163. — (a) To the extent that the laws, rules and procedures applicable to the conduct of primary, general and special elections by county boards of elections under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles.

(b) Any city, town or incorporated village which elects to conduct its own elections, under the provisions of G.S. 163-285, shall comply with the requirements contained in G.S. 163-280 and G.S. 163-281. (1971, c. 835, s. 1; 1973, c. 793, s. 85.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote subsection (a).

§ 163-287. Special elections; procedure for calling. — Any city, whether its elections are conducted by the county board of elections or the municipal board of elections, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 20 days prior to the date on which the registration books or records close for the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections. (1971, c. 835, s. 1; 1973, c. 793, s. 86.)

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

§ 163-288. Registration for city elections; county and municipal boards of elections.

(b) Where the municipal board of elections conducts the elections, each such municipality shall purchase only those loose-leaf binders for the registration records that have been approved by the State Board of Elections.

The loose-leaf registration forms shall be those approved by the State Board of Elections. When completed by each municipal registrant, the forms shall be the official registration record in each municipality and shall be kept in agreement with the county registration records for that registrant. They shall be prepared, completed, maintained and kept current pursuant to the same provisions of Article 7, Chapter 163, as apply to registration records of county boards of elections. They also shall be furnished by the State Board of Elections, through the respective county boards of elections, to the municipalities.

Every municipal board of elections conducting the elections in any city, town, or incorporated village shall secure and install those binders and loose-leaf forms required by this section no later than January 1, 1973, or no later than 90 days after any such municipality elects to conduct its own elections.

(1973, c. 793, s. 87.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote subsection (b). As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 163-288.1. Activating voters for newly annexed or incorporated areas. —

(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county or municipal board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly.

(1973, c. 793, s. 88.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote subsection (a).

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

§ 163-288.2. Registration in area proposed for incorporation. — (a) Whenever the General Assembly incorporates a new city and provides in the act of incorporation for a referendum on the question of incorporation or for a special election for town officials or for both, the board of elections of the county in which the proposed city is located shall determine those individuals eligible to vote in the referendum or special election. In determining the eligible voters the board may, in its discretion, use either of the following methods:

METHOD A. — The board of elections shall prepare a list of those registered voters residing within the proposed city. The board shall make this list available for public inspection in its office for a two-week period ending 21 days (excluding Saturdays and Sundays) before the day of the referendum or special election. During this period, any voter resident within the proposed city and not included on the list may cause his name to be added to the list. At least one week and no more than two weeks before the day the period of public inspection is to begin, the board shall cause notice of the list's availability to be posted in at least two prominent places within the proposed city and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state that the list has been prepared, that only those persons listed may vote in the referendum or special election, that the list will be available for public inspection in the board's office, and that any qualified voter not included on the list may cause his name to be added to the list during the two-week period of public inspection.

METHOD B. — The board of elections shall conduct a special registration of eligible persons desiring to vote in the referendum or special election. The registration records shall be open for a two-week period (except Sundays) ending 21 days (excluding Saturdays and Sundays) before the day of the referendum or special election. On the two Saturdays during that two-week period, the records shall be located at the voting place for the referendum or special election; on the other days it may, in the discretion of the board, be kept at the voting place, at the office of the board, or at the place of business of a person designated by the board to conduct the special registration. At least one week and no more than two weeks before the day the period of special registration is to begin, the board shall cause notice of the registration to be posted in at least two prominent places within the proposed city and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state the purpose and times of the special registration, the location of the registration records, and that only those persons registered in the special registration may vote in the referendum or special election.

(b) Only persons registered pursuant to this section may vote in the referendum or special election. (1973, c. 551.)

§ 163-289. Right to challenge; challenge procedure.

(c) If a municipal board of elections sustains a challenge on the grounds that a voter registered to vote in the municipality is not a resident of the municipality, it shall forthwith certify its decision to the county board of elections of the county or counties in which the municipality lies, and the voter's registration for municipal elections shall be expunged from the county registration records. (1971, c. 835, s. 1; 1973, c. 793, s. 89.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, added subsection (c).

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

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-291. **Partisan primaries and elections.** — The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms “county board of elections,” “chairman of the county board of elections,” “county officers,” and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

- (2) A candidate seeking party nomination for municipal or district office may file his notice of candidacy with the board of elections not later than 12:00 noon on the Friday preceding the fifth Saturday and not earlier than 12:00 noon on the Friday preceding the eighth Saturday before the primary election in which he seeks to run.
- (3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than Friday before the eighth Saturday before the primary. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(1973, c. 870, s. 1; 1975, c. 370, s. 2.)

Editor's Note. — The 1973 amendment rewrote subdivision (3).

The 1975 amendment, effective July 1, 1975, substituted “fifth” for “fourth” near the middle of subdivision (2).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (2) and (3) are set out.

§ 163-293. **Determination of election results in cities using the election and runoff election method.**

(e) Runoff elections shall be held on the date fixed in G.S. 163-279(a)(4). Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.

(1973, c. 793, s. 90.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, substituted “G.S. 163-279(a)(4)” for “G.S. 163-111(e)” in the first sentence of subsection (e).

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

§ 163-294.2. **Notice of candidacy and filing fee in nonpartisan municipal elections.**

(c) Candidates may file their notices of candidacy with the board of elections at any time after 12:00 noon on the Friday preceding the eighth Saturday and before 12:00 noon on the Friday preceding the fifth Saturday before the municipal primary or election. Notices of candidacy which were mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(e) The filing fee for the primary or election shall be fixed by the governing board not later than Friday before the eighth Saturday before the primary or election. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed. (1971, c. 835, s. 1; 1973, c. 870, s. 2; 1975, c. 370, s. 2.)

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

The 1975 amendment, effective July 1, 1975, substituted "fifth" for "fourth" near the end of the first sentence of subsection (c).

As the other subsections were not changed by the amendments, only subsections (c) and (e) are set out.

§ 163-295. Municipal and special district elections; application of Chapter 163. — To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles. (1971, c. 835, s. 1; 1973, c. 793, s. 91.)

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

§ 163-302. Absentee voting. — (a) In any municipal election, including a primary, or general election or referendum, conducted by the county board of elections, absentee voting may, upon resolution of the municipal governing body, be permitted. Such resolution must be adopted no later than 50 days prior to an election in order to be effective for that election. Any such resolution shall remain effective for all future elections unless repealed no later than 50 days before an election. A copy of all resolutions adopted under this section shall be filed with the State Board of Elections and the county board of elections conducting the election within 10 days of passage. This subsection shall not apply if the election is conducted by a municipal board of elections; nor shall absentee voting be permitted in any special district election.

(b) The provisions of Articles 20 and 21 of this Chapter shall apply to absentee voting permitted by this section, except that the State Board of Elections may provide a later date for the first meeting under G.S. 163-230 and the first day for voting under G.S. 163-227.2(b). (1971, c. 835, s. 1; 1975, c. 370, s. 1; c. 836.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, rewrote this section, which formerly provided that Articles 20 and 21 of this Chapter should not apply to any municipal or special district election.

The second 1975 amendment, effective July 2, 1975, added the second, third and fourth sentences of subsection (a).

§ 163-303. Regulation of campaign expenses not applicable in nonpartisan elections.

Local Modification. — City of Raleigh: 1973, c. 319, s. 1.

§ 163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to advise. — The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections. (1971, c. 835, s. 1; 1973, c. 793, s. 92.)

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

§ 163-305. Validation of elections. — All elections, and the results thereof, previously held in and for any municipality, special district, or school administrative unit pursuant to Subchapter IX, Chapter 163, are hereby validated. (1973, c. 492, s. 1.)

Editor's Note. — Session Laws 1973, c. 492, s. 2, provides that the act shall not affect pending litigation.

§ 163-306. Assumption of office by mayors and councilmen. — Newly elected mayors and councilmen (members of the governing body) shall take office as prescribed by G.S. 160A-68. (1973, c. 866.)

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 2.

The General Statutes Commission.

Sec.

164-14. Membership; appointments; terms; vacancies.

ARTICLE 2.

The General Statutes Commission.

§ 164-14. **Membership; appointments; terms; vacancies.** — (a) The Commission shall consist of 11 members, who shall be appointed as follows:

- (1) One member, by the president of the North Carolina State Bar;
- (2) One member, by the General Statutes Commission;
- (3) One member, by the dean of the school of law of the University of North Carolina;
- (4) One member, by the dean of the school of law of Duke University;
- (5) One member, by the dean of the school of law of Wake Forest University;
- (6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
- (7) One member, by the President of the Senate of each General Assembly from the membership of the Senate;
- (8) Two members, by the Governor;
- (9) One member, by the dean of the school of law of North Carolina Central University;
- (10) One member by the president of the North Carolina Bar Association.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President of the Senate, president of the North Carolina Bar Association and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(1975, c. 394, ss. 1, 2.)

Editor's Note. —

The 1975 amendment substituted "11" for "10" in the introductory language in subsection (a), added subdivision (10) of subsection (a) and inserted "president of the North Carolina Bar

Association" near the end of the first sentence of subsection (c).

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

Chapter 165.

Veterans.

Article 1.

Department of Military and Veterans Affairs.

- Sec. 165-3. Definitions.
- 165-5. [Repealed.]
- 165-6. Powers and duties of the Department.
- 165-7. [Repealed.]
- 165-11. Copies of records to be furnished to the Department of Military and Veterans Affairs.

Article 3.

Minor Spouses of Veterans.

- 165-18. Rights conferred.

Article 4.

Scholarships for Children of War Veterans.

- Sec. 165-20. Definitions.
- 165-21. Scholarship.
- 165-22. Classes or categories of eligibility under which scholarships may be awarded.
- 165-22.1. Administration and funding.

Article 5.

Veterans' Recreation Authorities.

- 165-24. Finding and declaration of necessity.

ARTICLE 1.

Department of Military and Veterans Affairs.

§ 165-1. North Carolina Veterans Commission renamed.

Cross Reference. — As to the Department of Military and Veterans Affairs, see §§ 143B-246 through 143B-255.

Editor's Note. — Session Laws 1973, c. 620,

s. 9, effective July 1, 1973, amends this section by substituting "Department of Military and Veterans Affairs" for "North Carolina Department of Veterans Affairs."

§ 165-3. Definitions. — Wherever used in this Article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

- (1) "Commission" means the Veterans Affairs Commission.
- (3) Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973. (1973, c. 620, s. 9.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote subdivision (1), which formerly defined "Board" and repealed subdivision (3), which defined "Director."

As the other subdivisions were not changed by the amendment, they are not set out.

§ 165-5: Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973.

§ 165-6. Powers and duties of the Department. — In furtherance of the stated purpose of this Article, the Department is hereby authorized and empowered to do the following:

- (10) Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973. (1945, c. 723, s. 1; 1949, c. 1292; 1967, c. 1060, s. 1; 1973, c. 620, s. 9.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, repealed subdivision (10), requiring the Department to prepare and submit a biennial report to the Governor and the General Assembly.

As the other subdivisions were not changed by the amendment, they are not set out.

§ 165-7: Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973.

§ 165-8. Quarters.

Editor's Note. — Session Laws 1973, c. 620, s. 9, effective July 1, 1973, amends this section by substituting "Department of Military and

Veterans Affairs" for "Department of Veterans Affairs."

§ 165-11. Copies of records to be furnished to the Department of Military and Veterans Affairs.

Editor's Note. — Session Laws 1973, c. 620, s. 9, effective July 1, 1973, amends this section by substituting "Department of Military and

Veterans Affairs" for "North Carolina Department of Veterans Affairs."

ARTICLE 3.

Minor Spouses of Veterans.

§ 165-18. Rights conferred.

(b) Any person under the age of 18 years, who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing subsection, including the right to dispose of such property.

(1973, c. 1446, s. 12.)

Editor's Note.—

The 1973 amendment substituted "subsection" for "section" near the end of subsection (b).

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

ARTICLE 4.

Scholarships for Children of War Veterans.

§ 165-20. Definitions. — As used in this Article the terms defined in this section shall have the following meaning:

- (3) "Child" means a person who has completed high school or its equivalent prior to receipt of a scholarship as may be awarded under this Article and who further meets one of the following requirements:
 - a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.
 - b. A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Military and Veterans Affairs if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following

which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3)a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of six years.

(6) "State educational institution" means any educational institution of higher learning which is owned and operated by the State of North Carolina, or any community college operated under the provisions of Chapter 115A and Article 3 of Chapter 116 of the General Statutes of North Carolina, or the college program of the North Carolina School of the Arts, or any technical institute operated under the provisions of Chapter 115A of the General Statutes of North Carolina.

(1973, c. 620, s. 9; c. 755; 1975, c. 160, s. 1.)

Editor's Note.—

The first 1973 amendment, effective July 1, 1973, substituted "Department of Military and Veterans Affairs" for "North Carolina Department of Veterans Affairs" in subdivision (3)b.

The second 1973 amendment added, at the end of subdivision (6), the language beginning "or any technical institute."

The 1975 amendment added "that period of service in" and "during which eligibility is established under G.S. 165-22" in paragraph a of subdivision (3).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (3) and (6) are set out.

§ 165-21. Scholarship. — A scholarship granted pursuant to this Article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this Article, a scholarship shall consist of:

- a. Tuition,
- b. A reasonable board allowance,
- c. A reasonable room allowance,
- d. Matriculation and other institutional fees required to be paid as a condition to remaining in said institution and pursuing the course of study selected, excluding charges or fees for books, supplies, tools and clothing.

(1975, c. 137, s. 1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote paragraph d of subdivision (1).

Session Laws 1975, c. 137, s. 2, provides: "This act shall become effective July 1, 1975, and shall

be applied beginning with the fall quarter, semester or term of the 1975 school year."

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded. — A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application, be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(2) Class I-B: Under this class a limited scholarship providing only those benefits set forth in G.S. 165-21(1)a and d and G.S. 165-21(2) of this Article, shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Veterans Administration. Provided, that if the

- veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Veterans Affairs shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the Department of Military and Veterans Affairs, but, in no event shall it predate the date of the veteran parent's death.
- (3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of,
- a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of thirty percent (30%) or more, but less than one hundred percent (100%), as rated by the United States Veterans Administration, or
 - b. Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States Veterans Administration, or
 - c. Repealed by Session Laws 1975, c. 160, s. 2.
- (5) Class IV: Under this class a scholarship as defined in G.S. 165-21 shall be awarded to any child whose parent, while serving honorably as a member of the armed forces of the United States in active federal service during a period of war, as defined in G.S. 165-20(4), was listed by the United States government as (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power. (1967, c. 1060, s. 8; 1973, cc. 197, 577; c. 620, s. 9; 1975, c. 160, s. 2; c. 167, s. 1.)

Editor's Note.—

The first 1973 amendment substituted "G.S. 165-21(1)a and d and G.S. 165-21(2)" for "G.S. 165-21(a)(1) and (4), and G.S. 165-21(b)" near the beginning of subdivision (2).

The second 1973 amendment added subdivision (5).

The third 1973 amendment, effective July 1, 1973, substituted "Department of Military and Veterans Affairs" for "North Carolina Department of Veterans Affairs" in subdivision (2).

The first 1975 amendment repealed paragraph c of subdivision (3), which formerly made eligible

for scholarships the children of certain prisoners of war wounded in combat.

The second 1975 amendment deleted "for a total of more than 90 days" following "United States government" in subdivision (5).

Session Laws 1975, c. 167, s. 2, provides that the act shall become effective upon ratification and shall apply to applications submitted on or after Jan. 1, 1975. The act was ratified April 23, 1975.

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

§ 165-22.1. Administration and funding. — (a) The administration of the scholarship program shall be vested in the Department of Military and Veterans Affairs, and the disbursing and accounting activities required shall be a responsibility of the Department of Administration. The Veterans Affairs Commission shall determine the eligibility of applicants, select the scholarship recipients, establish the effective date of scholarships, and may suspend or revoke scholarships if the said Veterans Affairs Commission finds that the recipient does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace or unlawful assemblies. The Department of Military and Veterans Affairs shall maintain the primary and necessary records, and the Veterans Affairs Commission shall promulgate such rules and regulations not inconsistent with the other provisions of this Article as it deems necessary for the orderly administration of the

program. It may require of State or private educational institutions, as defined in this Article, such reports and other information as it may need to carry out the provisions of this Article. The Department of Administration shall disburse scholarship payments for recipients certified eligible by the Department of Military and Veterans Affairs upon certification of enrollment by the enrolling institution.

(d) Scholarship recipients electing to attend a private educational institution shall be granted a monetary allowance for each term or other academic period attended under their respective scholarship awards. All recipients under Class I-B scholarship shall receive an allowance at one rate, irrespective of course or institution; all recipients under Classes I-A, II, III and IV shall receive a uniform allowance at a rate higher than for Class I-B, irrespective of course or institution. The amount of said allowances shall be determined by the Director of the Budget and made known prior to the beginning of each fall quarter or semester; provided that the Director of the Budget may change the allowances at intermediate periods when in his judgment such changes are necessary. Disbursements by the State shall be to the private institution concerned, for credit to the account of each recipient attending said institution. The manner of payment to any private institution shall be as prescribed by the Department of Administration. The participation by any private institution in the program shall be subject to the applicable provisions of this Article and to examination by State auditors of the accounts of scholarship recipients attending or having attended private institutions. The Veterans Affairs Commission may defer making an award or may suspend an award in any private institution which does not comply with the provisions of this Article relating to said institutions.

(e) Irrespective of other provisions of this Article, the Veterans Affairs Commission may prescribe special procedures for adjusting the accounts of scholarship recipients who for reasons of illness, physical inability to attend class or for other valid reason satisfactory to the Veterans Affairs Commission may withdraw from State or private educational institutions prior to the completion of the term, semester, quarter or other academic period being attended at the time of withdrawal. Such procedures may include, but shall not be limited to, paying the recipient the dollar value of his unused entitlements for the academic period being attended, with a corresponding deduction of this period from his remaining scholarship eligibility time. (1967, c. 1060, s. 8; 1969, c. 720, ss. 4, 5; c. 741, s. 4; 1971, c. 458; 1973, c. 620, s. 9; 1975, c. 19, s. 71; c. 160, s. 3.)

Editor's Note.—

The 1973 amendment substituted "Department of Military and Veterans Affairs" for "North Carolina Department of Veterans Affairs" near the beginning of the first sentence and for "Department of Veterans Affairs" in the last sentence of subsection (a), substituted "Veterans Affairs Commission" for "Department of Veterans Affairs" in two places in the second sentence of subsection (a), in the last sentence of subsection (d), and in subsection (e) and substituted "Veterans Affairs Commission" for "Director of the Department

of Veterans Affairs" in subsection (e). The amendment also rewrote the third sentence of subsection (a).

The first 1975 amendment corrected an error by substituting "a" for "an" preceding "uniform allowance" in the second sentence of subsection (d).

The second 1975 amendment substituted "Classes I-A, II, III and IV" for "Classes I-A, II and III" in the second sentence of subsection (d).

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

ARTICLE 5.

Veterans' Recreation Authorities.

§ 165-24. Finding and declaration of necessity. — It is hereby declared that conditions resulting from the concentration in various cities and towns of the State having a population of more than one hundred thousand inhabitants of persons serving in the armed forces in connection with the present war, or who after having served in the armed services during the present war, or previously have been honorably discharged, require the construction, maintenance and operation of adequate recreation facilities for the use of such persons; that it is in the public interest that adequate recreation facilities be provided in such concentrated centers; and the necessity, in the public interest, for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. (1945, c. 460, s. 2.)

Editor's Note. — This section is set out to correct an error in the replacement volume.

Chapter 166.**Civil Preparedness Agencies.**

Sec.	Sec.
166-1. Short title.	166-7. Mobile support units.
166-1.1. Purposes.	166-8. Civil preparedness agencies.
166-1.2. Limitations.	166-9. Mutual aid agreements.
166-1.3. Nondiscrimination in civil preparedness.	166-9.1. Immunity and exemption.
166-2. Definitions.	166-10. Appropriations and levy of taxes; authority to accept services, gifts, grants and loans.
166-3. State Civil Preparedness Agency; duties of Secretary of Department.	166-11. Utilization of existing services and facilities.
166-4. [Repealed.]	166-12. Eligibility of civil preparedness personnel; oath required.
166-5. Civil preparedness powers of the Governor.	
166-6. Emergency powers.	
166-6.1. Authority of Governor during a state of natural or accidental disaster.	

§ 166-1. Short title. — This Chapter may be cited as “North Carolina Civil Preparedness Act of 1951.” (1951, c. 1016, s. 1; 1975, c. 734, s. 14.)

Cross Reference. — As to the Department of Military and Veterans Affairs, see §§ 143B-246 through 143B-255.

Editor’s Note. — The 1975 amendment substituted “Civil Preparedness” for “Civil Defense.”

§ 166-1.1. Purposes. — The purposes of this Chapter are to:

- (1) Clarify the authority and responsibility of the Governor, State agencies and local governments in prevention of, preparation for, response to and recovery from natural or man-made disasters, riots, or hostile military or paramilitary action.
- (2) Reduce the vulnerability of people and property to damage, injury, and loss of life and property resulting from natural or man-made disasters.
- (3) Prepare for prompt and efficient rescue, care and treatment of persons threatened or affected by a disaster, and provide for the prompt and orderly rehabilitation of persons and the restoration of property.
- (4) Authorize and provide for cooperation and coordination of activities relating to disaster mitigation, preparedness, response and recovery among agencies and officials of this State.
- (5) Provide for cooperation and coordination of those same activities with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with other private and quasi-official organizations.
- (6) Provide for a civil preparedness program embodying all aspects of predisaster planning, response to and recovery from natural or man-made disasters. (1959, c. 337, s. 1; 1975, c. 734, s. 1.)

Editor’s Note. — The 1975 amendment rewrote this section.

§ 166-1.2. Limitations. — (a) No authority contained in this Chapter shall be used for any purpose other than the prevention or mitigation of an imminent or existing danger to the public health, safety, or welfare, or the impairment thereof.

(b) Nothing in this Chapter shall be construed to interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with a disaster. (1975, c. 734, s. 2.)

§ 166-1.3. Nondiscrimination in civil preparedness. — State and local governmental bodies and other organizations and personnel who carry out civil preparedness functions under the provisions of this Chapter are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age or economic status in the distribution of supplies, the processing of applications and other relief and assistance activities. (1975, c. 734, s. 3.)

§ 166-2. Definitions. — As used in this Chapter:

- (1) "Civil preparedness" shall mean those plans, actions and procedures necessary to provide protection to the people against loss of life, injury, and loss or damage to property caused by natural phenomena or man-made causes such as war, insurrection, riot or accidents; and those measures necessary to mitigate the effects of the destructive forces of man and nature, to provide for response to disaster conditions and for the relief of suffering and hardship resulting from such conditions and to initiate rehabilitation of persons and restoration of essential services and acceptable standards of living.
- (2) "Civil preparedness agency" shall mean a State or local governmental agency charged with coordination of the following: civil preparedness planning, response to threatened or actual disaster conditions, and measures for rehabilitation of persons and restoration of services and property following a disaster.
- (3) "Mobile support unit" shall mean an organization for civil preparedness created in accordance with the provisions of this Chapter by State or local authority to be dispatched by the Governor to supplement local organizations for civil preparedness in a stricken area.
- (3a) "Organization for civil preparedness" shall mean all individuals or groups of persons and materiel resources capable of being utilized in a disaster or imminent threat thereof, such utilization to be coordinated by a civil preparedness agency.
- (4) "Political subdivision" shall mean counties and incorporated cities and towns. (1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1; 1975, c. 734, ss. 4-6, 14.)

Editor's Note. — The 1975 amendment rewrote subdivisions (1) and (2), substituted "civil preparedness" for "civil defense" in two places in subdivision (3) and added subdivision (3a).

Regional Council Is Not Within Definition of Political Subdivision. — See opinion of Attorney General to Mr. David L. Britt, Department of Military and Veterans Affairs, 43 N.C.A.G. 187 (1973).

§ 166-3. State Civil Preparedness Agency; duties of Secretary of Department. — The Department of Military and Veterans Affairs shall be the State Civil Preparedness Agency.

The Secretary of the Department of Military and Veterans Affairs shall be responsible to the Governor for carrying out the program for civil preparedness in this State. He shall coordinate the activities of all organizations for civil preparedness within the State, and shall maintain liaison with and cooperate with civil preparedness agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this Chapter as may be prescribed by the Governor. (1951, c. 1016, s. 3; 1959, c. 337, s. 2; 1973, c. 620, s. 9; 1975, c. 734, s. 7.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote this section. The 1975 amendment added the second paragraph.

§ 166-4: Repealed by Session Laws 1975, c. 734, s. 8.

§ 166-5. Civil preparedness powers of the Governor. — (a) The Governor shall have general direction and control of the Civil Preparedness Agency and shall be responsible for the carrying out of the provisions of this Chapter and, in the event of disaster or the threat of disaster beyond local control or when requested by the governing body of any county, city or town in the State, may assume direct operational control over all or any part of the civil preparedness functions within this State.

(b) In performing his duties under this Chapter and to effect its policy and purpose, the Governor is authorized and empowered:

- (1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this Chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government. The Governor may issue executive orders pursuant to this subparagraph which shall be filed with the Secretary of State and available to the public generally at the office of the clerk of the superior court in the affected counties.
- (2) To prepare a comprehensive plan and program for the civil preparedness of this State, such plan and program to be integrated into and coordinated with the civil preparedness plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparations of plans and programs for civil preparedness by the political subdivisions of this State, such plans to be integrated into and coordinated with the civil preparedness plan and program of this State to the fullest possible extent, within the provisions of this Chapter.
- (3) In accordance with such plan and program for the civil preparedness of this State, to ascertain the requirements of the State or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and, within the appropriation therefor, to plan for and procure supplies, medicines, materials, and equipment, and to institute training programs and public information programs, and to take all other preparatory steps including the partial or full mobilization of civil preparedness organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil preparedness personnel in time of need.
- (4) To delegate any administrative authority vested in him under this Chapter, and to provide for the subdelegation of any such authority.
- (5) To cooperate and coordinate with the President and the heads of the armed forces, the civil preparedness agency of the United States, and

other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the civil preparedness of the State and nation.

- (6) By and with the consent of the Council of State to make appropriations from the Contingency and Emergency Fund for the purpose of matching federal aid grants for the purposes outlined in this Chapter.
- (7) On behalf of this State to enter into mutual aid agreements or compacts with other states and with the federal government, either on a statewide basis or local political subdivision basis, or with a neighboring state. Such mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine and other supplies; engineering services; emergency housing; police services, national or State guards while under the control of this State; health, medical and related services; fire-fighting, rescue, transportation and construction services and equipment; communications and radiological monitoring services, supplies and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items for mobile support units, and other agencies acting under such agreements; and on such terms and conditions as are deemed necessary.
- (8) To make such studies and surveys of the industries, resources and facilities in this State as may be necessary to ascertain the capabilities of the State for civil preparedness, and to plan for the most efficient emergency use thereof.
- (9) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.
- (10) To agree that the State will indemnify the federal government against any claim arising from debris removal when federal assistance is provided for that purpose.
- (11) By and with the consent of the Council of State to allocate contingency and emergency funds, and such other funds when necessary as may be reasonably available within the appropriations of the various departments, for disaster relief and assistance. (1951, c. 1016, s. 3; 1953, c. 1099, s. 3; 1955, c. 387, ss. 2, 3; 1975, c. 734, ss. 9, 10, 14.)

Editor's Note. — The 1975 amendment substituted "civil preparedness" for "civil defense" throughout the section, deleted "which rules and regulations shall be available to the public generally at the office of the clerk of the

superior court in each county and in each local civil defense office" at the end of the first sentence of subdivision (b)(1), added the second sentence of that subdivision and added subdivisions (9) through (11).

§ 166-6. Emergency powers. — The provisions of this section shall be operative only during the existence of a state of civil preparedness emergency (referred to hereinafter in this section as "emergency"). The existence of such emergency may be proclaimed by the Governor, after joint decision of the Governor and the Council of State, or by concurrent resolution of the legislature if the Governor in such proclamation, or the legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural disaster of major proportions has actually occurred within this State, and that the safety and welfare of the inhabitants of this State require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the Governor or by the legislature, shall terminate upon the proclamation of the termination thereof by the Governor,

or the passage by the legislature of a concurrent resolution terminating such emergency. During such period as such state of emergency exists or continues, the Governor shall have and may exercise the following additional emergency powers:

- (1) To enforce all laws, rules, and regulations, relating to civil preparedness and to assume direct operational control of any or all civil preparedness forces and helpers in the State.
- (2) To sell, lend, lease, give, transfer, or deliver materials or perform services for civil preparedness purposes on such terms and conditions as may be prescribed for any existing law, and to account to the State Treasurer for any funds received for such property.
- (3) To procure, by purchase, condemnation, seizure, or other means, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for civil preparedness without regard to the limitations of any existing law provided he shall make compensation for the property so seized, taken, or condemned on the following basis:
 - a. In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.
 - b. If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid seventy-five per centum (75%) of such amount and shall be entitled to recover from the State of North Carolina, in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award such additional amount, if any, which, when added to the amount so paid to him, shall be just compensation.
- (4) To provide for and compel, if deemed necessary, the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of such evacuees.
- (5) Subject to the provisions of the State Constitution, to relieve any public officer having administrative responsibilities under this Chapter of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this Chapter.
- (6) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.
- (7) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Chapter and with the orders, rules and regulations made pursuant thereto, which officers and agencies shall comply with such direction.
- (8) To employ such measures and give such directions to all State departments, commissions, boards, bureaus and other agencies, and to their counterparts in the political subdivisions, as may be reasonably necessary for the purpose of securing compliance with the provisions of this Chapter or with the findings or recommendations of the above-

named agencies by reason of conditions arising from enemy attack or the threat of enemy attack or otherwise.

- (9) To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages. (1952, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 337, s. 4; 1975, c. 734, s. 14.)

[In performing his duties under this Chapter, the Governor is further authorized and empowered in the event of a declaration of war by the Congress of the United States or when the Governor and Council of State acting together shall find that there is imminent danger of hostile attack upon the State of North Carolina:

- (3) To appoint an acting executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission, 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 the office and pending
 1. The selection and qualification of a person to serve for the unexpired term, or
 2. The selection of an acting executive head of the agency by the board or commission authorized to make such selection, and his qualification;

and to determine (after such inquiry as he deems appropriate) that the executive head of such State agency or institution is physically or mentally incapable of performing the duties of his office, and also to determine that such incapacity has terminated.

An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise. All powers granted to an acting executive head of a State agency or institution under this section 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 (i) the selection and qualification of a person to serve for the unexpired term, or (ii) the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 284, s. 2.)]

Editor's Note. —

The 1975 amendment substituted "civil

preparedness" for "civil defense" throughout the section.

§ 166-6.1. Authority of Governor during a state of natural or accidental disaster. — The provisions of this section shall be operative only during the existence of a state of natural or accidental disaster (hereinafter referred to jointly as "state of disaster"). The existence of a state of disaster may be proclaimed by the Governor or by joint resolution of the legislature, if the Governor in such proclamation or the legislature in such resolution finds that a disaster arising from either natural or accidental causes has actually occurred or is imminent within this State, and that such disaster calls for immediate action beyond the normal functioning of local or State governments. Any such state

of disaster whether proclaimed by the Governor or by the legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or the passage by the legislature of a joint resolution terminating such state of disaster. During such period as the state of disaster exists or continues, the Governor may assume any of the following additional disaster powers if the Council of State concurs in the Governor's assumption of the particular power or powers to be assumed:

- (1) To utilize all available State and local resources as reasonably necessary to cope with a disaster including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating disaster services.
- (2) To enforce all laws, rules, and regulations, relating to civil preparedness and to assume direct operational control over any or all civil preparedness activities within the State.
- (3) To sell, lend, lease, give, transfer, or deliver materials or perform services for civil preparedness purposes on such terms and conditions as may be prescribed for any existing law, and to account to the State Treasurer for any funds received for such property.
- (4) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State if he deems this action necessary for the preservation of life or other disaster response, mitigation, or recovery; and to prescribe routes, modes of transportation, and destination in connection with evacuation.
- (5) To control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein.
- (6) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Chapter and with the orders, rules and regulations made pursuant thereto, which officers and agencies shall comply with such direction.
- (7) To take action authorized under the provisions of this Chapter without regard to a particular order, rule, or regulation of a State agency if such action is necessary to protect the safety and welfare of the inhabitants of this State, and if strict compliance with such order, rule, or regulation would in any way prevent, hinder, or delay such action. (1975, c. 734, s. 11.)

§ 166-7. Mobile support units. — (a) The Governor or his duly designated representative is authorized to create and establish such number of mobile support units as may be necessary to reinforce civil preparedness organizations in stricken areas and with due consideration of the plans of the federal government and of other states. He shall appoint a commander for each such unit who shall have primary responsibility for the organization, administration and operation of such unit. Mobile support units shall be called to duty upon orders of the Governor and shall perform their functions in any part of the State, or, upon the conditions specified in this section, in other states.

(1975, c. 734, s. 14.)

Editor's Note. — The 1975 amendment substituted "civil preparedness" for "civil defense" in the first sentence of subsection (a).

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

§ 166-8. Civil preparedness agencies. — (a) Each political subdivision of this State is hereby authorized to establish a civil preparedness agency in accordance with the State civil preparedness plan and program; and it is further provided that in the event that any political subdivision of the State fails to establish such a civil preparedness agency, and the Governor, in his discretion, determines that a need exists for such a civil preparedness agency, then the Governor is hereby empowered to establish, or to establish through the Secretary of Military and Veterans Affairs, a civil preparedness agency within said political subdivision. Each civil preparedness agency shall have a director who shall be appointed by the governing body of the political subdivision, who may be paid in the discretion of the governing body of the political subdivision, and who shall have direct responsibility for the organization, administration and operation of such civil preparedness agency, subject to the direction and control of such governing body. Civil preparedness directors appointed by the governing bodies of counties shall coordinate the activities of all civil preparedness organizations within such county, including the activities of civil preparedness organizations of cities and towns within such counties. Each local organization for civil preparedness shall perform civil preparedness functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of G.S. 166-10. Counties and municipalities are hereby authorized to make appropriations for the purposes outlined in this section subject to the procedure and limitation established for appropriating municipal funds by the General Statutes.

(b) In carrying out the provisions of this Chapter each political subdivision, in which any disaster due to hostile action as described in G.S. 166-2(1) occurs, or in the event of fire, flood, earthquake or windstorm when the governing body of any such political subdivision shall invoke the provisions of this Chapter, shall have the power and authority:

- (1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil preparedness purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster resulting from enemy attack, or fire, flood, earthquake or windstorm, subject to the direct supervision of the governing body of such political subdivision; and to direct and coordinate the development of civil preparedness plans and programs in accordance with the policies and plans set by the federal and State civil preparedness agencies;
- (2) To appoint, employ, remove, or provide, with or without compensation, a civil preparedness director, air-raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian preparedness workers;
- (3) To establish a primary and one or more secondary control centers to serve as command posts during an emergency;
- (4) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for civil preparedness purposes and within or outside of the physical limits of the subdivision.

(c) A local state of emergency may be declared by the governing body of any municipality or county upon the occurrence of or imminent threat of a natural disaster. Such a declaration shall activate the local ordinances authorized in G.S. 14-288.12 through 14-288.14 and any and all applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder. The timing, publication, amendment and rescission of local

state of emergency declarations shall be in accordance with the local ordinance. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5; 1973, c. 620, s. 9; 1975, c. 734, ss. 12, 14, 16.)

Editor's Note. — Session Laws 1973, c. 620, s. 9, amends this section by substituting "Secretary of Military and Veterans Affairs" for "Director of Civil Defense."

The 1975 amendment added subsection (c). The amendment also substituted "civil

preparedness" for "civil defense" throughout subsections (a) and (b) and substituted "civil preparedness agency" for "local organization for civil defense" in three places and for "local organization" in three places in subsection (a).

§ 166-9. Mutual aid agreements. — (a) The director of each civil preparedness agency may, in collaboration with other public and private agencies within this State, develop or cause to be developed mutual aid arrangements for reciprocal civil preparedness aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements shall be consistent with the State civil preparedness plan and program, and in time of emergency it shall be the duty of each local organization for civil preparedness to render assistance in accordance with the provisions of such mutual aid arrangements.

(b) The director of each civil preparedness agency may, subject to the approval of the Governor, enter into mutual aid arrangements with civil preparedness agencies or organizations in other states for reciprocal civil preparedness aid and assistance in case of disaster too great to be dealt with unassisted. (1951, c. 1016, s. 7; 1975, c. 734, ss. 14, 16.)

Editor's Note. — The 1975 amendment substituted "civil preparedness" for "civil defense" throughout the section and substituted "civil preparedness agency" for "local

organization for civil defense" in the first sentence of subsection (a) and near the beginning of subsection (b).

§ 166-9.1. Immunity and exemption. — (a) All functions hereunder and all other activities relating to civil preparedness are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof nor other agencies of the State or political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any civil preparedness worker complying with or reasonably attempting to comply with this Article, or any order, rule, or regulation promulgated pursuant to the provisions of this Article, or pursuant to any ordinance relating to blackout, evacuation or other precautionary measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this Chapter, or under the Workmen's Compensation Law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

(b) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized civil preparedness worker who shall, in the course of performing his duties as such, practice such professional, mechanical, or other skill during a civil preparedness emergency.

(c) As used in this section, the term "civil preparedness worker" shall include any full or part-time paid, volunteer, or auxiliary employee of this State, or other states, territories, possessions or the District of Columbia, of the federal government, or any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing civil preparedness services at any place in this State, subject to the order or control of, or pursuant to a request of, the State government or any political subdivision thereof.

(d) Any civil preparedness worker, as defined in this section, performing civil preparedness services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance, to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges he would ordinarily possess if performing his duties in the State, province or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4; 1975, c. 734, s. 14.)

Editor's Note. — The 1975 amendment substituted "civil preparedness" for "civil defense" throughout the section.

§ 166-10. Appropriations and levy of taxes; authority to accept services, gifts, grants and loans. — (a) Each county and city in this State is authorized to make appropriations for the purposes of this Chapter and to fund them by levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

(b) Whenever the federal government or any agency or officer thereof shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of civil preparedness, the State, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer and upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm or corporation shall offer to the State or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil preparedness, the State, acting through the Governor, or such political subdivision acting through its governing body, may accept such offer and upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer.

(d) Either the State or a political subdivision in the State may accept grants from the federal government for use in recovery from disasters and for that purpose may, within the limits of any applicable constitutional requirements, accept advances and loans from the federal government, including loans for public works and development facilities, for governmental operating expenses, and for individual and family grant programs. (1951, c. 1016, s. 8; 1973, c. 803, s. 45; 1975, c. 19, s. 72; c. 734, ss. 13, 14.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, rewrote subsection (a).

The first 1975 amendment substituted "G.S. 153A-149" for "G.S. 153-65" in subsection (a).

The second 1975 amendment substituted "civil preparedness" for "civil defense" in subsections (b) and (c) and added subsection (d).

§ 166-11. Utilization of existing services and facilities. — In carrying out the provisions of this Chapter, the Governor is authorized to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof, and the governing bodies of the political subdivisions of the State are authorized to utilize the services, equipment, supplies and facilities of their respective subdivisions, to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor and to the civil preparedness agencies of the State upon request. This authority shall extend to all disasters and for civil preparedness training purposes. (1951, c. 1016, s. 9; 1955, c. 387, s. 5; 1957, c. 950, s. 5; 1975, c. 734, ss. 14, 16.)

Editor's Note. — The 1975 amendment substituted "civil preparedness agencies" for "civil defense organizations" near the end of the first sentence and "civil preparedness" for "civil defense" in the second sentence.

§ 166-12. Eligibility of civil preparedness personnel; oath required. — (a) No person shall be employed or associated in any capacity in any civil preparedness agency established under this Chapter who advocates or has advocated a change by force or violence in the constitutional form of the government of the United States or in this State, or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States, or has ever been a member of the Communist Party. Each person who is appointed to serve in a civil preparedness agency shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

"I,, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence; and that during such time as I am a member of the State Civil Preparedness Agency, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence, so help me God."

(b) No person shall be barred from holding office in any capacity under this Chapter by reason of the prohibition against double office holding. (1951, c. 1016, s. 10; 1975, c. 734, ss. 14, 16.)

Editor's Note. — The 1975 amendment, in subsection (a), substituted "civil preparedness agency" for "civil defense organization" near the beginning of the first sentence, "civil preparedness agency" for "organization for civil defense" in the second sentence and "State Civil Preparedness Agency" for "State Civil Defense Agency" in the oath.

Chapter 167.

State Civil Air Patrol.

Sec.	Sec.
167-1. [Repealed.]	167-3. [Repealed.]
167-2. Status and compensation of members; certain statutes inapplicable; State not liable on contracts, etc.	

§ 167-1: Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973.

Cross Reference. — As to the Department of Military and Veterans Affairs, see §§ 143B-246 through 143B-255.

§ 167-2. Status and compensation of members; certain statutes inapplicable; State not liable on contracts, etc. — The members of the State Civil Air Patrol shall serve without compensation and shall not be entitled to the benefits of the Retirement System of [for] Teachers and State Employees as set forth in Chapter 135 of the General Statutes. The provisions of Article 31 of Chapter 143 of the General Statutes, with respect to tort claims against State departments and agencies, shall not be applicable to the activities of the State Civil Air Patrol, and the State shall not in any manner be liable for injury or damage to any person, firm or corporation by reason of the acts of any of the members or officers thereof. The State shall not in any manner be liable for any of the contracts, debts or obligations of the said organization. The members of the State Civil Air Patrol shall be deemed and considered employees for workmen's compensation purposes of the Department of Military and Veterans Affairs during a State-requested and authorized mission. Such period of employment shall not extend to members operating under an authorized mission of the United States air force. The Secretary of the Department of Military and Veterans Affairs shall authorize all State-requested missions. (1953, c. 1231, s. 2; 1973, c. 620, s. 9; 1975, c. 284, s. 1.)

Editor's Note. — The 1973 amendment, effective July 1, 1973, deleted "including the members of the governing board thereof, except the Adjutant General" following "Civil Air Patrol" near the beginning of the first sentence.

The 1975 amendment deleted "and shall not be

entitled to any benefits provided by the North Carolina Workmen's Compensation Act as set forth in Chapter 97 of the General Statutes" following "compensation" in the first sentence, rewrote the fourth sentence and added the fifth and sixth sentences.

§ 167-3: Repealed by Session Laws 1973, c. 620, s. 9, effective July 1, 1973.

Chapter 168.

Handicapped Persons.

Article 1.

Rights.

Sec.

- 168-1. Purpose and definition.
- 168-2. Right of access to and use of public places.
- 168-3. Right to use of public conveyances, accommodations, etc.
- 168-4. May be accompanied by guide dog.
- 168-5. Traffic and other rights of persons using certain canes.
- 168-6. Right to employment.

Sec.

- 168-7. Guide dogs.
- 168-8. Right to habilitation and rehabilitation services.
- 168-9. Right to housing.
- 168-10 to 168-13. [Reserved.]

Article 2.

Vocational Rehabilitation.

- 168-14. Vocational rehabilitation services for deaf persons.

ARTICLE 1.

Rights.

§ 168-1. Purpose and definition. — The State shall encourage and enable handicapped persons to participate fully in the social and economic life of the State and to engage in remunerative employment. The definition of “handicapped persons” shall include those individuals with physical, mental and visual disabilities. For the purposes of this Article the definition of “visually handicapped” in G.S. 111-11 shall apply. (1973, c. 493, s. 1.)

Editor’s Note. — Session Laws 1973, c. 493, s. 3, makes the act effective July 1, 1973.

§ 168-2. Right of access to and use of public places. — Handicapped persons have the same right as the ablebodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. (1973, c. 493, s. 1.)

§ 168-3. Right to use of public conveyances, accommodations, etc. — The handicapped and physically disabled are entitled to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. (1973, c. 493, s. 1.)

§ 168-4. May be accompanied by guide dog. — Every visually handicapped person shall have the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places listed in G.S. 168-3 provided that he shall be liable for any damage done to the premises or facilities by such dog. (1973, c. 493, s. 1.)

§ 168-5. Traffic and other rights of persons using certain canes. — The driver of a vehicle approaching a visually handicapped pedestrian who is carrying a cane predominantly white or silver in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such pedestrian. (1973, c. 493, s. 1.)

§ 168-6. Right to employment. — Handicapped persons shall be employed in the State service, the service of the political subdivisions of the State, in the public schools, and in all other employment, both public and private, on the same terms and conditions as the ablebodied, unless it is shown that the particular disability impairs the performance of the work involved. (1973, c. 493, s. 1.)

§ 168-7. Guide dogs. — Every visually handicapped person who has a guide dog, or who obtains a guide dog, shall be entitled to keep the guide dog on the premises leased, rented or used by such handicapped person. He shall not be required to pay extra compensation for such guide dog but shall be liable for any damage done to the premises by such a guide dog. (1973, c. 493, s. 1.)

§ 168-8. Right to habilitation and rehabilitation services. — Handicapped persons shall be entitled to such habilitation and rehabilitation services as available and needed for the development or restoration of their capabilities to the fullest extent possible. Such services shall include, but not be limited to, education, training, treatment and other services to provide for adequate food, clothing, housing and transportation during the course of education, training and treatment. Handicapped persons shall be entitled to these rights subject only to the conditions and limitations established by law and applicable alike to all persons. (1973, c. 493, s. 1.)

§ 168-9. Right to housing. — Each handicapped citizen shall have the same right as any other citizen to live and reside in residential communities, homes, and group homes, and no person or group of persons, including governmental bodies or political subdivisions of the State, shall be permitted, or have the authority, to prevent any handicapped citizen, on the basis of his or her handicap, from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other citizen. Nothing herein shall be construed to conflict with provisions of Chapter 122 of the General Statutes. (1975, c. 635.)

§§ 168-10 to 168-13: Reserved for future codification purposes.

ARTICLE 2.

Vocational Rehabilitation.

§ 168-14. Vocational rehabilitation services for deaf persons. — The Department of Human Resources shall promote the employment of deaf persons in this State. The Department shall assist deaf persons whose disability limits employment opportunities in obtaining gainful employment commensurate with their abilities and in maintaining such employment.

The Department, in furtherance of these objectives, shall maintain statistics regarding trades and occupations in which deaf persons are employed.

The Department shall attempt to employ deaf persons in its vocational rehabilitation services for deaf persons and shall have at least one deaf person so employed. (1975, c. 412, s. 2.)

Editor's Note. — Session Laws 1975, c. 412, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 412, s. 3, provides: "The intent of this act is to transfer the Bureau of Labor for the Deaf from the Department of

Labor to the Department of Human Resources as a Type I transfer as defined in G.S. 143A-6(a)." Section 1 of the 1975 act repealed §§ 95-70 to 95-72, which formerly provided for the Bureau of Labor for the Deaf.

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STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1975

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1975 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

