

THE GENERAL STATUTES OF NORTH CAROLINA

1963 CUMULATIVE SUPPLEMENT

To Replacement Volume

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

UNDER THE DIRECTION OF
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Volume 3B

Place in Pocket of Corresponding 1958 Replacement Volume of
Main Set and Discard Previous Supplement

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THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1963

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Preface

This Cumulative Supplement to replacement volume 3B contains the general laws of a permanent nature enacted at the 1959, 1961 and 1963 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

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

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein prior to 1961 appears in Replacement Volumes 4B and 4C. The Cumulative Supplements to such volumes contain an index to statutes codified as a result of the 1961 and 1963 legislative sessions.

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 Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1959, 1961 and 1963 Sessions of the General Assembly affecting Chapters 117 through 150 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 246 (p. 547)-260 (p. 132).

Federal Reporter 2nd Series volumes 245-316.

Federal Supplement volumes 152-216.

United States Reports volumes 354-372.

Supreme Court Reporter volumes 78-83 (p. 1559).

North Carolina Law Review volumes 32-41 (p. 662).

The General Statutes of North Carolina 1963 Cumulative Supplement

VOLUME 3B

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§ 117-2. Powers.

Cited in Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

ARTICLE 2.

Electric Membership Corporations.

§ 117-6. Title of article.

Cited in Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 258, 120 S. E. (2d) 749 (1961);

State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

§ 117-8. Formation in unserved communities; filing application with Rural Electrification Authority.

Continued Operation after Area Becomes Integral Part of Town.—For a case involving the authority of an electric membership corporation to continue to operate in an area which was a rural area when its

distribution lines were constructed but is now an integral part of a town, see Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-9. Issuance of privilege for formation of such corporation.

Cited in Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-10. Formation authorized.

Quoted in Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961); Pee Dee Electric

Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-13. Board of directors; compensation; president and secretary.—Each corporation formed hereunder shall have a board of directors and the powers of a corporation shall be vested in and exercised by a majority of the directors in office. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote, but if the bylaws so provide the directors may be elected on a staggered term basis: Provided, that the total number of directors on a board shall be

so divided that not less than one third of them, or as nearly thereto as their division for that purpose will permit, shall be elected annually, and no term shall be longer than for three years; and provided further that, except as may be necessary in inaugurating such a plan, all directors shall be elected for terms of equal duration. The directors must be members and shall be entitled to receive for their services only such compensation as is provided in the bylaws: Provided, that such compensation shall not exceed twenty dollars (\$20.00) for each day of their attendance at meetings for which their attendance has been duly authorized. The board shall elect annually from its own number a president and a secretary. (1935, c. 291, s. 8; 1959, c. 387, s. 1.)

Editor's Note. — The 1959 amendment Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

Cited in Duke Power Co. v. Blue Ridge

§ 117-16. Corporate purpose; terms and conditions of membership.

—The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such corporation: Provided, that such terms and conditions of membership shall be reasonable; and provided further, that no bona fide applicant for membership, who is able and willing to satisfy and abide by all such terms and conditions of membership, shall be denied arbitrarily, or capriciously, or without good cause. (1935, c. 291, s. 11; 1959, c. 387, s. 2.)

Editor's Note. — The 1959 amendment added the proviso.

Membership is not terminated by a change in the character of the community from rural to urban. The corporation has the right and the duty to continue to serve its members. However it is not entitled to expand its services in such an area. Duke Power Co. v. Blue Ridge Electric Membership Corp., 256 N. C. 62, 122 S. E. (2d) 782 (1961).

A member may continue to receive cur-

rent though he is not a resident of the area served. The test is: Where is the service rendered?; not the residence of the member. Duke Power Co. v. Blue Ridge Electric Membership Corp., 256 N. C. 62, 122 S. E. (2d) 782 (1961).

Applied in Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

Quoted in Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-17. General grant of powers.

Cited in Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

§ 117-18. Specific grant of powers.

Legislative Purpose.—The legislature, by this section, made certain that when necessary to create membership corporations to provide citizens of rural areas with electricity, the corporations so created would not be hampered by having to obtain permission to function from some other agency. Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596,

117 S. E. (2d) 812 (1961).

An electric membership corporation and a public utility corporation are free to compete in rural areas, unless restricted by the provisions of a contract between them. Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 258, 120 S. E. (2d) 749 (1961).

§ 117-27. Article complete in itself and controlling.

Certificate of Public Convenience and Necessity Not Required.—In view of this section, an electric membership corporation is not required by § 62-101, before beginning the construction or operation of its

facilities for serving its members by furnishing them electricity for lights and power, to obtain from the Utilities Commissioner of North Carolina a certificate that public convenience and necessity re-

quires, or will require, the construction and operation of such facilities. Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co., 255 N. C. 258, 120 S. E. (2d) 449 (1961).

ARTICLE 3.

Miscellaneous Provisions.

§ 117-28. Foreign corporations; domestication; rights and privileges.—Any electric or telephone membership corporation created and existing under and by virtue of the laws of any adjoining state, which corporation desires to extend its lines into this State for the purpose of obtaining its power and energy needs, or an exchange interconnection, or for the purpose of supplying electric or telephone service to citizens and residents of this State, shall be and is hereby granted the right to domesticate in this State as such electric or telephone membership corporation, and, after such domestication, any such corporation shall have and enjoy all the rights, privileges, benefits and immunities granted to electric or telephone membership corporations under the laws of this State and shall be subject to the terms, provisions and conditions of this chapter, and other applicable laws, to the same extent as such laws are now applicable to membership corporations organized under the laws of this State. (1941, c. 12; 1959, c. 387, s. 3.)

Editor's Note.—

The 1959 amendment rewrote this section.

Chapter 118.

Firemen's Relief Fund.

Article 3.

North Carolina Firemen's Pension Fund. Sec.

- 118-18. Fund established; administration by board of trustees; rules and regulations.
- 118-19. Creation and membership of board of trustees; compensation.
- 118-20. Secretary.
- 118-21. Powers and duties of board of trustees.
- 118-22. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures and investments.
- 118-23. "Eligible firemen" defined; determination and certification of volunteers meeting qualifications.
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- 118-25. Monthly pensions upon retirement.
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- 118-29. Determination of creditable service; information furnished by applicants for membership.
- 118-30. Length of service not affected by serving in more than one fire department; transfer from one department to another.
- 118-31. Effect of member being six months delinquent in making monthly payments.
- 118-32. Exemption of pensions from attachment, etc.; rights nonassignable.

ARTICLE 1.

Fund Derived from Fire Insurance Companies.

§ 118-2. Tax on receipts for premiums.

This section carries no provision requiring the tax to be passed on to the purchaser of insurance. The fact that the tax may be included in the amount paid by the

purchaser as a part of the costs of doing business does not make the insurer the collecting agent, collecting the tax from

the insured. *American Equitable Assurance Co. v. Gold*, 249 N. C. 461, 106 S. E. (2d) 875 (1959).

§ 118-7. Disbursement of funds by trustees.

Local Modification. — City of Asheville: 1959, c. 759; city of Henderson: 1959, c. 943; city of High Point: 1961, c. 523; city of Salisbury: 1963, c. 56; town of Morganton: 1963, c. 689.

Session Laws 1959, c. 869, deleted the reference to "city of High Point: 1941, c. 138."

ARTICLE 3.

North Carolina Firemen's Pension Fund.

§ 118-18. **Fund established; administration by board of trustees; rules and regulations.**—For the purpose of furthering the general welfare and police powers and obligations of the State with respect to the protection of all its citizens from the consequences of loss or damage by fire, as heretofore recognized in part by the enactment of G. S. 160-117 et seq., of increasing the protection of life and all property against loss or damage by fire, of improving fire fighting techniques, of increasing the potential of fire departments, organizations and groups, of fostering increased and more widely spread training of personnel of said departments, organizations and groups, and of providing incentive and inducement for the participation in fire prevention and fighting activities and for the establishment of new, improved or extended fire departments, organizations and groups to the end that ultimately all areas of the State and all its citizens will receive the benefit of fire protection and a resulting reduction of loss or damage to life and property by fire hazard, and in recognition of the public service rendered to the State of North Carolina and its citizens by the "eligible firemen," as hereinafter defined, there is hereby created in this State a fund to be known and designated the "North Carolina Firemen's Pension Fund" and it shall be administered as set forth in this article. Said North Carolina Firemen's Pension Fund is established to provide pension allowances and other benefits for eligible firemen in the State who elect to become members as hereinafter provided. The board of trustees hereby created shall have authority to administer said fund and shall make necessary rules and regulations to carry out the provisions of this article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980.)

Editor's Note.—

This article, formerly consisting of §§ 118-18 to 118-37, as rewritten by the 1959 act contains §§ 118-18 to 118-32.

The 1961 amendment to this section inserted after the word "hazard" in line thirteen the words "and in recognition of the public service rendered to the State of North Carolina and its citizens by the 'eligible firemen,' as hereinafter defined."

As to refund of money paid to the Commissioner of Insurance under the Firemen's Pension Fund Act, see Session Laws 1959, c. 183.

Constitutionality of 1959 Amendment.—Session Laws 1959, c. 1211, amending § 105-228.5 so as to impose a tax on fire insurance contracts for the purpose of providing funds for the payment of pensions to retired firemen, c. 1212, rewriting article 3 of chapter 118 to create a firemen's pension fund to be derived from the proceeds

of the tax, and c. 1273, appropriating moneys from the general fund to the pension fund, limited to revenues to be produced by the tax, although separately enacted must be treated as a single statute. As so considered, they are unconstitutional under Const., Art. I, § 17, since they impose a tax on one group, a limited group of insurance companies, for the sole purpose of paying the salaries of a particular class or group of public employees. *Great American Ins. Co. v. Johnson*, 257 N. C. 367, 126 S. E. (2d) 92 (1962), decided under §§ 105-228.5 and 118-18 et seq. as they stood prior to their amendment in 1961.

Tax Imposed by Former Article Unconstitutional.—Before its amendment in 1959, this article imposed a tax, at the rate of \$1.00 for every \$100.00, on premiums on fire and lightning insurance policies covering property in areas in the State where fire protection was available. The amount

of the premium was required to be increased by the amount of the tax. The article provided that it should not be construed to include Farmers Mutual Fire Insurance Associations. It was held that the tax was upon the purchaser of insurance, rather than on the insurer, and that the exemption of purchasers from insurers

which were members of the Farmers Mutual Fire Insurance Association resulted in unconstitutional discrimination and lack of uniformity. *American Equitable Assurance Co. v. Gold*, 249 N. C. 461, 106 S. E. (2d) 875 (1959); *In re North Carolina Fire Ins. Rating Bureau*, 249 N. C. 466, 106 S. E. (2d) 879 (1959).

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

- (1) The State Insurance Commissioner, who shall act as chairman.
- (2) The State Auditor.
- (3) Three members to be appointed by the Governor, one a paid fireman, one a volunteer fireman and one representing the public at large, for terms of four (4) years each.

Board members shall serve without pay, except that all members shall be reimbursed for all necessary expenses that they may incur through service on the board of trustees. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-20. Secretary.—There is hereby created an office to be known as secretary of the North Carolina Firemen's Pension Fund. He shall be named by the board and shall serve at its pleasure. The board shall affix his salary, provided it shall not exceed eight thousand dollars (\$8,000.00) annually. The secretary shall be bonded in such amount as may be determined by the board, and he shall promptly transmit to the State Treasurer all moneys collected by him, which said moneys shall be deposited by the State Treasurer in said fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-21. Powers and duties of board of trustees.—The board of trustees shall have the power and duty to request appropriations out of the general fund for administrative expenses and to provide for the financing of this pension fund, to employ necessary clerical assistance, to determine all applications for pensions, to provide for the payment of pensions hereunder, to make all necessary rules and regulations not inconsistent with law for the government of said fund, to prescribe rules and regulations of eligibility of persons to receive hereunder, to expend funds in accordance with the provisions of this article, and generally to exercise all other powers necessary for the administration of the fund created by this article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

Board Is Agency of State.—The board of trustees of the North Carolina Firemen's Pension Fund purports to be an agency of the State, charged with the duty, among others, of administering moneys appropriated from the general fund of the State. *Great American Ins. Co. v. Gold*, 254 N. C. 168, 118 S. E. (2d) 792 (1961).

§ 118-22. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures and investments.—The State Treasurer shall be the custodian of the North Carolina Firemen's Pension Fund. The appropriations made by the legislature out of the general fund to provide money for administrative expenses shall be handled in the same manner as any other general fund appropriation. One fourth of the appropriation made out of the general fund to provide for the financing of the pension fund shall be transferred quarterly to a special fund to be known as the North Carolina Firemen's Pension Fund. There shall be set up in the State Treasurer's office a special fund to be known as the North Carolina Firemen's Pension Fund, and all contributions made by the members of this pension fund shall be deposited in said special fund. All expenditures for refunds, investments or benefits shall be in

the same manner as expenditures of other special funds. The State Treasurer shall have authority to invest all moneys in said fund not immediately needed for refunds or benefits, in the same manner as provided for investment of the sinking fund. The interest on such investments shall be credited to this special fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980.)

Editor's Note.—The 1961 amendment deleted the last sentence which formerly read "In no event shall the appropriation made by the General Assembly in future years exceed the amount of revenue col-

lected from the one per cent (1%) tax on fire and lightning insurance premiums in the preceding bienniums."

Constitutionality of 1959 Amendment.— See same catchline under § 118-18.

§ 118-23. "Eligible firemen" defined; determination and certification of volunteers meeting qualifications.—"Eligible firemen" shall mean all firemen of the State of North Carolina or any political subdivision thereof, including those performing such governmental function in the protection of life and property through fire fighting within a county or city governmental unit and so certified to the Commissioner of Insurance by the governing body thereof, and who belong to a bona fide fire department which, as determined by the commissioner, is classified as not less than class "9" or class "A" and "AA" departments in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to G. S. 58-131.1 or by such other reasonable methods as the commissioner may determine, and which operates fire apparatus and equipment of the value of five thousand dollars (\$5,000.00) or more, and said fire department holds drills and meetings not less than four hours monthly and said firemen attend at least thirty-six hours of all drills and meetings in each calendar year. As applied to volunteer firemen, "eligible firemen" shall mean those persons meeting the foregoing qualifications and who in the aggregate number are further determined by their departments as not exceeding twenty-five (25) volunteer firemen plus one (1) additional volunteer fireman per one hundred (100) population in the area served by their said respective departments. Each department shall annually determine and report the names of those volunteers meeting the foregoing eligibility qualifications to its respective board of county commissioners, which upon determination of the validity and accuracy of the same shall promptly certify said list to the board of trustees. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-24. Application for membership in fund; monthly payments by members; payments credited to separate accounts of members.— Those firemen who are now eligible may make application through the board of trustees hereinbefore created for membership in said fund within twenty-four months from June 19, 1959. All persons who subsequently become firemen may make application for membership in such fund within twelve months from the date of becoming eligible firemen. Each eligible fireman becoming a member of the fund shall pay the secretary of the board of trustees the sum of five dollars (\$5.00) per month; provided, all eligible firemen electing to become members and serving as such on June 19, 1959, shall pay the sum of five dollars (\$5.00) per month from said date; and further provided, firemen not now eligible but becoming so within five years of June 19, 1959, shall be permitted to become members and receive service time credits upon condition that they pay into said fund the sum of five dollars (\$5.00) per month from June 19, 1959. The said monthly payments shall be credited to the separate account of the member paying same and shall be kept by the custodian in such manner as to be available for payment to said member on account of his withdrawal from membership or to be used with respect to pension payments upon his said retirement. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-25. Monthly pensions upon retirement.—Any member who has served 30 years as a fireman in the State of North Carolina, who has been an “eligible fireman” for two years immediately preceding his application for the payment of a pension hereunder, and who is otherwise eligible as provided in § 118-23 hereof, and who has attained the age of 55 years shall be entitled to be paid from the fund herein created a monthly pension. Said monthly pension shall be in the amount of fifty dollars (\$50.00) per month or less as below set forth, provided that those members retiring after the age of 55 and before attaining the age of 60 may elect to receive the reduced amount to account for longer expectancy, said amount of monthly pension available at various retirement ages to be as follows:

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

Members shall pay five dollars (\$5.00) per month as required by § 118-24 until retirement from active service or until they shall have made said monthly payments for a period of 30 years, whichever first occurs; provided, any member retiring after 30 years of service, but before reaching the age of 55 years, shall continue to pay the monthly payments required by § 118-24 in order to continue his membership in the fund until he shall reach the age of 55 or until he shall have paid said monthly payments into the fund for 30 years, whichever is the earlier. Upon reaching retirement age and being otherwise eligible he shall receive a pension as set out above. Notwithstanding the above provisions, no person shall receive a pension hereunder prior to January 1, 1960, but those persons eligible and retiring prior to said date who have paid into said fund five dollars (\$5.00) per month with respect to a period of not less than 12 months or sixty dollars (\$60.00), whichever occurs first, shall be entitled to a pension in the amount of fifty dollars (\$50.00) per month or such reduced amount as set out above commencing January 1, 1960. No person shall be entitled to a pension hereunder until his official duties as a fireman shall have been terminated and he shall have retired as such according to standards or rules fixed by the board of trustees.

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

Editor’s Note.—The 1961 amendment added the last paragraph.

§ 118-26. Payments in lump sums.—The board of trustees shall direct payment in lump sums from the fund in the following cases:

- (1) To any fireman, upon the attaining of the age of 60 years, who, for any reason, is not qualified to receive the monthly retirement pension and who was enrolled as a member of the fund, an amount equal to the amount paid into the fund by him; provided, this provision shall not be construed to preclude any active fireman from completing the requisite number of years of active service after attaining the age of 60 years as may be necessary to entitle him to the pension as herein provided.
- (2) If any fireman dies before attaining the age at which a pension is payable to him under the provisions of this article, there shall be paid to his widow, or if there be no widow, to his child or children, or, if there be no widow or children, then to his heirs at law as may be determined by the board of trustees or to his estate, if it is adminis-

tered and there are no heirs, an amount equal to the amount paid in into the fund by said fireman.

- (3) If any fireman dies after beginning to receive the pension herein provided for, and before receiving an amount equal to the amount paid into the fund by him, there shall be paid to his widow, or if there be no widow, then to his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board of trustees, or to his estate, if it is administered and there are no heirs, an amount equal to the difference between the amount paid into the fund by the said fireman and the amount received by him as a pensioner.
- (4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys such individual contributed to the fund, provided, if all or any part of the moneys contributed to the fund with respect to such member shall have been paid by any person, firm or corporation other than the member and notification of such action shall have been made to the board of trustees at the time of said contribution and each of them, then, upon proper application, by such other person, firm or corporation, said moneys contributed to the fund shall be paid to such other person, firm or corporation originally contributing the same, upon the withdrawal of said member. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-27. Pro rata reduction of benefits when fund insufficient to pay in full.—If, for any reason, the fund hereby created and made available for any purpose covered by this article shall be insufficient to pay in full any pension benefits, or other charges thereupon then all benefits or payments shall be proratably reduced for such time and in such amount as such deficiency exists; provided, no claim shall accrue with respect to any amount by which pension or benefit payments shall have been so reduced. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-28. Provisions subject to future legislative change. — The pensions provided herein shall be subject to future legislative change or revision, and no member of the fund, or any person, shall be deemed to have acquired any vested right to any pension or other payment herein provided. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-29. Determination of creditable service; information furnished by applicants for membership.—The board of trustees shall fix and determine by appropriate rules and regulations the number of years credit for service of firemen. Firemen who are now serving as such shall furnish the board with information upon applying for membership as to previous service. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-30. Length of service not affected by serving in more than one fire department; transfer from one department to another.—A fireman's length of service shall not be affected by the fact that he may have served in more than one fire department as defined in § 118-23, and upon transfer from one department to another, notice of such fact shall be given to the board. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-31. Effect of member being six months delinquent in making monthly payments.—Any member who becomes six months delinquent in making monthly payments as required by § 118-23 of this article by the tenth of the month with respect to which said payment shall be due shall be removed from membership in the fund and shall lose one year of service credit and all rights hereunder with respect thereto for each six months' period that he remains so delinquent. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

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

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

- Sec.
 119-20. [Repealed.]
 119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; disposition of moneys by State Treasurer.
 119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; renaming, etc., of gasoline.

Article 4.

Liquefied Petroleum Gases.

- 119-48. Purpose; definition.
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 119-50. Registration of dealers; liability insurance or bond required.
 119-51. Administration of article; rules and regulations given force and effect of law.
 119-52. Unlawful acts.
 119-53. Penalty.

ARTICLE 2A.

Regulation of Re-Refined or Re-Processed Oil.

§ 119-13.1. **Definitions.**

Cited in *Royal Oil Corp. v. Federal Trade Comm.*, 262 F. (2d) 741 (1959).

§ 119-13.2. **Labels required on sealed containers; oil to meet minimum specifications.**

Order of Federal Trade Commission Not in Conflict with This Section.—This section requires that containers of reclaimed used oil be clearly marked "Reprocessed Oil." It does not prohibit the use of additional descriptive words, and where the Federal Trade Commission indicated that it was not the use of the word "reprocessed" which it considered

deceptive, but rather the failure to make the additional specific disclosure that the reprocessed oil had been previously used, an order of the Commission prohibiting sale of the oil without disclosing its previous use was clearly not in conflict with the State's requirement. *Royal Oil Corp. v. Federal Trade Comm.*, 262 F. (2d) 741 (1959).

§ 119-13.3. **Violation a misdemeanor.**

Cited in *Royal Oil Corp. v. Federal Trade Comm.*, 262 F. (2d) 741 (1959).

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-20: Repealed by Session Laws 1963, c. 1169, s. 6, effective July 1, 1963.

Cross Reference.—As to administrative, to inspection fees levied under this chapter, see § 105-269.3. penalty and remedy provisions applicable

§ 119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; disposition of moneys by State Treasurer. — Gasoline and oil inspection fees or taxes shall be collected by, and reports relating thereto, shall be made to, the Department of Revenue. The administration of the gasoline and oil inspection law shall otherwise be administered by the Commissioner of Agriculture. All moneys received under the authority of this article shall be paid into the State treasury and the State Treasurer shall place to the credit of the "State Highway Fund" that proportion of said funds representing inspection fees collected on highway use motor fuels, as certified monthly to the State Treasurer by the Commissioner of Revenue, and the remainder of said funds shall be credited to the general fund. (1937, c. 425, s. 6; 1941, c. 36; 1949, c. 1167; 1963, c. 245.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, rewrote the last sentence.

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

ply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167; 1961, c. 961.)

Editor's Note.—The 1961 amendment inserted beginning in line eighteen the words "to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State." It also inserted the last two provisos.

ARTICLE 4.

Liquefied Petroleum Gases.

§ 119-48. **Purpose; definition.**—It is the purpose of this article to provide for the adoption and promulgation of a code of safety, and such rules and regulations setting forth minimum general standards of safety for the design, construction, location, installation, and operation of the equipment used in handling, storing, measuring, transporting, distributing and utilizing liquefied petroleum gases, and to provide for compliance therewith; to promote and regulate the compliance of suppliers and consumers with the code, the laws, rules and regulations enacted in pursuance of safety, to provide for administration and enforcement of the code, laws, rules and regulations. The term "liquefied petroleum gas" as used in this article shall mean and include any material which is composed predominately of any of the following: Hydrocarbon, or mixtures of the same; propane, propylene, butanes (normal butanes or isobutane), butylenes. (1955, c. 487; 1959, c. 796, s. 1; 1961, c. 1072.)

Editor's Note.—The 1961 act setting forth this article repealed the former article entitled "Equipment for Handling, etc., Liquefied Petroleum Gases" and consisting of §§ 119-48 through 119-54.

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

—The standards as set forth in Pamphlet No. 58 of the National Fire Protection Association entitled, THE STORAGE AND HANDLING OF LIQUEFIED PETROLEUM GASES dated May, 1961, and Pamphlet No. 54 of the National Fire Protection Association entitled, INSTALLATION OF GAS APPLIANCES AND GAS PIPING dated June, 1959, and the rules and regulations promulgated by the North Carolina State Board of Agriculture are hereby adopted as if set forth herein, as safety standards for the design, construction, location, installation and operation of equipment and facilities used in handling, storing, and distribution of liquefied petroleum gas, subject, always, to the power and authority of the North Carolina State Board of Agriculture to adopt, reject, or to add to any provisions set forth in said pamphlets as above entitled after a public hearing held upon fifteen (15) days' notice. After adoption by the Board of Agriculture of such provision or provisions as it may consider necessary in furtherance of the purposes of this article, such provision or provisions shall become a part of this safety code to the same extent as if written in this article.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas, which code shall conform with the code adopted by the State Board of Agriculture, and the inspection service rendered by such municipality or political subdivision shall conform to the requirements of the inspection service rendered by the State Board of Agriculture in the enforcement of this article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671.)

Editor's Note. — The 1963 amendment substituted "May, 1961" for "June, 1960" near the beginning of this section. **Violation of Section as Contributory Negligence.**—The violation of this section by the driver of a truck transporting liq-

uid petroleum gas cannot be asserted as contributory negligence on the part of such driver in his action to recover for burns received as a result of a collision

when defendants do not plead a violation of the statute or the applicable safety regulations. *Rodgers v. Thompson*, 256 N. C. 265, 123 S. E. (2d) 785 (1962).

§ 119-50. Registration of dealers; liability insurance or bond required.—Any person, firm, or corporation engaged in or who desires to engage in the business of selling or otherwise dealing in liquefied petroleum gas which requires handling, storing, measuring, transporting or distributing liquefied petroleum gas, or who is engaged in or desires to engage in the business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment or appliances which use liquefied petroleum gas, shall, within sixty (60) days after June 21, 1961, and annually thereafter, on or before January 1 of each year, register with the Commissioner of Agriculture of North Carolina on a form or forms to be furnished by the Commissioner of Agriculture; such form or forms shall give the name and address of the person, firm, or corporation, and the place or places of and the type or types of business of such registrant, and such other pertinent information as the Commissioner may deem necessary; provided, however, that the provisions of this section shall not apply to a person, firm, or corporation who retails liquefied petroleum gas in containers of less than fifty (50) pounds water capacity only which retailing does not involve the filling of such containers.

Any person, firm, or corporation which is engaged in, or which desires to engage in the business of selling, handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or which shall install, service, repair, adjust, connect, or disconnect containers, equipment, or appliances which use liquefied petroleum gas, shall certify, under oath on the same form of registration as required by this section that the person, firm, or corporation applying for registration has a copy of Pamphlet No. 58 of the National Fire Protection Association, and a copy of Pamphlet No. 54 of the National Fire Protection Association, and a copy of the rules and regulations adopted by the North Carolina State Board of Agriculture, and that the said person, firm, or corporation has read and is familiar with the provisions thereof.

Such applicant shall obtain and maintain product liability and general comprehensive insurance of twenty-five thousand dollars (\$25,000.00) for bodily injury to, or death of, one person in any one accident, and subject to said limit for one person, fifty thousand dollars (\$50,000.00) because of bodily injury to, or death of, two or more persons in any one accident, and twenty-five thousand dollars (\$25,000.00) because of injury to, or destruction of, property of others in any one accident; or shall in lieu of said insurance file and maintain a bond in a form satisfactory to the commissioner which provides protection for the public in the same amounts and to the same extent as said insurance. (1955, c. 487; 1961, c. 1072.)

§ 119-51. Administration of article; rules and regulations given force and effect of law.—It shall be the duty of the Commissioner of Agriculture to administer all the provisions of this article and all the rules and regulations made and promulgated under this article relating to the handling, odorizing, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gases; to investigate for violations of this article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this article or of such rules and regulations adopted as hereinabove set forth. It is specifically provided that the rules and regulations of the Board of Agriculture adopted in conformity with this article shall have the force and effect of law, and that violations of said rules and regulations shall be misdemeanors, punishable as hereinafter provided. (1955, c. 487; 1961, c. 1072.)

§ 119-52. **Unlawful acts.**—It shall be unlawful for any person, firm, or corporation to handle, store, or distribute liquefied petroleum gas contrary to and in violation of the uniform safety code adopted by the Board of Agriculture, or the rules and regulations of the said board, adopted under the authority of this article; it shall be unlawful to sell any gas burning appliance designed and/or built for domestic use which has not been approved by the American Gas Association, Inc., or other underwriting laboratory approved by the Commissioner of Agriculture, or by the Commissioner of Agriculture; or to install any unvented heating appliance in a so-called trailer house, or to install unvented space heating appliances in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure. It shall be unlawful for any person, firm, or corporation to fill a consumer tank or container in excess of 85 per cent of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a "fill tube" or gauge, except that said tank or container may be filled by weight, provided the tank or container is weighed before and after filling and a ticket showing gross tare and net weight is given to the consumer; or to disconnect an appliance from a gas supply line without capping or plugging said line before leaving premises; or to turn on the gas after re-establishing an interrupted service without first having checked and closed all gas outlets; or to install, maintain or transport a gas tank or container filled with gas that is not equipped with safety relief connected directly into the vapor space of same.

Every supply tank or container with its regulating equipment connected in a service system, shall be identified as long as it is in service by the supplier with an attached tag, label, or marking which shall show the name of the person, firm, or corporation who is supplying liquefied petroleum gas to said system; and it shall be unlawful for any person, firm, or corporation other than such supplier or owner of system, to disconnect, or to interrupt, or to fill said system with liquefied petroleum gas without the consent of the said supplier. However, when some other registered supplier is requested by the consumer to connect his service and is given permission by the consumer to connect service, the new supplier shall notify former supplier before disconnecting former service, and the connection of his own service, and shall cap or plug all disconnected equipment outlets and leave said equipment in condition consistent with the safety code adopted by this article.

It shall be unlawful for any person, firm, or corporation to violate any of the provisions of this article, or to violate any of the rules and regulations established under the authority of this article by the Board of Agriculture. (1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072.)

§ 119-53. **Penalty.**—Any person, firm, or corporation violating any of the provisions of this article, or any of the rules and regulations made and promulgated in accordance with the provisions of this article, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine or imprisonment, or both, in the discretion of the court. (1955, c. 487; 1961, c. 1072.)

Chapter 120. General Assembly.

Article 4.

Reports of Officers to General Assembly.

Sec.

120-13. [Repealed.]

Article 6.

Acts and Journals.

120-22. Enrollment of acts; duplication and distribution of copies.

120-30. [Repealed.]

Article 6A.

Legislative Council.

120-30.1. Creation; appointment of members; members ex officio.

120-30.2. Time of appointments; terms of office.

120-30.3. Vacancies.

Sec.

120-30.4. Organization; committees; rules of procedure; quorum.

120-30.5. Meetings; right of legislators to attend.

120-30.6. Employees; executive secretary; contracts.

120-30.7. Cooperation with Council.

120-30.8. Powers and duties.

120-30.9. Compensation and expenses of members of Council or committees.

Article 9.

Lobbying.

120-43. Written authority from employer to be filed; copy for legislative committee.

ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-2. **House of Representatives.** — Until the General Assembly of North Carolina shall make another apportionment as provided by the Constitution and laws of North Carolina, the House of Representatives shall be composed of members elected from the counties of the State in the following manner, to wit:

The county of Mecklenburg shall elect five members; the county of Guilford shall elect four members; the counties of Cumberland, Forsyth and Wake shall elect three members each; the counties of Alamance, Buncombe, Durham, Gaston, Onslow, Robeson and Rowan shall elect two members each; the counties of Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey shall elect one member each. (Code, s. 2845; Rev., s. 4399; 1911, c. 151; C. S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265.)

Editor's Note.—

The 1961 amendment rewrote this section.

§ 120-3.1. **Subsistence and travel allowances for members and presiding officers.**

(b) The travel allowance authorized in subsection (a) of this section shall be paid the members and presiding officers of the General Assembly while coming to the city of Raleigh and returning to their respective homes, the distance to

be computed by the usual route of public travel. Such travel allowance shall be paid, upon proper certification, only for travel expense actually incurred. This travel allowance shall be limited to a maximum of one (1) round trip each week during each regular or special session of the General Assembly, and shall be that established by law for members of State boards and commissions generally.

(c) In addition to the travel allowance authorized in subsection (b) of this section, during any session of the General Assembly, whenever any member or presiding officer of either house of the General Assembly is directed by any committee of either house or by either house of the General Assembly to perform any legislative duties outside the city of Raleigh, then in such event such member or presiding officer shall be paid travel and subsistence allowances while engaged in such duties. Such travel allowance shall not exceed that established by law for State boards and commissions generally. No travel allowance shall be paid members and presiding officers of the General Assembly while they are engaged in legislative duties within the limits of the city of Raleigh. Subsistence allowance for expenses incurred in connection with their duties in the General Assembly in the sum of twelve dollars (\$12.00) per day shall be paid members and presiding officers for each day of the period during which the General Assembly remains in session.

(1959, c. 939; 1961, c. 889.)

Editor's Note. — The 1959 amendment rewrote the second sentence of subsection (b) to appear as the present second and third sentences.

The 1961 amendment, effective Feb. 8, 1961, changed the amount in the last sen-

tence of subsection (c) from eight to twelve dollars per day.

As only subsections (b) and (c) were changed by the amendments the rest of the section is not set out.

ARTICLE 4.

Reports of Officers to General Assembly.

§ 120-13: Repealed by Session Laws 1961, c. 243, s. 1.

ARTICLE 6.

Acts and Journals.

§ 120-22. Enrollment of acts; duplication and distribution of copies.

—(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision and direction of the Secretary of State. Prior to enrolling any bill the Secretary of State shall substitute the corresponding Arabic numerals for any date or for any section number of the General Statutes or of any act of the General Assembly which is written in words. All bills so enrolled shall be typewritten and carefully proofread. The Secretary of State is authorized and empowered to secure such equipment as may be required for this purpose, and from time to time during the sessions of the General Assembly, to employ such number of competent and trained persons, not to exceed twelve at any one time, as may be necessary to perform this service. One of such number so employed shall be designated as chief enrolling clerk, and shall receive not to exceed the sum of six dollars (\$6.00) per day for his services, and each of the others so employed shall receive not to exceed the sum of five dollars per day for his services: **Provided**, that when the business of the General Assembly has reached such a proportion that the employees authorized are unable to keep up with the enrollment of bills as they are passed, the Secretary of State is hereby authorized to use the employees in the various State departments before and after office hours in the enrollment of such bills, and they shall be paid one cent per line upon certification made to the State Auditor by the Secretary of State.

(b) The General Assembly is authorized to provide for the duplication and

limited distribution of copies of enrolled and ratified laws and joint resolutions of the General Assembly. The Speaker of the House and the President of the Senate are authorized to jointly promulgate rules and regulations to govern the duplication and distribution of current laws and joint resolutions of the General Assembly during and immediately after the biennial and any special sessions of the General Assembly, by jointly executed and signed order which shall be spread upon the Journal of the respective Houses. The Enrolling Office, under the supervision and direction of the Secretary of State, shall furnish the General Assembly with a suitable and conformed copy of all laws and joint resolutions of the General Assembly, which shall show the chapter number of any law or the number of any joint resolution in conformity with the number assigned to the enactment for the purposes of printing and publication of the session laws. Details concerning the duplication of the laws and joint resolutions, the number of copies of each enactment to be duplicated, and the distribution of same shall be as ordered by the presiding officers of the House and Senate, but distribution of the duplications shall be restricted to the officers and members of the General Assembly, the office of the Secretary of State, the Enrolling Office, the Attorney General, the Institute of Government, and such other officers, departments, and agencies of State government as the rules and regulations shall provide. The cost and expenses of printing, duplication, and distribution shall be paid out of funds appropriated to the General Assembly as in case of the cost and expenses of printing of bills upon introduction. (1903, c. 5; Rev., s. 4422; C. S., s. 6108; 1933, c. 173; 1945, c. 416, s. 1; 1947, c. 378; 1963, c. 213.)

Editor's Note.—

The 1963 amendment designated the

former section as subsection (a) and added

subsection (b).

§ 120-30: Repealed by Session Laws 1961, c. 24.

ARTICLE 6A.

Legislative Council.

§ 120-30.1. **Creation; appointment of members; members ex officio.**

—There is hereby created a Legislative Council to consist of five senators to be appointed by the President pro tempore of the Senate and five representatives to be appointed by the Speaker of the House. The appointments from each house shall be subject to the approval of a majority vote of the members of that house. The President pro tempore of the Senate and the Speaker of the House shall be ex officio members of the Legislative Council. Provided, that when the President of the Senate has been elected by the Senate from its own membership, then the President of the Senate shall make the appointments of the Senate members of the Legislative Council, shall serve ex officio as a member of the Council and shall perform the duties otherwise vested in the President pro tempore by §§ 120-30.4 and 120-30.5 of this article. (1963, c. 721, s. 1.)

§ 120-30.2. **Time of appointments; terms of office.**—Appointments to the Legislative Council shall be made prior to the close of each regular session of the General Assembly. The term of office shall begin on the day of adjournment sine die of the session at which the appointments were made, and shall end on the date when the next regular session of the General Assembly convenes. (1963, c. 721, s. 2.)

§ 120-30.3. **Vacancies.**—Vacancies in the appointive membership of the Legislative Council occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Council. Every vacancy shall be filled by a member of the same house as that of the person causing the vacancy. (1963, c. 721, s. 3.)

§ 120-30.4. **Organization; committees; rules of procedure; quorum.**—The Legislative Council shall elect a chairman and a vice-chairman and such other officers as it deems necessary. The President pro tempore of the Senate shall preside at the organizational meeting until a chairman has been elected. The Council may create committees consisting of its own members or other members of the General Assembly, or of other persons having special knowledge or competence as to particular matters, to study and report on assigned subjects. The Council shall adopt rules of procedure governing its meetings. Six members shall constitute a quorum of the Council. (1963, c. 721, s. 4.)

§ 120-30.5. **Meetings; right of legislators to attend.**—The first meeting of the Legislative Council shall be held at the call of the President pro tempore of the Senate in the State Legislative Building within fifteen (15) days after the appointment of the members. Thereafter the Council shall meet at such times and places as the Council may deem desirable, but in any event it shall meet at least once in each quarter of the calendar year. Every member of the General Assembly has the right to attend all sessions of the Council and its committees, and to present his views at the meeting on any subject under consideration. (1963, c. 721, s. 5.)

§ 120-30.6. **Employees; executive secretary; contracts.**—The Legislative Council may employ and fix the compensation of such personnel, including an executive secretary, as the Council may deem necessary for the execution of the functions of the Council and its committees. The Council may contract with any public or private agency or institution for staff services, and for assistance in performing research studies or collecting information. (1963, c. 721, s. 6.)

§ 120-30.7. **Cooperation with Council.**—The Legislative Council or any committee thereof may call upon any department, agency, institution, or officer of the State or of any political subdivision thereof for such facilities and data as may be available, and these departments, agencies, institutions, and officers shall cooperate with the Council and its committees to the fullest possible extent. (1963, c. 721, s. 7.)

§ 120-30.8. **Powers and duties.**—The Legislative Council has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner. In making these studies and investigations, the Council shall give priority to those subjects requested by the General Assembly.
- (2) To report to the General Assembly the results of the studies made by or at the direction of the Council. The reports may be accompanied by the recommendations of the Council and bills to effectuate the recommendations.
- (3) To provide legislative research facilities and personnel for the use of the committees and individual members of the General Assembly. The committees of the General Assembly shall have first priority in the use of these research facilities and personnel.
- (4) Upon completion by the clerks of the Senate and House of their duties after the close of each legislative session, to assume custody of all equipment, records, materials and supplies in the possession of the clerks. Immediately prior to the convening of the next session, the Council shall transfer all equipment, materials and supplies to the clerks of the respective houses.

- (5) When the General Assembly is not in session, to authorize the expenditure of funds appropriated to the General Assembly for the purchase, repair or maintenance of furniture, equipment, materials and supplies, and to contract for services needed by the General Assembly. (1963, c. 721, s. 8.)

§ 120-30.9. Compensation and expenses of members of Council or committees.—The members of the Council and of any committee established pursuant to this chapter shall be paid twenty-five dollars (\$25.00) for each day of meetings of the Council or a committee thereof attended by them, and in addition shall be reimbursed for all necessary travelling and other expenses incurred in the performance of their duties. All payments for purposes authorized by this chapter shall be made by the State Treasurer upon written authorization of the chairman or the executive secretary of the Council, from funds appropriated to the General Assembly. (1963, c. 721, s. 9.)

ARTICLE 7.

Employees.

§ 120-33. Compensation of employees of the General Assembly; mileage.—The principal clerks of each house shall be allowed the sum of twenty-four dollars (\$24.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The reading clerks and the sergeants-at-arms of each house shall be allowed the sum of eighteen dollars (\$18.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The chief enrolling clerk shall be allowed the sum of twenty-four dollars (\$24.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from his home to Raleigh and return.

The journal clerks, calendar clerks and chief engrossing clerks in each house shall be allowed the sum of seventeen dollars (\$17.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The assistants to the calendar clerk and the assistants to the journal clerk and the clerks to the committees on finance and appropriations of each house and the disbursing clerks and the joint disbursing clerks, the secretary to the Speaker of the House of Representatives, and the secretary to the Lieutenant-Governor shall be allowed the sum of fifteen dollars (\$15.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The assistants to the engrossing clerks and all committee clerks and assistants appointed by the Secretary of State to supervise the enrolling of bills and resolutions shall be allowed the sum of thirteen dollars (\$13.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The chief pages of the House of Representatives and the Senate shall receive the sum of eight dollars (\$8.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive the sum of six dollars and fifty cents (\$6.50) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The chaplain of each house shall be allowed the sum of ten dollars (\$10.00) per day and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from his home to Raleigh and return.

All laborers and assistants to the sergeants-at-arms authorized by law or rules of either the House of Representatives or the Senate shall receive during the session of the General Assembly the sum of nine dollars (\$9.00) per day and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272; 1943, c. 303; 1945, c. 9; 1951, c. 2; 1957, cc. 5, 1432; 1961, cc. 1176, 1177.)

Editor's Note.—

The 1961 amendments, retroactive to Feb. 1, 1961, increased the compensation of the sub-officers and employees of the

General Assembly. The first three sentences are from the second amendment and the rest of the section is from the first amendment.

ARTICLE 9.

Lobbying.

§ 120-43. **Written authority from employer to be filed; copy for legislative committee.**—Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the Secretary of State within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them. A copy of such written authorization executed by those persons, firms, corporations or organizations for whom they claim to be authorized to speak shall also be filed by such legislative counsel or agents with the chairman of any committee of either branch of the General Assembly at or before the time of appearance before the committee in a representative capacity. (1933, c. 11, s. 4; 1961, c. 1151.)

Editor's Note.—The 1961 amendment, effective July 1, 1961, added the second sentence.

Chapter 121.

State Department of Archives and History.

Article 1.

General Provisions.

- Sec.
 121-2.1. More adequate teaching of State and local history in public schools.
 121-5.1. Inventorying, repairing and microfilming of county records for security purposes.
 121-8.1. Creation and composition of Historic Sites Advisory Committee.
 121-8.2. Duties of Historic Sites Advisory Committee.
 121-8.3. Director of Department of Archives and History to furnish copies of recommendations of Historic Sites Advisory Committee to legislative committees.
 121-13.1. Preservation and custodial care of State Capitol legislative chambers.

Article 2.

Tryon's Palace and Tryon's Palace Commission.

- 121-14. Acceptance and administration of

Sec.

- gifts for restoration of Tryon's Palace; execution of deeds, etc.
 121-15. Authority to acquire necessary property for restoration when certain funds available.
 121-16. Acquiring lands by purchase or condemnation.
 121-17. Funds deposited with trustee.
 121-18. Closing streets and including area in restoration project; acquiring area originally included in palace grounds.
 121-19. Purpose, establishment and composition of Tryon's Palace Commission.
 121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's Palace.
 121-21. Commission authorized to adopt and copyright certain emblems and lease or license the use of reproductions or replicas.

ARTICLE 1.

*General Provisions.***§ 121-2. Powers and duties of the Department.**

(4.1) To conduct a records management program, including the operation of a records center or centers and a centralized microfilming program, for the benefit of all State agencies.

(1959, c. 68, s. 1.)

Editor's Note.—
The 1959 amendment inserted subdivision (4.1). As the rest of the section was

not affected by the amendment it is not set out.

§ 121-2.1. More adequate teaching of State and local history in public schools.—The Department of Archives and History, with the cooperation of the Superintendent of Public Instruction, is hereby authorized and directed to develop and conduct a program for the better and more adequate teaching of State and local history in the public schools of North Carolina, including the preparation and publication of suitable histories of all counties where such histories do not now exist and of other appropriate materials, the distribution of such materials to the public schools for a reasonable charge, and the coordination of this program throughout the State. (1961, c. 1068.)

§ 121-5.1. Inventorying, repairing and microfilming of county records for security purposes.—The North Carolina Department of Archives and History is hereby authorized and directed to formulate and execute a program of inventorying, repairing, and microfilming in the counties for security purposes those official records of the several counties which the Department determines have permanent value, and of providing safe storage for microfilm copies of such records. (1959, c. 1162.)

§ 121-7. Purchase of historic properties.—The Department of Archives and History may, from funds appropriated to the Department for such purpose, acquire, preserve, restore, or operate historic or archeological real and personal properties, or may assist a county, municipality, or nonprofit corporation or organization in the acquisition, preservation, restoration, or operation of such properties by providing a portion of the cost therefor; provided, that no acquisition, preservation, restoration or operation of such properties shall be made by the State of North Carolina and no contribution shall be made from State funds toward such acquisition, preservation, restoration, or operation until (i) the property or properties shall have been approved for such purpose by the Department of Archives and History according to criteria adopted by the Historic Sites Advisory Committee, (ii) the report and recommendation of the Historic Sites Advisory Committee has been received and considered by the Department of Archives and History, and (iii) the Department of Archives and History has found that there is a feasible and practical method of providing funds for the acquisition, preservation, restoration, and operation of such property. If funds or contributions for such acquisition are not available, the Governor and Council of State may, upon the recommendation of the Department of Archives and History, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on property or properties, which option shall continue until thirty (30) days after the adjournment sine die of the next General Assembly. State funds shall not be used for the purchase of property having historic or archeological significance unless the fee simple and unconditional title to such property is acquired by the State of North Carolina or by a county or city therein or by a nonprofit corporation or organization. Upon recommendation of the Department of Archives and History, the Governor and the Council of State are authorized to allocate funds from the Contingency and Emergency Fund for the immediate ac-

quisition, preservation, restoration, or operation of historic or archeological real or personal properties. All funds hereinafter appropriated to purchase, restore, maintain or operate historic or archeological real and personal property shall be deemed to be subject to § 31.2 of the Executive Budget Act unless the statute making the appropriation shall in specific and express terms provide otherwise. (1955, c. 543, s. 1; 1963, c. 210, s. 1.)

Editor's Note.—The 1963 amendment re-wrote this section.

§ 121-8.1. Creation and composition of Historic Sites Advisory Committee.—There is hereby created a Historic Sites Advisory Committee which shall consist of seven (7) members. The Committee shall include the following: The State Budget Officer; the Chairman of the Department of History, University of North Carolina; Dean of the School of Design, North Carolina State College; Director of the Department of Conservation and Development; and three (3) persons to be appointed by the Governor for terms ending July 1, 1967 and every four (4) years thereafter. One (1) of the members to be appointed by the Governor shall reside in the Piedmont, one (1) shall reside in the eastern section of the State, and one (1) shall reside in the western section of the State. The Committee shall elect one (1) of its members as chairman, and the Director of the Department of Archives and History shall serve as secretary. Each ex officio member of the Committee is authorized to designate a member of his staff to represent him at meetings of the Committee. (1963, c. 210, s. 2.)

§ 121-8.2. Duties of Historic Sites Advisory Committee.—The Historic Sites Advisory Committee shall develop criteria for the evaluation of State historic sites and all real and personal property which may be considered to be of such historic or archeological importance as would justify the acquisition and ownership thereof by the State of North Carolina, acting by itself or in connection with any county, city, or town, or any group of citizens or organizations. The Committee shall also develop criteria for the evaluation of all historic or archeological properties owned by or under option to a county, city, town, non-profit corporation or organization for which State aid is requested. The Committee shall investigate and evaluate all proposed historic and archeological property for which State appropriations are suggested to determine if the property is historically authentic and significant, if it is essential to the development of a balanced program of historic sites, and if practical plans can be developed for financing, maintaining and operating the site. The Committee shall make a written report of its findings and recommendations with respect to all such historic or archeological sites which shall be filed as a matter of record in the custody of the Department of Archives and History. The report shall set out in such detail as may be necessary the amount of money which will have to be expended for the restoration of any such property and the manner and method by which the maintenance and operation should be carried on, and the sources from which funds may be derived for such purpose. (1963, c. 210, s. 2.)

§ 121-8.3. Director of Department of Archives and History to furnish copies of recommendations of Historic Sites Advisory Committee to legislative committees.—The Director of the Department of Archives and History shall furnish to the chairman of each legislative committee to which is referred any bill seeking an appropriation of funds for the purposes of acquiring, preserving, restoring, or operating any property having historic value or significance, at least five copies of the written report of the findings and recommendations of the Historic Sites Advisory Committee theretofore filed with said Department relating to the particular property or properties described in the bill. The copies of the findings and recommendations of the Historic Sites Advisory Committee shall be furnished to the legislative committee chairman or chairmen as soon as practicable. (1963, c. 210, s. 2.)

§ 121-13.1. **Preservation and custodial care of State Capitol legislative chambers.**—As soon as the General Assembly shall have moved into the new legislative building, the present legislative chambers in the Capitol shall be placed in custody of the State Department of Archives and History to be preserved as historic shrines for the edification of the present and future generations. Insofar as practicable, the aforesaid legislative chambers shall be maintained and preserved in the conditions in which they now are and shall be used exclusively for the purpose of historic shrines and as public attractions; provided, however, that the initial and final meetings of each regular or special session of the General Assembly may commence and adjourn sine die in the aforesaid legislative chambers as a ceremony in perpetuum rei memoriam.

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

ARTICLE 2.

Tryon's Palace and Tryon's Palace Commission.

§ 121-14. **Acceptance and administration of gifts for restoration of Tryon's Palace; execution of deeds, etc.**—The Department of Archives and History is hereby authorized and empowered to accept gifts of real or personal property from any source for the restoration of Tryon's Palace at New Bern, North Carolina, and administer the same. All gifts of moneys received by the Department of Archives and History shall be deposited in a special account with the Treasurer of North Carolina. The Department of Archives and History is hereby given authority to execute such deeds and other instruments as may be necessary. (1945, c. 791, s. 1; 1955, c. 543, s. 8.)

Editor's Note. — The 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development."

§ 121-15. **Authority to acquire necessary property for restoration when certain funds available.**—The Department of Archives and History is hereby authorized and directed to acquire the necessary property in New Bern, North Carolina, for the restoration of Tryon's Palace, when as much as two hundred fifty thousand dollars (\$250,000.00), or securities in said amount as provided in § 121-17, has been provided by private contributions for this purpose: Provided, that the Department of Archives and History at such time shall find that there are reasonable grounds to anticipate that from private donations there will thereafter be provided ample funds to restore the Palace. (1945, c. 791, s. 2; 1949, c. 233, s. 1; 1955, c. 543, s. 8.)

Editor's Note. — The 1949 amendment rewrote this section, and the 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development."

§ 121-16. **Acquiring lands by purchase or condemnation.**—The Department of Archives and History, within the limits and amounts appropriated by the General Assembly and such funds as may be available from donations or otherwise, when the conditions set forth in § 121-15 of this article have been met, is hereby granted the power and authority to purchase sufficient lands for the restoration of said Palace, and the said Department is hereby authorized to accept title to said lands in the name of the State of North Carolina.

The Department of Archives and History shall also have the authority to ac-

quire, by condemnation, under the provisions of chapter forty of the General Statutes of North Carolina, including the provisions of the Public Works Eminent Domain Law, which is hereby made applicable to such proceedings, such areas of land in New Bern, North Carolina, as it may find to be necessary for the restoration of said Palace. (1945, c. 791, s. 3; 1949, c. 233, s. 2; 1955, c. 543, s. 8.)

Editor's Note. — The 1949 amendment rewrote the first paragraph, and the 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development" throughout the section.

§ 121-17. Funds deposited with trustee.—The Governor as Director of the Budget shall have full authority and discretion to approve the acceptance of donations of cash or securities irrevocably deposited with a trustee in lieu of any requirement that funds provided by outside sources be turned over to the State, and funds or securities placed in trust by private donors for such purpose shall be deemed to be funds turned over to the State for acquisition and restoration of the Palace. (1945, c. 791, s. 4.)

§ 121-18. Closing streets and including area in restoration project; acquiring area originally included in palace grounds.—Whereas the said Tryon's Palace and grounds originally included all of that area in the city of New Bern known and designated as George Street between Pollock and South Front Streets, and the title thereto is in the State of North Carolina, subject to the easement for use of said street, and the use of such portion of said George Street is essential for a proper restoration of Tryon's Palace, when the governing body of the city of New Bern under its general authority imposed by law shall close George Street between Pollock and South Front Streets, or such portion thereof as may be found by the Commission herein authorized to be essential for the purposes of such restoration, the area within such closed street shall be thereafter used exclusively for the restoration of Tryon's Palace. Provided, that the Department of Archives and History is authorized and empowered, in its discretion, to acquire for the use of said Tryon's Palace such part of the area in the city of New Bern originally included in the Palace grounds as may be deemed reasonably necessary for the restoration of said Palace. (1945, c. 791, s. 5; 1949, c. 233, s. 3; 1955, c. 543, s. 8.)

Editor's Note. — The 1949 amendment added the proviso at the end of this section, and the 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development."

§ 121-19. Purpose, establishment and composition of Tryon's Palace Commission.—For the purpose of supervising the restoration of Tryon's Palace and for the supervision, management and maintenance thereof after such restoration is completed there shall be a commission, to be known and designated as Tryon's Palace Commission, acting under the general authority of the Department of Archives and History, such Commission to be composed of twenty-five persons, to serve without pay and without expense allowance, to be appointed by the Governor, and in addition to the members so appointed the Governor, the Attorney General, the Director of the Board of Conservation and Development, the Director of the Department of Archives and History, the mayor of the city of New Bern and the chairman of the board of commissioners for Craven County shall serve as ex officio members of said Commission. (1945, c. 791, s. 2; 1955, c. 543, s. 8.)

Editor's Note. — The 1955 amendment, which substituted "Department of Archives and History" for "State Board of Conservation and Development," provides that "the Director of the Department of Conservation and Development shall continue to be an ex officio member of the "Tryon's Palace Commission."

§ 121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's Palace.—In addition to exercising the powers and duties imposed upon the Tryon Palace Commission by chapter 791 of the Session Laws of 1945 and chapter 233 of the Session Laws of 1949 (§§ 121-14 to 121-19), the Tryon Palace Commission is hereby fully authorized and empowered to receive and expend and disburse, for the restoration of the said Tryon's Palace, all such funds and property which was provided for said purpose by the last will and testament of Maude Moore Latham, deceased, and the said Commission shall likewise have the power and authority to receive and expend all such other funds as may be donated or made available for the purpose of restoring the said Palace or for the purpose of furnishing and equipping same and the grounds on which the same is located at New Bern, North Carolina.

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

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

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

The Tryon Palace Commission shall have the power and authority in its discretion to call upon the Treasurer of the State of North Carolina to act as treasurer of the said funds and properties and, if so designated, said treasurer shall exercise all the powers and duties herein imposed upon the financial officer and treasurer hereinbefore referred to.

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

Editor's Note. — The third and sixth paragraphs refer to the Department of Conservation and Development. The failure to change the reference to the Depart-

ment of Archives and History was probably an inadvertence on the part of the legislature.

§ 121-21. Commission authorized to adopt and copyright certain emblems and lease or license the use of reproductions or replicas.—The Tryon Palace Commission is hereby authorized to adopt an official flag, seal, and other emblems appropriate in connection with the management and operation of the Tryon Palace Restoration, and to copyright the same in the name of the State. The Commission, with the approval of the Governor, is authorized to lease or license the use of reproductions or replicas of such flag, seal, and other emblems upon such terms and conditions as it deems advisable. (1957, c. 1449.)

Chapter 122.

Hospitals for the Mentally Disordered.

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ARTICLE 1.

Organization and Management.

§ 122-1. **Creation of State Department of Mental Health; jurisdiction; transfer of proceedings, appropriations and records.**—There is hereby created a department of State government to be known as the State Department of Mental Health. The State Department of Mental Health is to have jurisdiction over all of the State's mental hospitals, all of the State's residential centers for the mentally retarded, and joint State and community sponsored mental health clinics. The Department is to have authority and responsibility over all phases of mental health in North Carolina to the extent provided in this chapter including that heretofore vested by law in the State Hospitals Board of Control and in all other State agencies with respect to mental health. Any proceedings pending on June 24, 1963, before the Hospitals Board of Control, or the State Board of Health regarding mental health clinics, or the State Board of Public Welfare regarding the licensing of privately operated mental hospitals or institutions, shall not be abated but shall be automatically transferred to the State Department of Mental Health and shall be conducted in accordance with the provisions of the law governing such proceedings. All unexpended appropriations made to the State Board of Health for the operation of mental health clinics are hereby transferred to the Department of Mental Health. All records, files, and other papers belonging to the State Hospitals Board of Control, the State Board of Health regarding mental health clinics and the State Board of Public Welfare relating to the licensing of privately operated hospitals and institutions, shall be continued as a part of the records and files of the Department of Mental Health. (1963, c. 1166, s. 3.)

Editor's Note.—Former § 122-1 was re-designated by Session Laws 1963, c. 1166, s. 2, as § 122-7. Section 3 of the 1963 act added present § 122-1.

§ 122-1.1. **Creation of State Board of Mental Health; appointment of members; terms of office; removal; vacancies; organization; powers and duties; compensation.**—There is hereby created a policy-making body within and for the State Department of Mental Health which shall be known as the State Board of Mental Health. The State Board of Mental Health shall consist of fifteen members appointed by the Governor. In order that all sections of the State shall have representation on said Board, the Governor shall name one member from each congressional district of the State and the remaining members at large. The initial members of the State Board of Mental Health shall be the persons serving on the State Hospitals Board of Control immediately prior to June 24, 1963. The initial members shall serve for the duration of the terms to which they were appointed to the Hospitals Board of Control. Upon the expiration of their terms, the members of the State Board of Mental Health shall be appointed as follows: The appointments to fill the three vacancies occurring in 1963 shall be for a term of four (4) years; the appointments to fill two of the three vacancies occurring in 1964 shall be for a term of three (3) years, and the appointment to fill one of the vacancies occurring in 1964 shall be for a term of five (5) years; the appointments to fill four of the six vacancies occurring in 1965 shall be for a term of four (4) years, and the appointments to fill two of the six vacancies occurring in 1965 shall be for a term of six (6) years; and, the appointments to fill the three vacancies occurring in 1966 shall be for a term of five (5) years. Thereafter all appointments shall be for a term of six

(6) years. At least two of the members shall be persons duly licensed to practice medicine in North Carolina.

Members of the State Board of Mental Health shall serve for terms as prescribed above and until their successors are appointed and qualified. The Governor shall have the power to remove any member of the Board from office for misfeasance, malfeasance, or nonfeasance. All vacancies occurring for any reason other than the expiration of a member's term are to be filled by appointment of the Governor for the unexpired term.

The Board is authorized to meet and organize and shall, from their number, select a chairman and one or more vice-chairmen. The Board may also elect a secretary who may or may not be a member of the Board.

The Board shall determine policies and adopt necessary rules and regulations governing the operation of the State Department of Mental Health and the employment of professional and staff personnel. The State Board of Mental Health, by and with the approval of the Governor, may terminate for cause the services of any employee appointed for a specific length of time. In the event of any such termination, severance pay shall be adjusted by the Governor and the Advisory Budget Commission. In addition, the Board is authorized to establish, subject to the approval of the Director of the Budget and the Advisory Budget Commission, new divisions within the Department.

Members of the Board are to be reimbursed for travel expenses and paid a per diem in accordance with the biennial Appropriations Act. (1963, c. 1166, s. 3.)

Editor's Note.—See note to § 122-7.1.

§ 122-1.2. Powers and duties of Department.—All the powers and duties vested in the State Hospitals Board of Control immediately prior to June 24, 1963, are hereby transferred and vested in the State Department of Mental Health, to be carried out pursuant to the policies of the State Board of Mental Health. In addition to these transferred powers and duties, and all other powers and duties of the Department as specified in the General Statutes of North Carolina, the Department shall have the following general powers and duties:

- (1) The Department shall cooperate with the State's correctional and penal institutions by providing psychiatric and psychological service for students, inmates, and for inmates scheduled for parole. In addition to the regular full-time employees of the Department, the Department is authorized to employ part-time professional staff to perform this work. Funds for the payment of these services shall be made available by the respective departments, or, if not available, from those departments, from an allotment by the Governor and the Council of State from the Contingency and Emergency Fund.
- (2) The Department shall cooperate with any local health authorities in augmenting, promoting, and improving local residential programs for the mentally retarded, mentally ill, and inebriate.
- (3) The Department shall cooperate with the State Board of Education, State Department of Public Instruction, the State Board of Health, and the State Commission for the Blind in rehabilitation services for mentally retarded persons through education and training programs.
- (4) The Department shall cooperate with the State Board of Public Welfare and the State Board of Health in their programs of preventive and rehabilitative services through home care and maternal and child health.
- (5) The Department shall sponsor and carry out training and research in the field of mental retardation, mental illness, and inebriety; provided, however, that nothing in this subdivision should prohibit any

other agency or institution now engaged in such programs from carrying out training and research in the field of mental retardation, mental illness, and inebriety.

- (6) The Department of Mental Health and the local mental health clinics shall cooperate with the Development Evaluation Clinics and the Child Health Supervisory Clinics in their work relating to retarded children. (1963, c. 1166, s. 3.)

Editor's Note.—See note to § 122-7.2.

§ 122-1.3. Commissioner of Mental Health.—The State Board of Mental Health shall appoint, with the approval of the Governor, a Commissioner of Mental Health who shall serve for a term of six (6) years and who shall be the chief executive of the State Department of Mental Health. Subject to the supervision, direction and control of the State Board of Mental Health, the Commissioner shall administer the policies, rules and regulations established by the Board. The Commissioner shall be a medical doctor duly licensed in North Carolina with approved training and experience in psychiatry. The salary of the Commissioner shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Commissioner shall devote his full time to the duties of his employment as Commissioner of Mental Health.

The Board shall provide the Commissioner with such stenographic and clerical assistance as it may deem necessary. Upon request of the Board, the Department of Administration shall provide suitable office space in the city of Raleigh for the Commissioner. (1963, c. 1166, s. 3.)

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

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

The general business manager shall be employed for a period of six (6) years from the time of his selection, unless sooner removed by the Board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no other office or position of employment.

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

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

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

§ 122-2. **Power to acquire and hold property.**—Broughton Hospital, Cherry Hospital, Dorothea Dix Hospital, and the John Umstead Hospital, and any institution established, operated and maintained by the North Carolina State Department of Mental Health, may each acquire and hold, for the purpose of its institution, real and personal property by devise, bequest, or by any manner of gift, purchase or conveyance whatsoever. (1899, c. 1, s. 2; Rev., s. 4543; C. S., s. 6152; 1947, c. 537, s. 3; 1955, c. 887, s. 2; 1959, c. 348, s. 2; c. 1002, s. 2; c. 1028, ss. 1-4; 1963, c. 1166, s. 10.)

Editor's Note.—

The 1959 amendments changed the names of the State Hospital at Morganton, the State Hospital at Goldsboro, the State Hospital at Raleigh and the State Hospital at Butner to Broughton Hospital, Cherry

Hospital, Dorothea Dix Hospital and John Umstead Hospital, respectively.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-2.1. **Power to acquire and hold property conveyed by federal government.**—The North Carolina State Department of Mental Health shall be and is authorized and empowered to accept, acquire and hold any real or personal property conveyed to it by an agency of the federal government with such revisionary restrictions imposed upon it by federal statute. The North Carolina State Department of Mental Health may use and maintain such property in the same manner as if it held title in fee simple, and may construct such buildings upon it as are necessary to accomplish the purposes of the institution. (1947, c. 537, s. 4; 1963, c. 1166, s. 10.)

Editor's Note. — The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-3. **Authority of North Carolina State Department of Mental Health as to admission of patients; how commitments made.**—The North Carolina State Department of Mental Health shall have the authority to establish rules and regulations not contrary to law governing the admission of persons to any State hospital or other institution under its control which is now or may hereafter be established. Clerks of superior court of the several counties of the

State may make commitments to such institutions in the same manner now provided by law for the several State hospitals and training schools.

The North Carolina State Department of Mental Health is hereby given authority to admit certain classes of patients to any one of the institutions under its control and shall notify the clerks of superior court of its action. Sections 116-129 through 116-137 shall apply to colonies for feeble-minded persons and to feeble-minded persons held in any colonies providing that § 116-135 shall apply only to Caswell School. (C. S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 5; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, s. 10.)

Editor's Note.—

The 1959 amendments changed the names of the State Hospital at Raleigh, the State Hospital at Morganton, the State Hospital at Butner, the State Hospital at Goldsboro and Caswell Training School to Dorothea Dix Hospital, Broughton Hospital, the John Umstead Hospital, Cherry Hospital and Caswell School, respectively. The second 1959 amendment also deleted, in the former first paragraph, the word "epileptic" in reference to colored persons to be treated at Cherry Hospital, deleted a former second paragraph relating to care of white epileptics, and substituted "training schools" for "Caswell Training School" at the end of the present first paragraph.

The first 1963 amendment deleted the former first paragraph, which provided that Dorothea Dix, Broughton and John Umstead Hospitals should be exclusively for white persons and Cherry Hospital should be exclusively for colored persons.

The second 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

Sections 116-129 to 116-137, referred to in this section, were repealed by Session Laws 1963, c. 1184, s. 7, effective July 1, 1963. For present provisions as to centers for mentally retarded, see article 9 of this chapter.

§ 122-4. Division of territory among the several institutions under the North Carolina State Department of Mental Health.—It shall be the duty of the North Carolina State Department of Mental Health to designate territories for Dorothea Dix Hospital, Broughton Hospital and any State hospitals or institutions now or hereafter established for the admission of the white mentally disordered persons of the State, with authority to change said territories when deemed necessary. It shall notify the clerks of superior court of the counties of the territories designated and of any change of these territories. (C. S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 6; 1959, c. 1028, ss. 1, 3; 1963, c. 166, s. 10.)

Editor's Note.—

The 1959 amendment changed the names of the State Hospital at Raleigh and the State Hospital at Morganton to Dorothea Dix Hospital and Broughton

Hospital, respectively.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-5. Care and treatment of Indians in mental hospitals.—The authorities of Dorothea Dix Hospital and Broughton Hospital may also receive for care and treatment mentally disordered, and inebriate Indians who are resident within the State, and who may, within the discretion of the superintendent, be assigned to any of the wards of the hospital. (1919, c. 211; C. S., s. 6154; 1945, c. 952, s. 10; 1947, c. 537, s. 7; 1959, c. 1002, s. 4; c. 1028, ss. 1, 3.)

Editor's Note.—

The first 1959 amendment deleted the word "epileptic" formerly following "mentally disordered" in line three. And the second 1959 amendment changed the

names of the State Hospital at Raleigh and the State Hospital at Morganton to Dorothea Dix Hospital and Broughton Hospital, respectively.

§ 122-6. Care of epileptics who are mentally disordered.—Whenever it becomes necessary for any person of this State afflicted with the disease

known as epilepsy and who is mentally disordered to be confined or to receive hospital treatment, such person shall be committed by the clerks of superior court of the several counties in the manner now provided by law for the commitment of mentally disordered persons to the several hospitals for the mentally disordered. The North Carolina State Department of Mental Health is hereby given the authority to admit to any of the State institutions under its control epileptics who are mentally disordered.

Charges for the patients shall be made in the same manner as now provided by law for care of mentally disordered persons. (1909, c. 910, ss. 1, 2; C. S., s. 6155; 1945, c. 952, s. 11; 1947, c. 537, s. 8; 1957, c. 1232, s. 2; 1959, c. 1002, s. 5; 1963, c. 1166, s. 10.)

Editor's Note.—

The 1959 amendment struck out the former last three sentences of the first paragraph and inserted in lieu thereof the present second sentence.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-7. Incorporation and names of hospitals.—The hospital for the mentally disordered, located near Morganton, shall be and remain a corporation under this name: Broughton Hospital. The hospital for the mentally disordered, located near Raleigh, shall be and remain a corporation under this name: Dorothea Dix Hospital. The hospital for the mentally disordered, located near Goldsboro, shall be and remain a corporation under this name: Cherry Hospital. The hospital for the mentally disordered located near Butner shall be and remain a corporation under this name: John Umstead Hospital. The North Carolina State Department of Mental Health shall be authorized to acquire property and to establish, operate and maintain thereon a hospital or institution and to exercise with respect to such hospital or institution the same property rights and powers as are exercised by it with respect to the State hospitals above referred to. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had. (Code, ss. 2227, 2240; 1899, c. 1, s. 1; Rev., s. 4542; C. S., s. 6151; 1945, c. 952, s. 8; 1947, c. 537, s. 2; 1955, c. 887, s. 1; 1959, c. 348, s. 1; c. 1002, s. 1; c. 1028, ss. 1-4; 1963, c. 1166, ss. 2, 10.)

Cross Reference.—As to John Umstead Hospital, see §§ 122-92 through 122-98.

Editor's Note.—This section was formerly § 122-1. Former § 122-7 was repealed by Session Laws 1963, c. 1166, s. 1. Section 2 of the 1963 act redesignated former § 122-1 as § 122-7.

The 1945 amendment substituted "mentally disordered" for "insane." Prior to section 7 of the amendatory law the title of this chapter was "Hospital for the Insane."

The 1947 amendment inserted the fifth sentence relating to Hospitals Board of Control.

The 1955 amendment inserted the fourth sentence, relating to the State Hospital at Butner.

Chapter 537 of Session Laws 1947, which amended or inserted various sections of this article, provides in section 1: "The purposes of this act shall be to authorize

the North Carolina Hospitals Board of Control to acquire Camp Butner to establish there an institution similar to the other State hospitals and a colony of feeble-minded. To authorize the transfer thereof patients and children from the other institutions under the North Carolina Hospitals Board of Control. To authorize the transfer of patients or inmates between the institutions under the control of the North Carolina Hospitals Board of Control, and to authorize rules and regulations in regard to admission of persons to these institutions. To simplify the commitment laws for State hospitals; also to provide for release, discharge and termination of commitment of patients. To authorize the North Carolina Hospitals Board of Control to establish requirements for care in State hospitals of this State and to make reciprocal agreements with other states in this regard, and to authorize the interstate

transfer of mental patients. To provide a means to obtain authority for emergency life-saving operations on inmates of State institutions, when the family cannot be reached and permission obtained."

The 1959 amendments changed the names of the State Hospital at Morganton, the State Hospital at Raleigh, the

State Hospital at Goldsboro and the State Hospital at Butner to Broughton Hospital, Dorothea Dix Hospital, Cherry Hospital and John Umstead Hospital, respectively.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control" in the fifth sentence.

§ 122-7.1. Other mental health facilities for treatment of alcoholism; State alcoholic rehabilitation program; community alcoholism programs.—(a) The North Carolina State Board of Mental Health shall be and hereby is empowered to set up on property now held or hereafter acquired mental health facilities for the care and treatment of persons suffering from alcoholism. It is authorized to establish rules and regulations for the admission, care, and treatment of such persons, and to determine costs, and to set rates for the maintenance of these persons. The North Carolina State Board of Mental Health may itself operate such facilities directly, or in co-operation with the State Board of Alcoholic Control, or may delegate such operation. The State Board of Health and the State Department of Public Welfare shall act in an advisory capacity in the operation of these facilities.

(b) The State alcoholic rehabilitation program, an agency of the State Board of Mental Health, is designated as the State agency authorized to establish and administer minimum standards for local community alcoholism programs as a condition for participation in the State grants-in-aid.

The State alcoholic rehabilitation program is authorized to develop and promote local community alcoholism programs in accordance with the State policy hereafter expressed:

- (1) It shall be the policy of the State alcoholic rehabilitation program to aid financially the development of local community alcoholism programs only in those communities which have manifested a readiness to contribute to the financial support of such programs, assisted by State grants-in-aid to the extent available.
- (2) It shall be the policy of limiting such grants-in-aid to any community program to a period of two years.

Nothing in this subsection shall be construed to prohibit or limit or encroach upon the operation of community alcoholism programs in existence prior to June 22, 1961. (1949, c. 1206, s. 1; 1961, c. 1173, ss. 1, 2, 4; 1963, c. 1166, ss. 2, 12.)

Editor's Note.—This section was formerly § 122-1.1. Subsection (a) was derived from Session Laws 1949, c. 1206, s. 1, and subsection (b) from Session Laws 1961, c. 1173, ss. 1, 2, 4.

Session Laws 1963, c. 1166, s. 2, redesignated former §§ 122-1.1 and 122-1.2 as §§ 122-8.1 and 122-8.2. However, Session Laws 1955, c. 887, s. 12, already was codi-

fied as § 122-8.1. Therefore, §§ 122-1.1 and 122-1.2 are redesignated herein as §§ 122-7.1 and 122-7.2, respectively.

The 1963 amendment substituted "State Board of Mental Health" for "Hospitals Board of Control."

For appropriation to the State alcoholic rehabilitation program, see Session Laws 1961, c. 1173, s. 3.

§ 122-7.2. Establishment and operation of Western Carolina Training School; change of name.—Subject to the availability of funds, the North Carolina State Department of Mental Health is hereby authorized to purchase, construct or otherwise acquire, operate and maintain a training school for mentally retarded children to be known as the Western Carolina Training School. The North Carolina State Department of Mental Health is authorized in its discretion to change the name herein prescribed, by appropriate resolution of the Department, to such other suitable name as it may deem desirable. The Department is authorized to establish rules and regulations for the admission, care, and treatment of such persons, and to determine costs, and to set rates for the main-

tenance of these persons. The North Carolina State Department of Mental Health may itself operate such facilities directly or may delegate such operation. The State Board of Health and the State Department of Public Welfare shall act in an advisory capacity in the operation of these facilities. (1959, c. 1008; 1961, c. 513; 1963, c. 1166, ss. 2, 10.)

Editor's Note.—This section was formerly § 122-1.2. Session Laws 1963, c. 1166, s. 2, redesignated former §§ 122-1.1 and 122-1.2 as §§ 122-8.1 and 122-8.2. However, Session Laws 1955, c. 887, s. 12, already was codified as § 122-8.1. Therefore, §§ 122-1.1 and 122-1.2 are redesignated herein as §§ 122-7.1 and 122-7.2, respectively.

The 1961 amendment inserted the second sentence.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control" and "Department" has been substituted for "Board."

§ 122-8: Repealed by Session Laws 1963, c. 1166, s. 1.

§ 122-8.1. **Disclosure of information, records, etc.**—No superintendent, physician, psychiatrist or any other officer, agent or employee of any of the institutions or hospitals under the management, control and supervision of the North Carolina State Department of Mental Health shall be required to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating an inmate or patient of said institutions or hospitals in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said inmate or patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure: Provided that where a person or persons are defendants in criminal cases and a mental examination of such defendants has been ordered by the court, the North Carolina State Department of Mental Health through its agents and officers may transmit the results or the report of such mental examination to the clerk of said court and to the solicitor or prosecuting officer and to the attorney or attorneys of record for the defendant or defendants. (1955, c. 887, s. 12; 1963, c. 1166, s. 10.)

Cross Reference.—For later provisions similar to this section, see § 122-52.

Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

Editor's Note. — Pursuant to Session

§ 122-9. **Building committee; selection; duties.**—It shall be the duty of the State Board of Mental Health herein provided for to select and appoint from its number a building committee, who shall be specially charged with the duty of supervision of the buildings to be built or repaired from appropriations made to said institutions by the General Assembly of this State. (1921, c. 183, s. 4; C. S., s. 6159(c); 1943, c. 136, s. 4; 1963, c. 1166, s. 13.)

Editor's Note.—

The 1963 amendment substituted "State

Board of Mental Health" for "board of directors."

§ 122-11. **Meetings of Board.**—The State Board of Mental Health shall convene annually at each of the institutions enumerated in § 122-7 at a time to be fixed by such Board and at such other times as it shall appoint, and investigate the administration and condition of said institutions. (1899, c. 1, s. 8; Rev., s. 4450; 1917, c. 150, s. 1; C. S., s. 6161; 1943, c. 136, s. 5; 1963, c. 1166, s. 13.)

Editor's Note.—

The 1963 amendment substituted "State

Board of Mental Health" for "board of directors."

§§ 122-11.1 to 122-11.3: Repealed by Session Laws 1963, c. 1166, s. 1.

§ 122-11.4. **Monthly reports to Commissioner of Mental Health.**—The superintendent of each of said institutions shall make monthly reports to the Commissioner of Mental Health in such manner and detail as the North

Carolina State Department of Mental Health may prescribe. (1943, c. 136, s. 8; 1959, c. 1002, s. 10; 1963, c. 1166, s. 10.)

Editor's Note.—

The 1959 amendment substituted "Commissioner of Mental Health" for "General Superintendent of Mental Hygiene" and "North Carolina Hospitals Board of Control" for "board of directors".

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-11.6. Outpatient mental hygiene clinics.—The North Carolina State Department of Mental Health is authorized to establish, in its discretion, outpatient mental hygiene clinics at any of the institutions under its control, and to operate such outpatient facilities as are essential for its inservice training program in psychiatric care and treatment. (1943, c. 136, s. 11; 1955, c. 155, s. 2; 1963, c. 1166, s. 10.)

Editor's Note.—

The 1963 amendment substituted "State

Department of Mental Health" for "Hospitals Board of Control."

§§ 122-11.7, 122-11.8: Repealed by Session Laws 1963, c. 1166, s. 1.

§ 122-12. Bylaws and regulations.—The State Board of Mental Health shall make all necessary bylaws and regulations for the government of each of said institutions, among which regulations shall be such as shall make the institutions as nearly self-supporting as is consistent with the purpose of their creation. (1899, c. 1, s. 14; Rev., s. 4551, 1917, c. 150, s. 1; C. S., s. 6162; 1943, c. 136, s. 10; 1963, c. 1166, s. 13.)

Editor's Note.—

The 1963 amendment substituted "State

Board of Mental Health" for "board of directors."

§ 122-13. Transfer of patients from one hospital to another; transfer of funds.—The North Carolina State Board of Mental Health is authorized to make such rules and regulations as in its discretion may seem best for the transfer of patients from one State hospital or institution under its control to another State hospital or institution under its control; and it is further authorized and empowered to transfer from one State hospital for the mentally disordered any funds appropriated for permanent improvement or maintenance, if in their discretion and judgment it may become advisable or necessary. (1919, c. 330; C. S., s. 6163; 1947, c. 537, s. 9; 1963, c. 1166, s. 12.)

Editor's Note.—

The 1963 amendment substituted "State

Board of Mental Health" for "Hospitals Board of Control."

§ 122-13.1. Transfer of patients from Psychiatric Training and Research Center at Chapel Hill to State hospital or institution under control of North Carolina State Department of Mental Health.—When it is deemed desirable that any patient of the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital at Chapel Hill be transferred to a State hospital or institution under the control of the North Carolina State Department of Mental Health such a transfer may be effected upon the approval of the superintendent of the appropriate State hospital and the recommendation of the Director of the Inpatient Service of the Psychiatric Training and Research Center. A certified copy of the commitment on file at the Psychiatric Training and Research Center and the order of the Director of the Inpatient Service shall be sufficient warrant for holding the mentally disordered person by the officials of the appropriate State hospital. (1955, c. 1274, s. 1; 1963, c. 1166, s. 10.)

Editor's Note.— The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-14. **Delivery of inmates to federal agencies.**—The directors and superintendents of the several State hospitals are hereby authorized, empowered and directed to transfer and deliver to the United States Veterans Bureau or other appropriate department or bureau of the United States government or to the representatives or agents of such Veterans Bureau or other department or bureau of said government, all inmates or prisoners, being soldiers or sailors who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said hospitals. And said directors and superintendents shall take from such Veterans Bureau or other department or bureau of said government, or its duly accredited representatives or agents, receipts or acknowledgments showing the delivery of such inmates or prisoners so transferred to the United States government for the purpose of treatment under the laws and regulations of said government with respect to insane persons who have served in the military or naval forces of the United States. (1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 623, s. 1; 1953, c. 675, s. 15; 1959, c. 1002, s. 11.)

Editor's Note.—

The 1959 amendment substituted in line two the words "several State hospitals"

for the words "State Hospital at Raleigh, the State Hospital at Morganton and the State Hospital at Goldsboro."

§ 122-15. **Transfer of inmates to general wards.**—The directors and superintendents of Dorothea Dix Hospital and Cherry Hospital are hereby authorized, empowered and directed to transfer from the wards in said hospitals set apart for the dangerous insane to the general wards any of the inmates or prisoners therein who, in the judgment of said directors and superintendents, have reached such a state of improvement in their mental condition as to justify such transfer. (1925, c. 51, s. 2; 1959, c. 1028, ss. 1, 2.)

Editor's Note. — The 1959 amendment changed the names of the State Hospital at Raleigh and the State Hospital at

Goldsboro to Dorothea Dix Hospital and Cherry Hospital, respectively.

§ 122-16. **Board may make ordinances; penalties for violation.**—Authority is hereby conferred upon the State Board of Mental Health of the State hospitals for the insane and upon the board of directors and superintendent of the North Carolina School for the Deaf to enact ordinances for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder, and when adopted the ordinances shall be recorded in the proceedings of the said Board and printed, and a copy posted at the entrance to the grounds, and not less than three copies posted at different places within the grounds, and when so adopted and printed, and posted up, the ordinances shall be binding upon all persons coming within the grounds. Such boards are empowered and directed to prescribe penalties for the violation of each section of the ordinances so adopted, and if any person violates a section of the ordinances, the penalty prescribed may be recovered in a civil action instituted in the name of the hospital against the person offending, before any justice of the peace in the county in which the hospital is situated, and the sum so recovered shall be used as the State Board of Mental Health shall direct. Violation of any ordinances so made shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (1899, c. 1, s. 54; 1901, c. 627; Rev., ss. 3695, 4559; 1915, c. 14, s. 2; 1917, c. 150, s. 1; C. S., s. 6164; 1963, c. 1166, s. 13.)

Editor's Note.—The 1963 amendment substituted "State Board of Mental Health" for "board of directors" preceding "of the State hospitals."

§ 122-17. **Executive committee appointed.** — The State Board of Mental Health shall, out of their number, appoint five members as an executive committee, who shall hold their respective offices as such for one year, and shall have such powers and be subject to such duties as the State Board of

Mental Health may delegate to them. (1899, c. 1, s. 6; Rev., s. 4548; 1917, c. 150, s. 1; C. S., s. 6165; 1945, c. 925, s. 6; 1963, c. 1166, s. 13.)

Editor's Note.— Board of Mental Health” for “board of directors.”
The 1963 amendment substituted “State

§ 122-19. **Application of funds belonging to hospitals.**—All moneys and proceeds of property given to any hospital, and all moneys arising from the sale of any real estate which may be owned by such hospital shall be paid into the State treasury, and all donations in which there shall be special directions for their application shall be kept as a distinct fund and faithfully applied, as the donor may have directed; and the same hospital shall be supported by appropriations from the State treasury. But the proceeds arising from the sale of personal property belonging to a hospital, the board paid by private patients, rentals from real estate, and money from any other sources, except the sale of real estate, shall remain with the hospital and be used as the State Board of Mental Health may determine. An account of the proceeds of all such income and its expenditures shall be carefully kept and published in the report to the General Assembly. (1899, c. 1, s. 34; Rev., s. 4552; C. S., s. 6167; 1963, c. 1166, s. 13.)

Editor's Note.— The 1963 amendment substituted “State Board of Mental Health” for “board of directors.”

§ 122-19.1: Repealed by Session Laws 1963, c. 668, s. 4, effective July 1, 1963.

§ 122-20. **Board of Public Welfare and General Assembly, visitors; Board to make report.**

Cross Reference.—For later provisions similar to this section, see § 122-53.

§ 122-23. **Assisting inmate to escape; misdemeanor.**

Cross Reference.—For later provisions similar to this section, see § 122-54.

ARTICLE 2.

Officers and Employees.

§ 122-24. **Directors, superintendents and staff members not personally liable.**—No director or superintendent or any staff member under the supervision and direction of the director or superintendent of any State hospital shall be personally liable for any act or thing done under or in pursuance of any of the provisions of this chapter. (1899, c. 1, s. 31; Rev., s. 4560; C. S., s. 6172; 1961, c. 511, s. 1.)

Editor's Note.—The 1961 amendment inserted in this section the words “or any staff member under the supervision and direction of the director or superintendent.”

§ 122-25. **Superintendents and business managers of hospitals and residential centers for the retarded; medical and rehabilitation personnel.**—The Commissioner of Mental Health, with the approval of the State Board of Mental Health, shall appoint a medical superintendent for each hospital. The medical superintendent shall be a medical doctor duly licensed in North Carolina with approved training and experience in psychiatry. The appointment shall be for a term of six (6) years. The Commissioner of Mental Health shall also, with the approval of the State Board of Mental Health, appoint for a term of six (6) years a superintendent of each residential center for the retarded. Such superintendent shall be a medical doctor duly licensed by the

State of North Carolina with approved training and experience in pediatrics or psychiatry.

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

The business manager of each State mental hospital or each residential center for the retarded shall be appointed by the general business manager with the approval of the State Board of Mental Health. The business manager of each institution should be a person of demonstrated executive and business ability who has had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and who is a person of good character and otherwise qualified to discharge his duties. (1899, c. 1, s. 69; Rev., s. 4561; 1917, c. 150, s. 1; C. S., s. 6173; 1963, c. 1166, s. 4.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 122-28. Officers and employees not to accept outside compensation; exceptions.—No physician or doctor employed by the Department of Mental Health shall receive any compensation, other than that paid by the State or local community, except when so authorized by the Department of Mental Health. (1899, c. 1, s. 10; Rev., s. 4564; C. S., s. 6176; 1957, c. 1232, s. 9; 1963, c. 1166, s. 5.)

Editor's Note.—

The 1963 amendment rewrote this section, which formerly related to appointment and removal of physicians.

§ 122-31. Salaries of superintendent and employees. — The State Board of Mental Health shall fix the salaries and compensation of the superintendent, and the officers and employees whose services may be necessary for the management of the hospitals under charge of said Board. The salaries shall not be diminished during the term of the incumbents. (1899, c. 1, s. 12; Rev., s. 4567; 1917, c. 150, s. 1; C. S., s. 6179; 1953, c. 256, s. 2; 1963, c. 1166, s. 13.)

Editor's Note.—

The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

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

Editor's Note.—The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

§ 122-33. Superintendent or business manager may appoint employees as policemen, who may arrest without warrant.—The superintendent or business manager of each hospital and training school and the superintendent of the North Carolina School for the Deaf are empowered to appoint such number of discreet employees of their respective hospitals or schools as they may think proper, special policemen, and within the grounds of such hospital or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the State law or the ordinances of that hospital or school, in their presence, and within the grounds of their hospital or school, and carry the offenders before some justice of the peace for trial.

The justice of the peace shall issue a warrant and proceed as in other criminal cases before him. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C. S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12.)

Editor's Note.—

The 1959 amendment rewrote the first sentence of this section.

§ 122-34. Oath of special policemen.—Before exercising the duties of a special policeman, the employees appointed, as in the preceding section, shall take an oath of office before some justice of the peace of the county, or other officer empowered to administer oaths, and the same shall be filed with the records of the State Department of Mental Health. The oath of office shall be as follows:
State of North Carolina, County.

I,, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special policeman in and for the State hospital at, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said hospital, and to suppress nuisances, and to suppress and prevent disorderly conduct within said grounds. So help me, God.

Sworn and subscribed before me, this day of, A. D. (1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C. S., s. 6182; 1963, c. 1166, s. 11.)

Editor's Note.—The 1963 amendment substituted "State Department of Mental Health" for "board of directors."

§ 122-35. Volunteer firemen among employees rewarded.—The State Department of Mental Health shall have power to provide benefits, to be paid to any employee of the hospital who shall be injured while discharging the duties of a volunteer fireman. And the Board may inaugurate a system by which a fund is raised to provide suitable benefits for said firemen, and may contribute from the funds of the hospital for that purpose. The volunteer firemen at the various hospitals shall not share in the State Firemen's Relief Fund. (1899, c. 1, s. 59; Rev., s. 4571; 1917, c. 150, s. 1; C. S., s. 6183; 1963, c. 1166, s. 11.)

Editor's Note.—The 1963 amendment substituted "State Department of Mental Health" for "board of directors."

ARTICLE 2A.

Local Mental Health Clinics.

§ 122-35.1. Designation of State Department of Mental Health as State's mental health authority; outpatient mental health clinics; support of local mental health clinics authorized.—The State Department of Mental Health is hereby designated as the State's mental health authority for purposes of administering federal funds allotted to North Carolina under the provisions of the National Mental Health Act and similar federal legislation pertaining to mental health activities. The State Department of Mental Health is further designated as the State agency authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in federal-State grants-in-aid, and is authorized to promote and develop community mental health outpatient clinics in accordance with the provisions of this chapter: Provided, that nothing in this chapter shall be construed to prohibit the operation of outpatient mental health clinics by the State Department of Mental Health at any of the institutions under the control of the State Department of Mental Health, or the operation of an outpatient mental health clinic at the North Carolina Memorial Hospital in Chapel Hill or at any other hospital acceptable to the State Department of Mental Health.

It shall be the policy of the State Department of Mental Health to promote the establishment of mental health clinics in those localities which have shown a readiness to contribute to the financial support of such clinics, assisted by the federal and State grants-in-aid to the extent available.

The governing authorities of local governmental units are authorized to appropriate funds for the support or partial support of mental health clinics which serve such localities whether or not the facilities of the clinic are physically located within the boundaries of such cities, towns, or counties, and whether or not such clinics are owned or operated by the local governmental units, and such support or partial support is hereby declared to be a necessary expense within the meaning of Article VII, § 7 of the North Carolina Constitution. The funds so appropriated may be included as an appropriation in the general fund of the local governmental unit, or may, in the case of a county, be included in the special tax levied for the preservation and promotion of the public health. (1963, c. 1166, s. 6.)

Editor's Note.—Former § 122-35.1 was redesignated by Session Laws 1963, c. 1166, s. 2, as § 122-36. Section 6 of the 1963 act added article 2A, including present § 122-35.1, to this chapter. See Editor's note to § 122-36.

§ 122-35.2. Duties of Community Mental Health Services Division.

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

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

—The Department of Mental Health is authorized to establish community mental health services within a framework of policies which provide for the joint operation of mental health clinics within local communities which agree to participate financially and otherwise in the program. This is to be a partnership arrangement in which the Department of Mental Health represents the State of North Carolina and a local mental health authority represents the community. The Department of Mental Health, through the Community Mental Health Services Division, is authorized to maintain standards for local mental health clinics, to advise agencies interested in community mental health, and cooperate with other local health services. (1963, c. 1166, s. 6.)

§ 122-35.4. Local mental health authorities. — Local mental health services, when approved by the Department of Mental Health, may be established by (i) any board of county commissioners, (ii) any governing body of a municipality with a population in excess of 25,000 or (iii) any independent community agency interested in mental health. The governmental unit or agency establishing the local mental health service shall be known as a "local mental health authority." The local mental health authority may establish or designate an advisory board. (1963, c. 1166, s. 6.)

§ 122-35.5. Joint county and city mental health services. — Joint mental health services may be established by: (i) Two or more counties, (ii) a combination of two or more cities with a combined population in excess of 25,000 or (iii) a combination of one or more cities with one or more counties.

Joint mental health services may be jointly operated, or one participating city or county may contract to provide said services for any other city or county. The costs of joint services are to be apportioned among the participating units

on the basis of the population of each participating unit. The local governmental units establishing the joint mental health services shall be known as the "local mental health authority." (1963, c. 1166, s. 6.)

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

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

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

§ 122-35.7. Supervision of local clinics; clinical directors.—Each clinic established pursuant to the provisions of this article must be operated under the supervision of the State Department of Mental Health. There must be a residential clinical director of each clinic who shall be responsible for its administration. The clinical director shall be a medical doctor duly licensed by the State of North Carolina with adequate training and experience in psychiatry acceptable to the Commissioner of Mental Health. (1963, c. 1166, s. 6.)

§ 122-35.8. Appointment of local clinical directors and staff.—The local mental health authority shall appoint, subject to the approval of the Commissioner of Mental Health, the clinical director of the local mental health clinic. The director of the clinic shall appoint all members of the staff of the clinic. (1963, c. 1166, s. 6.)

§ 122-35.9. Physical property to be furnished by local or federal authorities.—All real estate, buildings, and equipment necessary to the operation of the local mental health clinic must be supplied from local or federal funds or both, and such property shall be and remain the property of the local mental health authority. (1963, c. 1166, s. 6.)

§ 122-35.10. Fees for services. — The collection of fees for services performed in the child-guidance clinic shall be optional with the local mental health authority. The local clinics serving adult persons shall provide for the collection of fees from individuals accepted for services who are able to pay for such services. No person is to be refused services because of the inability to pay the fees. The fees to be charged are to be fixed by the local mental health authority and all funds so collected shall be utilized for the fiscal operation of the local mental health authority. (1963, c. 1166, s. 6.)

§ 122-35.11. Local funds for mental health clinics.—The local mental health authority shall be responsible for obtaining the necessary local funds for the support of the clinic. All such funds are to be placed under the direction of the local mental health authority and are to be used for the purchase of land, buildings, equipment, secretarial services, supplies, maintenance, and to pay the professional staff. (1963, c. 1166, s. 6.)

§ 122-35.12. Grants-in-aid to local mental health authorities. — From State and federal funds available to the Department of Mental Health, the Department is to make grants-in-aid to the local mental health authorities as

follows: Two thirds of the first thirty thousand dollars (\$30,000) of the approved budget of the local mental health authority and one half of the remainder of the approved budget. Where the actual expenditures of the local mental health authority are less than the approved budget, the State and federal grants-in-aid are to be determined on the basis of actual expenditures rather than the approved budget. For purposes of this section the terms approved budget and actual expenditures are not to include the items specified in G. S. 122-35.9. (1963, c. 1166, s. 6.)

ARTICLE 3.

Admission of Patients; General Provisions.

§ 122-36. **Definitions.**—(a) The word “inebriate” shall mean a person habitually so addicted to alcoholic drinks or narcotic drugs or other habit forming drugs as to have lost the power of self-control and that for his own welfare or the welfare of others is a proper subject for restraint, care, and treatment.

(b) The words “mental illness” shall mean an illness which so lessens the capacity of the person to use his customary self-control, judgment, and discretion in the conduct of his affairs, and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control. The words “mentally ill” shall mean a person with a mental illness.

(c) The words “mentally retarded” shall mean a person who is not mentally ill but whose mental development is so retarded that he has not acquired enough self-control, judgment, and discretion to manage himself and his affairs, and for whose own welfare or that of others, supervision, guidance, care, or control is necessary or advisable.

(d) The words “hospitalize” or “hospitalization” shall mean those processes as promulgated in this chapter whereby an alleged mentally ill or mentally retarded person or alleged inebriate may be placed in an appropriate State hospital for the mentally ill or State residential center for the mentally retarded. The terms shall include voluntary, medical certification, emergency and judicial procedures.

(e) The words “qualified physician” shall mean a medical doctor who is duly licensed by this State to practice medicine; provided, however, that no physician is to be considered a “qualified physician” with respect to any procedure to hospitalize any person who is related by blood or marriage to the said physician.

(f) The “county of residence” of an alleged mentally ill, mentally retarded, or inebriate person shall be the county of his actual residence at the time of his hospitalization, notwithstanding that such person may have been temporarily out of the county of his residence, in a hospital, or under court order a patient of some other state institution at the time of his hospitalization. A county or residence shall not have been changed by virtue of a person being temporarily out of his county, in a hospital, or confined under court order. (1899, c. 1, s. 28; Rev., s. 4574; C. S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1957, c. 1232, s. 13; 1963, c. 1166, s. 2; c. 1184, s. 1.)

Editor's Note.—Session Laws 1963, c. 1184, s. 1, effective July 1, 1963, rewrote this article, which formerly consisted of §§ 122-35.1 to 122-65, and designated the

sections therein as §§ 122-36 to 122-55.

For article on hospitalization of the mentally ill, see 31 N. C. Law Rev. 274.

§ 122-37. **Findings as to residence reported by clerk; mentally ill or inebriates not to become residents.**—In every examination of an alleged mentally ill person or alleged inebriate it shall be the duty of the clerk to particularly inquire whether the proposed patient is a resident of this State, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the pro-

posed patient the clerk shall give all available information concerning the proposed patient and his past residence to the superintendent. The alleged mentally ill person or alleged inebriate shall then be treated as a bona fide resident until facts are presented to the clerk of court warranting a finding of nonresidence. A finding of residence by the clerk shall in no case have a binding effect, and if facts are later ascertained showing legal residence in another state the procedure set forth in G. S. 122-38 shall be followed.

No person who shall have removed into this State while mentally ill or inebriate, or while under care in an institution in any other state, nor any person not a resident of North Carolina but under care in an institution, public or private, in this State shall be considered a resident; and no length of residence in this State of such a person, while mentally ill or inebriate, or under care shall be sufficient to make him a resident of this State or entitled to State institutional care. (1899, c. 1, s. 18; Rev., ss. 3591, 4587, 4588; C. S., ss. 6187, 6188; 1945, c. 952, ss. 16, 17; 1947, c. 537, s. 11; 1953, c. 256 s. 3; 1957, c. 1386; 1963, c. 1184, s. 1.)

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

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

The cost of such proceedings and conveyance away from the State shall be borne by the county in which the person shall have been adjudged a proper subject for restraint, care, and treatment. (1899, c. 1, s. 16; Rev., s. 4584; C. S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, s. 18; 1963, c. 1184, s. 1.)

§ 122-39. Reciprocal agreements with other states to set requirements for State hospital care and release of patients.—The State Department of Mental Health is authorized to enter into reciprocal agreements with other states regarding the return of residents to or from such other states and for the purpose of fixing the requirements whereby a patient under hospitalization to a state hospital in such other state or states may be released and come into this State while still on conditional release from the state hospital of such other state or states. The said Department may also enter into reciprocal agreements with another state or states to fix and establish the requirements whereby a patient under hospitalization in a State hospital in this State may be released and go into such other state or states on conditional release from a State hospital in this State. Any such patient so released from a state hospital or other institution in another state or states for the purpose of coming into this State shall not be considered to gain residence in this State by any period of time he resides in this State, and a person or patient released from a State hospital in North Carolina will retain his North Carolina residence during his acceptance

in the other state under agreements authorized under this section. No members of the State Board of Mental Health or the Commissioner of Mental Health or any physician, psychiatrist, officer, agent, or employee of the State Department of Mental Health shall be held personally liable for any acts done or damages sustained by reason of any official acts done or committed under the authority of this section. (1947, c. 537, s. 20; 1955, c. 887, s. 13; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1.)

§ 122-40. Transfer of mentally ill citizens of North Carolina from another state to North Carolina.—The State Department of Mental Health is authorized, upon being satisfied that a person hospitalized in a state hospital for the mentally ill in another state is a resident of this State, to authorize such person to be returned to the appropriate institution in this State at the expense of the sending state. The hospitalization of an alleged mentally ill person or an alleged inebriate in another state and the authorization by the State Department of Mental Health for his return shall be sufficient authority for the superintendent of the appropriate State hospital in this State to hold this patient for a reasonable period not to exceed thirty (30) days. During this time hospitalization procedures for temporary observation and treatment may be initiated as provided for in article 7 of this chapter, without the removal of the patient from the hospital. (1945, c. 952, s. 34; 1947, c. 537, s. 19; 1959, c. 1002, ss. 20, 21; 1963, c. 1184, s. 1.)

§ 122-40.1. Proceedings in case of insanity of alien.—If any person, not a citizen of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the Governor of this State of the name of the insane person, the country of which he is a citizen, and his place of residence in said country if the same can be ascertained, and such other facts in the case as he may obtain, together with a copy of the examination taken; and the Governor shall transmit such information and examination to the Secretary of State at Washington, D. C., with the request that he inform the minister resident or plenipotentiary of the country of which the insane person is supposed to be a citizen. (1899, c. 1, s. 16; Rev., s. 4585; C. S., s. 6211; 1963, c. 1184, s. 1.)

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

§ 122-42. Cost of conveying patients to and from hospital; how paid.—The cost and expenses of conveying every patient to any hospital from any county, or of removing him from the hospital to the county from which he was hospitalized or to the county of his residence, as released, shall be paid by the treasurer of the county of residence, upon the order of its board of county commissioners. Whenever the board of commissioners shall be satisfied that such person has property sufficient to pay such cost and expenses, or that some other person liable for his support and maintenance has property sufficient to pay such costs and expenses as aforesaid, they may bring an action to recover the amount

paid from the said person, or from the other person liable for his support and maintenance. (1899, c. 1, s. 32; Rev., s. 4555; C. S., s. 6202; 1945, c. 952, s. 30; 1963, c. 1184, s. 1.)

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

To the clerk who makes the examination, ten dollars (\$10.00), and if the clerk goes to the place where the proposed patient is or resides, seven cents (7¢) a mile each way in addition. This shall cover his entire costs in taking the examination and making out the necessary papers. When the clerk is holding an examination of a patient who is a resident of a county other than the county in which the clerk holds office, the fees herein provided to be paid by the county of the patient's residence shall be paid to the clerk individually and shall be in addition to any regular compensation to which the clerk is entitled.

To the physicians making the examination, the sum of fifteen dollars (\$15.00) each and mileage at the rate of seven cents (7¢) per mile. If the county physician is a salaried officer, he is not to be allowed any fee for making this examination.

To the person serving process such fees as are now allowed by law for service of process of similar character. (1899, c. 1, s. 15; Rev., ss. 4580, 4581; C. S., s. 6198; 1947, c. 537, s. 17; 1955, c. 887, s. 8; 1957, c. 1232, s. 19; 1961, c. 511, s. 7; 1963, c. 1184, s. 1.)

§ 122-44. **Inquiry into estates; priority given to indigent patients; payment required from others.**—After the clerk of the court has determined that the alleged mentally ill or alleged inebriate person is a fit subject for care and treatment in a State hospital the clerk shall go further and inquire whether the said person is indigent or not in such way that he has not sufficient estate or property to bear the expense of his care and treatment. If the said person is found to be indigent, the clerk shall determine whether or not the person legally responsible for his support has sufficient estate or property to bear the costs of care and treatment.

In the admission of patients to any State facility, priority of admission shall be given to indigent persons; but the State Department of Mental Health may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The Department may, if there be sufficient room, admit other than indigent patients, upon proper compensation, based on the ability of the patient or his estate or one legally responsible for his support to pay. Where the clerk of the court or the superintendent of the hospital has doubt as to the indigency of the patient, he shall refer the question to the county department of public welfare for investigation. Upon the death of any patient, the State facility may maintain an action against his estate for his support and maintenance. (1899, c. 1, s. 44; Rev., s. 4573; 1915, c. 254; 1917, c. 150, s. 1; C. S., s. 6186; 1945, c. 952, s. 15; 1957, c. 1232, s. 15; 1963, c. 1184, s. 1.)

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions.

Meaning of "Indigent Persons."—The term "indigent insane" [now "indigent persons"] includes all those who have no income over and above what is sufficient to

support those who may be legally dependent on the estate. In re Hybart, 119 N. C. 359, 25 S. E. 963 (1896).

Financial Status at Time of Admission Need Not Be Determined.—It was not required that the directors of a hospital finally determine the status of a patient at the time of his admission, the financial status of the patient being subject to the vicissitudes of fortune. State v. Security

Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

Free Admission of Person Able to Pay Expenses.—An insane person able to pay

expenses at the State Hospital was not entitled to free admission. *Hospital v. Fountain*, 128 N. C. 23, 38 S. E. 34 (1901).

§ 122-45. **Persons entitled to immediate admission if space available; notice to clerk of admission.**—Any resident of North Carolina who has been legally adjudged by a clerk of court or other authorized person in accordance with the provisions of this chapter to be a proper subject for care and treatment in a State hospital shall, if treatment facilities are available, be entitled to immediate admission. No resident of this State who has been legally adjudged to be a proper subject for care and treatment and who has been presented to the superintendent of the proper State hospital as provided in this chapter, shall be refused admission thereto if treatment facilities are available, but nothing in this article shall be construed to affect the acceptance, discharge and transfer of patients as now provided for by law.

Upon the admission of any person pursuant to order of a clerk of superior court, the superintendent of the institution shall notify such clerk of the admission. (1919, c. 326, ss. 1, 6; C. S., s. 6184; 1945, c. 952, s. 13; 1957, c. 1232, s. 14; 1959, c. 1002, s. 13; 1963, c. 451, s. 2; c. 1166, s. 2; c. 1184, s. 1.)

§ 122-46. **Right of patient to communication and visitation; exercise of civil rights.**—(a) Subject to reasonable rules and regulations of the hospital and except to the extent that the chief medical officer of the hospital determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient shall be entitled (i) to communicate by sealed mail or otherwise with persons, including official agencies, inside and outside the hospital; (ii) to receive visitors; and (iii) to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and vote, unless he has been adjudicated incompetent under the provisions of G. S. chapter 35 and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized under this section on the right of communication, every patient shall be entitled (i) to communicate by sealed mail with the State Department of Mental Health, and with the court, if any, which ordered his hospitalization; and (ii) to receive his or her attorney if accompanied by a medical member of the hospital staff.

(c) Any limitations imposed by the head of the hospital on the exercise of these rights by the patient and the reasons for such limitations shall be made a part of the clinical record of the patient. (1963, c. 1884, s. 1.)

§ 122-47. **Use of restraining devices limited.** — Mechanical restraints shall not be applied to a patient unless it is determined by the head of the hospital or his designee to be required by the medical needs of the patient. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the head of the hospital or his designee. (1963, c. 1184, s. 1.)

§ 122-48. **Clerk to keep record of examinations and discharges.**—The clerk shall keep a record of all examinations of persons alleged to be mentally ill or inebriate and he shall record in such record a brief summary of the proceedings and of his findings. He shall also keep a record of all conditional releases and discharges provided for in article 8 of this chapter. Provided, that when an alleged mentally ill person or an alleged inebriate who is a resident of this State is hospitalized from some county other than the county of his residence, the clerk of the superior court of the county of such person's residence shall maintain the records specified in this section upon receipt of a certified copy of such records from the clerk of the superior court of the county of hospitalization. (1899, c. 1, s. 17; Rev., s. 4586; C. S., s. 6197; 1945, c. 952, s. 26; 1955, c. 887, s. 7; 1961, c. 1186; 1963, c. 1184, s. 1.)

§ 122-49. **Female patient to be accompanied by female attendant or member of the family.**—Each female patient must be accompanied to the hospital by a member of her family; if a member of her family is not available, she must be accompanied by a female designated by the county director of public welfare of the county of the patient's residence or admission. The expenses of the female attendant are to be borne by the county commissioners of the county of the patient's residence. (1919, c. 326, s. 4; C. S., s. 6201; 1945, c. 952, s. 29; 1953, c. 256, s. 6; 1961, c. 186; 1963, c. 1184, s. 1.)

§ 122-50. **Person conveying patient to hospital without authority.**—No sheriff or other person shall convey a patient to any hospital without having ascertained that the patient will be admitted, and if any sheriff or other person shall carry a patient to a hospital without having ascertained that the patient will be admitted, and the patient is not admitted, he shall be required to convey the patient back to the county of his residence, and shall not be repaid by the county or hospital for expenses incurred in carrying the patient to and from the hospital. (1899, c. 1, s. 25; Rev., s. 4546; C. S., s. 6206; 1963, c. 1184, s. 1.)

§ 122-51. **Civil liability for corruptly attempting hospitalization.**—Nothing contained in this chapter shall be held or construed to relieve from liability in any suit or action instituted in the courts of this State, any husband, wife, guardian, or physician, who unlawfully, maliciously and corruptly attempts to hospitalize any person or patient to any hospital for the mentally ill or center for the mentally retarded under the provisions of this chapter. (1963, c. 1184, s. 1.)

§ 122-52. **Disclosure of information, records, etc.**—No superintendent, physician, psychiatrist or any other officer, agent or employee of any of the facilities under the management, control, and supervision of the State Department of Mental Health shall be required to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating a patient of said facilities in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure: Provided that where a person or persons are defendants in criminal cases and a mental examination of such defendants has been ordered by the court, the State Department of Mental Health through its officers and agents may transmit the results or the report of such mental examination to the clerk of said court and to the solicitor or prosecuting officer and to the attorney or attorneys of record for the defendant or defendants. (1963, c. 1184, s. 1.)

§ 122-53. **General Assembly visitors of hospitals.**—The members of the General Assembly shall be ex officio visitors of all hospitals under the control of the State Department of Mental Health. (1963, c. 1184, s. 1.)

Cross Reference.—For earlier provisions similar to this section, see § 122-20.

§ 122-54. **Assisting patient to escape; misdemeanor.**—If any person shall assist any patient of any State hospital for the mentally ill, mentally retarded, or inebriate to leave said hospital without authority, he shall be guilty of a misdemeanor. (1963, c. 1184, s. 1.)

Cross Reference.—For earlier provisions similar to this section, see § 122-23.

§ 122-55. **Hospitalization and incompetency proceedings to have no effect on one another.**—Except for the provisions of G. S. 35-3, the hospitalization of an alleged mentally ill person or an alleged inebriate or an alleged men-

tally retarded person under the provisions of this chapter shall in no way affect incompetency proceedings as set forth in chapter 35 of the General Statutes of North Carolina, and incompetency proceedings as set forth in chapter 35 shall have no effect upon hospitalization proceedings as set forth in this chapter. (1963, c. 1184, s. 1.)

ARTICLE 4.

Voluntary Admission.

§ 122-56. **Admission upon patient's application—Generally.** — Any person believing himself to be mentally ill or threatened with mental illness, or an inebriate, may voluntarily admit himself to the proper hospital. The application for admission of such a person shall be signed at the hospital on a form approved by the State Department of Mental Health. The applicant must have a written statement in letter form from a qualified physician which states that in the opinion of the physician the applicant is a fit subject for admission into the hospital, and that he recommends his admission. No certificate of the clerk of the superior court is to accompany this application, and the superintendent of the State hospital shall not be required to notify the clerk of court of the discharge of the patient. The superintendent may, if he thinks it a proper application, receive the patient thus voluntarily admitted and treat him, but no report need be made to the clerk of court. The State Department of Mental Health shall have the same control over patients who admit themselves voluntarily as it has over those hospitalized under judicial proceedings except that a voluntary patient shall be entitled to be discharged after he shall have given the superintendent ten days' written notice of his desire to be discharged, unless proceedings have been initiated for the judicial hospitalization of such patient.

If in the opinion of the examining physician or of the superintendent of the hospital the patient should be admitted for not less than a thirty-day period to permit more adequate examination and treatment, the superintendent may have the patient sign a special form agreeing to admit himself for thirty (30) days. When the patient shall have signed this form admitting himself for thirty (30) days, the superintendent may require that the patient remain at the hospital for this full period.

Judicial hospitalization of voluntarily admitted patients must proceed through the same channels as specified in article 7 of this chapter. (1899, c. 1, s. 49; Rev., s. 4593; 1917, c. 150, s. 1; C. S., s. 6209; 1945, c. 952, s. 32; 1953, c. 256, s. 8; 1955, c. 887, s. 10; 1957, c. 1232, s. 21; 1961, c. 511, s. 9; 1963, c. 1184, s. 2.)

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, redesignated former article 4 as article 8.

§ 122-57. **Same—Psychiatric Training and Research Center at North Carolina Memorial Hospital.**—Any person believing himself to be an inebriate or mentally ill or threatened with mental illness may voluntarily apply for admission to the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital in Chapel Hill in the same manner as he would apply for voluntary admission to a State hospital. Upon the approval of his application by the Director of the Inpatient Service, the applicant may be admitted. The patient's application shall be in the same form as those provided for in G. S. 122-56 and must be accompanied by the statement of a qualified physician that the applicant is a fit subject for admission. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2.)

ARTICLE 5.

Admission by Medical Certification.

§ 122-58. **Admission on certification of physicians.**—(a) Whenever two qualified physicians shall certify, on forms to be provided by the State Department of Mental Health, that any person is mentally ill, or an inebriate, and is in need of care and treatment in a hospital for the mentally ill or inebriate, such person shall be admitted to the appropriate State hospital, or private hospital within the meaning of G. S. 122-72, on receipt of such certificate. The certificate of the physicians shall be notarized. No certificate of the clerk of superior court shall accompany this certification and no superintendent shall be required to supply the clerk of court with a certificate of discharge unless a hearing is held under subsection (b) of this section.

(b) If the patient or any member of his family objects to admission in the manner herein provided prior to admission, the procedure outlined in G. S. 122-63 must be followed before hospitalization. If, after admission, the patient or any member of his family shall object to the admission of the alleged mentally ill person or alleged inebriate in the manner herein provided, they may, within sixty (60) days after the admission of such patient, file with the clerk of the superior court of the county in which the hospital is located, an affidavit stating such objection. The clerk receiving such affidavit shall then proceed to hold the hearing required by G. S. 122-64. The expenses of such hearing shall be borne by the county of residence of the patient. (1961, c. 512, s. 1; 1963, s. 1184, s. 2.)

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, redesignated former article 5 as article 10.

ARTICLE 6.

Emergency Hospitalization.

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

Authorization for such detention may be given by any qualified physician in the form of a written statement that he has examined such person within 24 hours of the date of his statement and that it is his professional opinion, based upon such examination, that the person is homicidal or suicidal, or dangerous to himself or others. The physician's statement shall be sworn to before a person authorized to take acknowledgments or witnessed by a peace officer, and shall constitute authority, without any court action, for the sheriff or any other peace officer to take custody of the alleged homicidal or suicidal person and transport him immediately to the appropriate State hospital or other suitable place of detention. It shall be the duty of the peace officer to whom such authorization is presented to effect such custody and transportation.

If such person has not been examined by a physician and it is believed that it would be dangerous to attempt to have him examined without restraint, authorization for detention may be given by the clerk of the superior court in the form of a written order directed to the sheriff or any other peace officer. The clerk may issue such order upon the application of any person having knowledge of the facts. The application must be in writing, signed and sworn to before the clerk,

and must state that affiant believes the person to be homicidal or suicidal, the particulars as to his behavior, history and circumstances supporting such belief, that affiant is of the opinion that it would be dangerous to attempt to have the person examined by a physician without restraint, and it must include a request for the issuance of an order for detention and show the address of the affiant and his relationship, if any, to the alleged homicidal or suicidal person. In his order, the clerk may direct the officer to detain such person for an examination by a physician or to transport him immediately to the appropriate State hospital, as the facts and circumstances may warrant.

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

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

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

ARTICLE 7.

Judicial Hospitalization.

§ 122-60. Affidavit of mental illness or inebriety and request for examination.—When it appears that a person is suffering from some mental illness or inebriety and is in need of observation or admission in a State hospital for the mentally ill or inebriate, some reliable person having knowledge of the facts shall make before the clerk of the superior court of the county in which the alleged mentally ill person or alleged inebriate is or resides, and file in writing, on a form approved by the State Department of Mental Health, an affidavit that the alleged mentally ill person or alleged inebriate is in need of observation or admission in a hospital for the mentally ill or inebriate, together with a request that an examination of the proposed patient be made.

This affidavit may be sworn to before the clerk of the superior court, or the deputy clerk of the court. (1899, c. 1, s. 15; Rev., s. 4575; C. S., s. 6190; 1945, c. 952, s. 19; 1947, c. 537, s. 13; 1963, c. 1184, s. 2.)

Cross Reference.—See note to § 122-62.

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, redesignated former article 7 as article 12. For comment on involuntary commitment procedures, see 41 N. C. Law Rev. 141.

§ 122-61. Detention of persons alleged to be mentally ill or inebriate and dangerous to themselves or others.—If the affidavit filed in accordance with the provisions of G. S. 122-60 states that the alleged mentally ill person or alleged inebriate is likely to endanger himself or others, he may be taken into custody and detained in his own home, in a private or general hospital, or in any other suitable facility as approved by the local health director for such detention, upon an order of the clerk of the court. He shall not, except because of and during an extreme emergency, be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses, and then only upon an order of the clerk of the court, and with notification as soon as practicable to the local health director.

The clerk shall expedite the hearing, and, if the alleged mentally ill person or

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

Editor's Note.—For comment on former § 122-44, corresponding to this section, see 19 N. C. Law Rev. 487.

§ 122-62. Clerk to issue an order for examination.—When an affidavit and request for examination of an alleged mentally ill person or alleged inebriate has been made, or when the clerk of the superior court has other valid knowledge of the facts of the case to cause an examination to be made, he shall direct two qualified physicians who are not directly involved with the care and treatment of the patient in the hospital to which the person may be hospitalized, to examine the alleged mentally ill person or alleged inebriate. The clerk is authorized to order the alleged mentally ill person or inebriate to submit to such examination, and it shall be the duty of the sheriff or other law enforcement officer to see that this order is enforced. The purpose of the examination is to determine whether or not the alleged mentally ill or inebriate person is a proper subject for observation and treatment. If the said physicians are satisfied that the alleged mentally ill or inebriate person should be hospitalized they shall sign an affidavit to that effect on a form approved by the State Department of Mental Health.

This affidavit may be sworn to before the clerk of the superior court, an assistant clerk of the superior court, a deputy clerk of the court, or a notary public. (1899, c. 1, s. 15; Rev., s. 4576; C. S., s. 6191; 1945, c. 952, s. 20; 1947, c. 537, s. 14; 1961, c. 511, s. 2; 1963, c. 1184, s. 2.)

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions.

For note as to liability for signing certificate of insanity without proper examination of alleged lunatic, see 36 N. C. Law Rev. 552.

Applicant May Act as Intermediary in Obtaining Affidavit of Physician.—Since the affidavits may be made before notaries, rather than before the clerk, it follows by necessary implication that the affiant in the affidavit-application may act as intermediary in carrying the papers to and from the physician for the execution of the physician's affidavit. *Jarman v. Offutt*, 239 N. C. 468, 80 S. E. (2d) 248 (1954).

Judicial Authority Conferred upon Clerk.—Jurisdiction to direct two physicians to examine an alleged mentally disordered person to determine if a state of mental disorder exists, and, when the two physicians shall have certified that the alleged mentally disordered person is in need of observation and admission in a hospital for the mentally disordered, to have a hearing and examine the certificates or affidavits of the physicians and any proper witnesses, and, where warranted, to commit the alleged mentally disordered person to a State hospital for the mentally dis-

ordered is the judicial authority conferred upon the clerk of the superior court. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Clerk Is Judge and Physicians Are Witnesses.—While the examination and affidavits by two physicians to commit an alleged mentally disordered person to a State hospital for the mentally disordered for examination and observation are required, the act of commitment and detention of such person in such a hospital, if any be made, is performed by the clerk of the superior court. The two physicians, therefore, are witnesses in the proceeding and the clerk of the superior court is the judge. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Statement of Physician Is Absolutely Privileged.—In a lunacy proceeding instituted by proper affidavit sworn to before the clerk, a statement of a physician sworn to before a notary public is absolutely privileged and will not support an action for libel. *Jarman v. Offutt*, 239 N. C. 468, 80 S. E. (2d) 248 (1954).

A proceeding to commit an alleged mentally disordered person to a State hospital for the mentally disordered under the procedure set forth in former § 122-43, corresponding to this section, and former § 122-46 (see now § 122-63) was a judicial proceeding within the rule of absolute priv-

ilege. Therefore the affidavits of physicians required by former §§ 122-43 and 122-46, being pertinent to a judicial proceeding and thus privileged, although defamatory were not actionable. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Allegations Insufficient to Show Malicious Prosecution, False Imprisonment or Abuse of Process.—Allegations that physicians, in making affidavits pursuant to former § 122-43, corresponding to this section, were guilty of gross negligence amounting to legal malice, without allegations that they were motivated by an ulterior or wrongful purpose or conspired with another in this ulterior and wrongful purpose, failed to state cause of action for malicious prosecution, or for false imprisonment, or for abuse of process. *Bailey*

v. McGill, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Allegations Sufficient to Make Out Case of Abuse of Process.—Where plaintiff's allegations tended to show that defendant physician influenced plaintiff's parents to (see now § 122-60) execute the affidavits required by former § 122-42 and subsequently influenced two other physicians to execute the affidavits required by former § 122-43, corresponding to this section, in order to have plaintiff committed, solely through ill will and a desire to rid himself of plaintiff as a patient, etc., contrary to the purpose authorized by former §§ 122-43 and 122-46 (see now § 122-63), and plaintiff was committed, a cause of action for abuse of process was alleged. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

§ 122-63. Clerk may commit for observation and treatment period.—When two qualified physicians have certified that the alleged mentally ill person or alleged inebriate is in need of observation and admission to the proper State hospital, the clerk shall hold an informal hearing. The clerk shall cause to be served on the alleged mentally ill person or alleged inebriate notice of the hearing. Such notice may be served by an officer of the law or some other person designated by the clerk of court. If the clerk designates a member of a hospital staff, a member of the staff of the county department of public welfare, or a member of the staff of the county or district health department to serve the notice, no charge is to be made for such service. The clerk shall have the hearing without unnecessary delay and shall examine the certificates or affidavits of the physicians and any proper witnesses. At the conclusion of the hearing the clerk may dismiss the proceedings if he finds that the alleged mentally ill or inebriate person is not in need of observation and treatment in an appropriate hospital. If he finds that the alleged mentally ill or inebriate person is in need of observation and treatment, he is to issue an order for hospitalization on a form approved by the State Department of Mental Health. This order shall authorize the appropriate hospital to receive said person and there to examine him and observe his condition and give appropriate treatment for a period not exceeding one hundred and eighty (180) days. The clerk may authorize the transfer of such alleged mentally ill person or alleged inebriate to the proper hospital, when notified by the superintendent of the hospital that treatment facilities are available. If such person is not admitted to the appropriate State hospital within thirty (30) days of the date on which the clerk issued the order of hospitalization, the order shall be void and of no effect whatsoever.

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

When a person has been admitted to one of the State hospitals under the provisions of this chapter for a period of observation and treatment, and when he has been carefully examined, if he is found to be not mentally ill or an inebriate, or not in need of care in a State hospital, the superintendent shall immediately report these findings to the clerk of the superior court of the county in which such person has residence, who shall order his discharge. The removal of said person from the State hospital shall be after the notice and in the manner prescribed in G. S. 122-67. (1899, c. 1, s. 15; Rev., s. 4578; 1915, c. 204, s. 1; C. S., s. 6193; 1923, c.

144, s. 1; 1945, c. 952, s. 22; 1947, c. 537, s. 15; 1953, c. 133; 1955, c. 887, ss. 4, 6; 1957, c. 1232, s. 17; c. 1257; 1959, c. 1002, s. 15; 1961, c. 511, ss. 3, 4; 1963, c. 1184, s. 2.)

Cross Reference.—See notes to §§ 122-62 and 122-65.

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions.

Necessity for Trial.—An order for the commitment of a person to an insane hospital is essentially a judgment by which he is deprived of his liberty, and it is a cardinal principle of English jurisprudence that before any judgment can be pronounced against a person there must have been a trial of the issue upon which the judgment is given. In *re Wilson*, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Detention of an alleged insane person for a short period of time pending observation is permitted. In *re Wilson*, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Jury Trial.—As to right to trial by jury under former §§ 122-46 and 122-46.1, corresponding to this section and § 122-65, see In *re Cook*, 218 N. C. 384, 11 S. E. (2d) 142 (1940); In *re Wilson*, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Appeal.—There was no provision for an appeal from the order of the clerk to the superior court under former statute corresponding to this article. In *re Cook*, 218 N. C. 384, 11 S. E. (2d) 142 (1940).

§ 122-64. Place for hearings; judicial hospitalization of persons already in hospitals.—All hearings to determine whether or not an alleged inebriate or alleged mentally ill person should be judicially hospitalized are to be held in the county of residence of the alleged inebriate or alleged mentally ill person. However, in those instances where the alleged inebriate or alleged mentally ill person is already in a public or private mental institution or public general hospital, without prior judicial hospitalization, the clerk of the superior court of the county in which the patient is hospitalized shall, upon request of the controlling officer of said hospital, go to such hospital and hold the hearing required by G. S. 122-63. If the clerk holding such hearing finds that the alleged mentally ill or inebriate person is in need of observation and treatment as provided for in G. S. 122-63, or is in need of hospitalization for a minimum necessary period as provided for in G. S. 122-65, the clerk may enter an order requiring hospitalization for such observation and treatment or for such minimum necessary period. The expense of such hearing shall be borne by the county of residence of such alleged mentally ill person or alleged inebriate. The records of such hospitalization shall be maintained in accordance with the provisions of G. S. 122-48.

There is to be paid to the physicians making the examination a fee to be determined in accordance with the schedule of fees adopted by the State Department of Mental Health and mileage at the rate of seven cents (7¢) per mile. If the county physician is a salaried officer, he is not to be allowed any fee for making this examination. The fee of the clerk of superior court for holding the hearing shall be as provided in G. S. 122-43. (1957, c. 1232, s. 16; 1963, c. 1184, s. 2.)

§ 122-65. Clerk may order discharge of person hospitalized for observation and treatment or hospitalize for minimum necessary period; second hearing.—When a person is judicially hospitalized for observation and treatment, the hospital superintendent shall, at the expiration of one hundred and eighty (180) days, file with the clerk of the superior court of the county in which the hospital is located, a written report stating the conclusion reached by the hospital superintendent as to whether or not further treatment is needed. Upon the basis of this report the clerk shall discharge the patient or order a second hearing to decide whether or not the alleged mentally ill person or alleged inebriate should be further hospitalized for a minimum necessary period. If the recommendation of the hospital superintendent is that the patient should be hospitalized for a minimum necessary period the clerk shall set a date for the hearing and cause no-

tice to be served on the alleged mentally ill person or alleged inebriate by a person designated by the clerk who may or may not be an officer of the law. The alleged mentally ill or inebriate person may, if he so desires, waive the hearing by signing a statement to that effect and returning it to the clerk of court. If the hearing is not waived, the clerk of the county in which the patient is hospitalized shall have the hearing without unnecessary delay, at which time the clerk is to receive evidence concerning the condition of the alleged mentally ill or inebriate person including any evidence the alleged mentally ill or inebriate person wishes to offer. At the conclusion of the hearing the clerk may discharge the patient or issue an order for hospitalization for a minimum necessary period on a form approved by the State Department of Mental Health. (1945, c. 952, s. 23; 1957, c. 1232, s. 18; 1961, c. 511, s. 5; 1963, c. 1184, s. 2.)

Cross Reference.—See note to § 122-63.

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions.

Necessity for Trial.—An order for the commitment of a person to an insane hospital is essentially a judgment by which he is deprived of his liberty, and it is a cardinal principle of English jurisprudence that before any judgment can be pronounced against a person there must have been a trial of the issue upon which the judgment is given. In *re Wilson*, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Final Order of Commitment without Notice and Opportunity to Be Heard Invalid.—By reason of lack of notice to an alleged mentally disordered person and an opportunity for her to be heard on the question of her sanity, a final order of commitment for an indefinite period under which she was restrained violated her constitutional rights. In *re Wilson*, 257 N. C.

593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Method of Securing Release.—Prior to 1957, it was held that a person committed to a State mental institution under former article 3 of this chapter could not invoke the provisions of § 35-4 for a determination of the restoration of sanity by a jury trial as a condition precedent to his release under former § 122-46.1, corresponding to this section, the proper remedy being by habeas corpus under § 17-32. In *re Harris*, 241 N. C. 179, 84 S. E. (2d) 808 (1954).

In 1957, former § 122-46, corresponding to § 122-63, was amended so as to provide expressly that if a guardian had been appointed under §§ 35-2 or 35-3, the procedure for restoration of sanity should be as provided by §§ 35-4 and 35-4.1. It was held that this provision removed from former § 122-46 the objection that a traditional jury trial was not provided as a means of determining the issue of sanity. In *re Wilson*, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

§ 122-65.1. Mentally ill person or inebriate temporarily hospitalized.—When any person is found to be mentally ill or inebriate under the provisions of this chapter or is on conditional release from a State hospital and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threaten injury to himself and danger to the community, and he cannot be otherwise properly restrained, he may be temporarily hospitalized and treated in a private hospital, county hospital, or other suitable place until a more suitable provision can be made for his care. (1963, c. 1184, s. 2.)

§ 122-65.2. Authorization for admission of patients to Psychiatric Training and Research Center at North Carolina Memorial Hospital. — The Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital at Chapel Hill shall be authorized to receive alleged mentally ill persons hospitalized for observation and treatment, in the same manner as a State hospital. The clerk of the court shall not, however, hospitalize to this Center without the approval of the Director of the Inpatient Service. (1955, c. 1274, s. 2; 1961, c. 511, s. 6; 1963, c. 1184, s. 2.)

§ 122-65.3. Clerk may hospitalize for observation at Center; certifying physicians.—When the clerk of court has approval as provided in G. S.

122-65.2 he may hospitalize alleged mentally ill persons to the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital in the manner provided by G. S. 122-63. Any two qualified physicians not directly connected with the Inpatient Service of the Center may serve as certifying physicians. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2.)

§ 122-65.4. **Clerk may hospitalize for minimum necessary period to Center.**—When the alleged mentally ill person hospitalized at the Psychiatric Training and Research Center at the South Wing of North Carolina Memorial Hospital has been observed for a period of one hundred and eighty (180) days the Director of the Inpatient Service shall report concerning the patient's condition in the same manner as the superintendent of the State hospital as provided in G. S. 122-65. The clerk shall act on this report in the same manner as is provided in G. S. 122-65. (1955, c. 1274, s. 2; 1959, c. 1002, s. 17; 1963, c. 1184, s. 2.)

§ 122-65.5. **Withdrawal of petition.**—The petitioner in proceedings to determine whether or not a person is a fit subject for care and treatment in a State hospital may, at any time before the proposed patient has been admitted to the particular State hospital, withdraw such petition by filing with the clerk of the superior court, in writing a motion to this effect. The clerk with the written consent of the examining physicians is authorized to allow such motion. When such motion is allowed, the proceedings shall be deemed at an end. (1945, c. 952, s. 25; 1947, c. 537, s. 16; 1963, c. 1184, s. 2.)

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, designated this section as § 122-66.

ARTICLE 8.

Discharge of Patients.

§ 122-66: Repealed by Session Laws 1961, c. 511, s. 10.

Editor's Note.— July 1, 1963, redesignated former article
Session Laws 1963, c. 1184, s. 3, effective 4 as this article.

§ 122-66.1. **Discharge of patients; filing thereof.** — (a) The superintendent of any State hospital may discharge a patient in the following manner and with the following effect:

- (1) The superintendent shall prepare a certificate of discharge and in said certificate find that the patient is not incompetent or that such patient has been restored to competency in all respects or that such patient is not mentally ill or inebriate and no longer in need of care and treatment in a State hospital for the mentally ill or inebriate.
- (2) The certificate of discharge shall be sent by the superintendent to the clerk of the superior court of the county from which the patient was committed.
- (3) The certificate of discharge shall be filed and a notation made in the lunacy docket by the clerk of the superior court and such certificate shall operate to remove all disabilities arising from the commitment.

(b) The discharge of patients provided for in this section shall not conflict with the procedure provided in G. S. 122-67. (1957, c. 1232, s. 22; 1963, c. 1184, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "mentally ill or inebriate and no longer in need of care and treatment in a State hospital for the mentally ill or inebriate" for "of unsound mind" at the end of subdivision (1).
For note on guardianship and restoration to sanity, see 41 N. C. Law Rev. 279.

§ 122-67. Release of patients from hospital; responsibility of county.—When it shall appear that any mentally ill person under commitment to and confined in a hospital for the mentally ill but not charged with a crime or under sentence shall have shown improvement in his mental condition as to be able to care for himself, or when he shall have become no longer dangerous to the community and to himself, or when it shall appear that suitable provision can be made for the alleged mentally disordered person so that he will not be injurious or dangerous to himself or the community, the superintendent of the hospital may in his discretion release him on probation to the care of his guardian, relative, friends or of any responsible person or agency in the community, and may receive him back into the hospital without further order of commitment during the continuance of the order of hospitalization which shall not have been terminated by the action of the superintendent in releasing him on probation. The superintendent of the hospital may require of the person assuming responsibility for the mentally disordered patient released on probation reports relative to the patient's condition and evidence and assurance of responsibility.

The superintendent may terminate the release of such mentally ill patient and order his return to the hospital, and the person responsible for the mentally ill patient's care may notify the superintendent of the hospital or the clerk of the superior court of the county in which the mentally ill patient has residence or is now located, and the clerk of the superior court so notified may order the mentally ill patient held pending his return to the hospital. The superintendent shall from time to time notify the clerk of the superior court of the county of the patient's residence of the release or probation of a patient for more than thirty days.

When the patient is indigent, the county may be required to pay for the transportation of the patient to the county of his residence.

It shall be the duty of the sheriff of the county to which a patient has been released, or in which he is found at the termination of his release on probation by the superintendent or by the clerk of the superior court, to return him to the hospital to which he is under hospitalization; cost of such return shall be a charge on the county in which the mentally ill patient is resident.

When a person under hospitalization has been released on probation to his own care or to his own family, and when he is no longer under the continued care and supervision of the hospital, as in a boarding home, and when he shall have been able to remain continuously out of the hospital without returning for the period of one year, he shall be regarded as recovered from his mental illness and no longer in need of care in a mental hospital, and shall be discharged from the order of hospitalization at the next succeeding discharge date of the hospital as provided by rules of the North Carolina State Department of Mental Health.

When a patient has been found to be without mental illness, or to have recovered from mental illness, or to be in such condition that he may safely be released, the superintendent shall notify the natural or legal guardian or nearest of kin and at the same time the superintendent shall send duplicate of such notice to the director of public welfare of a patient's home county. If the person notified should fail to come for the patient or to remove him from the hospital within a reasonable time, the superintendent shall notify the clerk of superior court of the county in which the patient has or had residence, who shall issue an order to the sheriff of such county directing the sheriff to call for and reconvey him to the county of his residence. The sheriff shall first take this patient to his or her family, or guardian, and if they cannot, or will not, provide a place for such patient in the home the sheriff shall then place this person under the charge of the director of public welfare in the patient's home county. (1899, c. 1, s. 22; Rev., s. 4596; 1917, c. 150, s. 1; C. S., s. 6214; 1945, c. 952, s. 36; 1947, c. 537, s. 21; 1953, c. 256, s. 9; 1955, c. 887, s. 4 (a); 1961, c. 186; c. 511, s. 11; 1963, c. 1166, s. 10; c. 1184, s. 5.)

Editor's Note.—

The first 1961 amendment substituted "director" for "superintendent" in two

places in the last paragraph. The sec-

and 1961 amendment deleted the words "arrest and" formerly appearing between the words "his" and "return" near the beginning of the second paragraph.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control." Session Laws

1963, c. 1184, s. 5, effective July 1, 1963, substituted "mentally ill" for "mentally disordered," "mental illness" for "mental disorder" and "hospitalization" for "commitment" throughout this section, except in a very few instances. It also substituted "residence" for "settlement" at the end of the third paragraph.

§ 122-68.1. Superintendent must notify Commissioner of Mental Health and North Carolina State Department of Mental Health of unusually dangerous mentally disordered patients.—Whenever a person is found by the State hospital psychiatrists to be unusually dangerous to himself or others, the superintendent must notify the Commissioner of Mental Health and the North Carolina State Department of Mental Health. Such a patient cannot be paroled without the agreement of the North Carolina State Department of Mental Health and the Commissioner of Mental Health. If the Commissioner of Mental Health finds that any patient in one of the State hospitals is unusually dangerous to himself or to others, he may place the patient under the rules of this section. (1945, c. 952, s. 39; 1957, c. 1232, s. 24; 1959, c. 1002, s. 23; 1963, c. 1166, s. 10.)

Editor's Note.—

The 1959 amendment substituted "Commissioner of Mental Health" for "General Superintendent" and "North Carolina Hospitals Board of Control" for "State Hospitals Board of Control" throughout the sec-

tion.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

ARTICLE 9.

Centers for Mentally Retarded.

§ 122-69. State Department of Mental Health to have jurisdiction over centers for mentally retarded.—Caswell, O'Berry, Murdoch, and Western Carolina Centers for the retarded, and such other residential centers for the care and treatment of the mentally retarded as may be established by the State shall be under the jurisdiction of the State Department of Mental Health. The Department of Mental Health shall have the general superintendence, management, and control of the centers; of the grounds and buildings, officers, and employees thereof; of the patients therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and the State Board of Mental Health may make such rules and regulations as may seem to them necessary for carrying out the purposes of the centers. And the Department shall have the right to keep and control the patients of the centers until such time as the Department may deem proper for their discharge under such proper and humane rules and regulations as the Board may adopt. (1963, c. 1184, s. 6.)

Editor's Note.—The 1963 act inserting Former §§ 122-69 to 122-71 were repealed by Session Laws 1945, c. 952, s. 38.

§ 122-69.1. Objects and aims of centers for mentally retarded. — The residential centers shall have the following general aims and objects:

- (1) Provide facilities and programs for those who cannot be contained in the community because of medical or psychosocial reasons;
- (2) Provide conditions which allow those admitted full development—emotionally, physically, and intellectually;
- (3) Provide medical care, educational opportunities, training in social and occupational skills, and opportunities for freedom and happiness to minimize the effects of the mental handicap;

- (4) Maintain facilities for evaluation and diagnosis, for cooperating with other agencies in instructing the public in the care of the mentally handicapped at home, and for aftercare of discharged residents from the centers;
- (5) Develop a therapeutic residential program that will be coordinated with an over-all State program;
- (6) Disseminate knowledge concerning the causation, prevention, nature and treatment of the mentally handicapped;
- (7) Engage in training and research in the field of the mentally handicapped;
- (8) Cooperate with all agencies—federal, State or local in the further attainment of these objects. (1963, c. 1184, s. 6.)

§ 122-70. Admissions to centers for mentally retarded.—Application for the admission of a child under 21 years of age must be made by the father if the mother and father are living together, and if not, by the one having custody, or by a duly appointed guardian. Otherwise, the State Department of Mental Health is authorized and empowered to promulgate rules, regulations and conditions of admission of children and adults to the centers. (1963, c. 1184, s. 6.)

§ 122-71. Financial responsibility of parents, guardians or patients.—In cases in which the parents or guardian of a child being admitted to a center are financially able, or in which an adult being admitted is financially able, the Department shall require such parents or guardian or adult to transport the child or adult to the appropriate center and make such contribution toward his maintenance as may seem just and proper to the Department. (1963, c. 1184, s. 6.)

§ 122-71.1. Discharge of patients.—Any person admitted to a center may be discharged therefrom or returned to his or her parents or guardian when requested by the parents or guardian or when, in the judgment of the State Department of Mental Health, it will not be beneficial to such person or to the best interest of the center that such person be retained longer therein. (1963, c. 1184, s. 6.)

§ 122-71.2. Offenses relating to patients.—For the protection of the persons residing in the centers, it shall be unlawful for any person not a patient of a center for the mentally retarded:

- (1) To advise, or solicit, or to offer to advise or solicit, any patient of said centers to leave without authority;
- (2) To transport, or to offer to transport, in an automobile or other conveyances any patient of said centers to or from any place: Provided, this shall not apply to the superintendents or to any other person acting under the superintendent;
- (3) To engage in, or to offer to engage in any act which would constitute a sex offense with any patient of said centers;
- (4) To receive, or to offer to receive, any child patient of said centers into any place, structure, building or conveyance for the purpose of engaging in any act which would constitute a sex offense or to solicit any patients of said centers to engage in any act which would constitute a sex offense;
- (5) To conceal a person who has left a center without authority.

Any person who shall knowingly and willfully violate subdivisions (1) and (2) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; any person who shall knowingly and willfully violate subdivisions (3), (4) and (5) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1963, c. 1184, s. 6.)

§ 122-71.3. **Articles 3 through 8 inapplicable to centers.**—The provisions of articles 3, 4, 5, 6, 7 and 8 of this chapter shall not apply to the centers for the mentally retarded except as specifically stated therein. (1963, c. 1184, s. 6.)

ARTICLE 10.

Private Hospitals for the Mentally Disordered.

§ 122-72. **Licensing and control of private mental institutions and homes.**—(a) It shall be unlawful for any person or corporation to establish or maintain a private hospital, home or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without first having obtained a license therefor from the Department of Mental Health. Any person who carries on, conducts or attempts to carry on or conduct a private hospital, home, or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without first having obtained a license therefor from the Department of Mental Health shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this section shall be liable under the provisions of this section in the same manner and to the same extent as a private individual violating the law.

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

(c) Hospitals, homes or schools licensed under this article by the Department of Mental Health shall at all times be subject to the visitation of the said Department or any representative thereof, and each such hospital, home or school shall make to the Department a semiannual report on the first days of January and July of each year. The report shall state the number and residence of all patients admitted, the number discharged during the six (6) months preceding, and the officers of the hospital, home, or school. Each such hospital, home or school shall file with the Department a copy of its bylaws, rules, and regulations. The statistical records of each such hospital, home, or school shall at all times be open to the inspection of the Department of Mental Health. The State Department of Mental Health is authorized to license all private hospitals, homes, and schools established hereafter in this State for the cure, treatment and rehabilitation of the mentally ill, mentally retarded, and inebriate, and the Board of Mental Health may prescribe such minimum standards as they may deem necessary, and shall exercise the power of visitation, and for that purpose may depute any member of the Department to visit any private hospital, home, or school established under this article.

(d) The State Department of Mental Health may bring an action in the Superior Court of Wake County to vacate and annul any license granted by the Department, and such license shall be vacated and annulled upon a showing by the Department that the managers of any private hospital, home, or school shall have been guilty of immorality, cruelty, gross neglect, or wilful violation of the rules and regulations of the Board of Mental Health.

(e) The authority to license and inspect privately-operated homes or other nonmedical institutions (including religious facilities) for mentally ill persons,

mentally retarded, and inebriates shall be the responsibility of the State Board of Public Welfare, and in such cases the supervision, reports and visitation provided for in this section with respect to the State Department of Mental Health shall apply with respect to the State Board of Public Welfare and such nonmedical institutions. (1899, c. 1, s. 60; Rev., s. 4600; C. S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 1166, s. 7.)

Editor's Note.—

The 1963 amendment rewrote this section.

Session Laws 1963, c. 1184, s. 9, effective July 1, 1963, redesignated former article 5 as this article.

§ 122-72.1. Psychiatric services in general hospitals.—The term “private hospital” as used in this article shall include psychiatric services in general hospitals licensed by the Medical Care Commission, except that the provisions of G. S. 122-72 relating to licensing and reporting shall not apply to the psychiatric services in general hospitals; provided, however, that no mentally disordered or inebriate person is to be committed to a general hospital licensed by the Medical Care Commission unless such hospital has adequate facilities and qualified personnel for the proper observation, care and treatment of such person and the hospital director agrees to accept such person. (1963, c. 813, s. 1.)

§ 122-73. Counties and towns may establish hospitals.—Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such mentally ill persons as cannot be admitted into a State hospital, and of mentally retarded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the State Department of Mental Health is given the same authority over such hospitals as is given them by the preceding section [§ 122-72] for private hospitals. (1899, c. 1, s. 61; Rev., s. 4601; C. S., s. 6220; 1945, c. 952, s. 42; 1957, c. 100, s. 1; 1963, c. 1166, s. 8; c. 1184, s. 14.)

Editor's Note.—

The first 1963 amendment substituted “State Department of Mental Health” for “State Board of Public Welfare.”

The second 1963 amendment, effective

July 1, 1963, substituted “mentally ill” for “mentally disordered” and “mentally retarded” for “mental defectives and feeble-minded.”

§ 122-74. Private hospitals part of public charities. — All hospitals, homes, or schools for the care and treatment of mentally ill and mentally retarded persons and inebriates, formed in compliance with the two preceding sections [§§ 122-72, 122-73] and duly licensed by the Department of Mental Health or Board of Public Welfare as in this article provided, shall, during the continuance of such license, become and be a part of the system of public charities of the State of North Carolina. (1903, c. 329, s. 1; Rev., s. 4602; C. S., s. 6221; 1957, c. 100, s. 1; 1963, c. 1166, s. 9; c. 1184, s. 15.)

Editor's Note.—

The first 1963 amendment inserted the words “Department of Mental Health or.”

The second 1963 amendment, effective

July 1, 1963, substituted “mentally ill and mentally retarded” for “insane persons, idiots, and feeble-minded.”

§ 122-75. Placing mentally ill persons in private hospitals.—Whenever any person shall be found to be mentally ill in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such mentally ill person, and, moreover, to support and maintain such mentally ill person in any named hospital without the state, or any private hospital within the State, and such mentally ill person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a State hospital (or in case such mentally ill person is incapable of declaring such preference, then the same may be declared by his

guardian), and two respectable physicians who shall have examined such mentally ill person, shall deem it proper, then it may be lawful for the clerk, together with said physicians, to recommend in writing that such mentally ill person shall be placed in the hospital so chosen, as a patient thereof. (1899, c. 1, s. 39; Rev., s. 4603; C. S., s. 6222; 1945, c. 952, s. 43; 1963, c. 1184, s. 16.)

Editor's Note.— word "disordered" each time that the latter
The 1963 amendment, effective July 1, appeared in this section.
1963, substituted the word "ill" for the

§ 122-77. Clerk to report proceedings to judge. — The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such mentally ill person may reside or be domiciled, and if he approves them, he shall so declare in writing, and such proceedings, with the approval thereof, shall be recorded by the clerk. (1899, c. 1, s. 42; Rev., s. 4605; C. S., s. 6224; 1945, c. 952, s. 45; 1963, c. 1184, s. 17.)

Editor's Note.— 1963, substituted the word "ill" for the
The 1963 amendment, effective July 1, word "disordered."

§ 122-78. Certified copy and approval of judge sufficient authority. —A certified copy of such proceedings, with the approval of a judge, shall be sufficient warrant to authorize any friend of such mentally ill person appointed by the judge to remove him to the hospital designated. (1899, c. 1, s. 43; Rev., s. 4606; C. S., s. 6225; 1945, c. 952, s. 46; 1963, c. 1184, s. 18.)

Editor's Note.— 1963, substituted the word "ill" for the
The 1963 amendment, effective July 1, word "disordered."

§ 122-79. Examination, hospitalization and treatment in private hospital.—When it is deemed advisable that any person, a citizen of North Carolina, or a citizen of another state or country, temporarily sojourning in North Carolina, should be detained in the private hospital to which the person is to be hospitalized within the State, two persons, one of whom must be a physician and who shall not be connected with the treatment of the alleged mentally ill person or inebriate, shall make affidavit before a clerk of the superior court of this State or a notary public that they have carefully examined the alleged mentally ill person; that they believe him to be a fit subject for hospitalization to a hospital for the mentally ill, and that his detention and treatment will be for his benefit. This certificate shall be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate and approval of the clerk shall be deposited with the superintendent of the private hospital as his authority for holding and treating the mentally ill person. The clerk may, as he sees fit, order any mentally ill person to be taken to a private hospital within the State instead of to one of the State hospitals and this order shall be sufficient authority for holding and treating such mentally ill person in such private hospital. Mentally retarded persons, and inebriates may be hospitalized to and held and treated in private hospitals or homes in this State in the manner hereinbefore prescribed for mentally ill persons. (1903, c. 329, s. 2; Rev., s. 4607; C. S., s. 6226; 1945, c. 952, s. 47; 1949, c. 1060; 1963, c. 813, s. 2; c. 1184, s. 19.)

Editor's Note.— persons instead of hospitalization of mentally ill persons. The amendment also substituted "Mentally retarded" for "Mental defectives, feeble-minded" at the beginning of the last sentence, deleted the proviso at the end of the section and inserted the provisions as to treating persons held in the second, third and last sentences.

The first 1963 amendment substituted near the middle of the first sentence the words "the treatment of the alleged mentally disordered person or inebriate" for the words "this private hospital."

Prior to the second 1963 amendment, effective July 1, 1963, this section provided for commitment of mentally disordered

§ 122-80. Patients transferred from State hospital to private hospital. — When it is deemed desirable that any patient of any State hospital be transferred to any licensed private hospital within the State, the State Department of Mental Health may so order. A certified copy of the hospitalization order on file at the State hospital shall be sent to the private hospital which, together with the order of the State Department of Mental Health, shall be sufficient warrant for holding the mentally ill or mentally retarded person, or inebriate by the officers of the private hospital. A certified copy of the order of transfer shall be filed with the clerk of superior court of the county from which such mentally ill or mentally retarded person, or inebriate was hospitalized. After such transfer the State hospital from which such patient was transferred shall be relieved of all future responsibility for the care and treatment of such patient. (1903, c. 329, s. 3; Rev., s. 4608; C. S., s. 6227; 1945, c. 952, s. 50; 1957, c. 1232, s. 25; 1963, c. 1184, s. 20.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "State Department of Mental Health" for "executive committee" in the first and second sentences, substituted "hospitalization order" for "commit-

ment" in the second sentence, substituted "ill or mentally retarded person" for "disordered person, mental defective" in the second and third sentences, and "hospitalized" for "committed" at the end of the third sentence.

§ 122-81. Guardian of mentally ill or retarded persons to pay expenses out of estate.—It shall be the duty of any person having legal custody of the estate of a mentally ill or mentally retarded person, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate. (1899, c. 1, s. 40; 1903, c. 329, s. 4; Rev., s. 4610; C. S., s. 6228; 1945, c. 952, s. 51; 1963, c. 1184, s. 21.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted the words "ill or mentally

retarded person" for the words "disordered person, mentally defective."

§ 122-81.1. Voluntary admission to private hospital. — Any person believing himself to be mentally ill or inebriate, or threatened with mental illness, may voluntarily admit himself to a private hospital as defined in G. S. 122-72 in accordance with the procedure specified in article 4 of this chapter; provided the private hospital is willing to accept such person for care and treatment. (1945, c. 952, s. 47½; 1963, c. 1184, s. 22.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section.

§ 122-82.1. Superintendent must notify clerk of court when patient is paroled or discharged.—Whenever a patient who has been hospitalized in a private hospital is paroled or discharged the hospitalizing clerk of court must be notified by the superintendent of the private hospital as provided for in the statutes relating to the State hospitals. (1945, c. 952, s. 48; 1963, c. 1184, s. 23.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted the words "hospitalized in" for the words "committed to" and the word "hospitalizing" for the word "committing."

§ 122-82.2. Superintendent must notify of patient leaving without authority.—Whenever a patient who has been hospitalized in a private hospital leaves such hospital without authorization, the clerk of court who ordered such hospitalization, the examining physicians, and the sheriff of the county of residence of the patient must be notified by the superintendent of the private hospital. (1945, c. 952, s. 49; 1963, c. 1184, s. 24.)

Editor's Note. — Prior to the 1963 amendment, effective July 1, 1963, this section related to giving notice of the escape of a patient committed to a private hospital.

ARTICLE 11.

Mentally Ill Criminals.

§ 122-83. **Mentally ill persons charged with crime to be committed to hospital.** — All persons who may hereafter commit crime while mentally ill, and all persons who, being charged with crime, are adjudged to be mentally ill at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is mentally ill and cannot plead, to Dorothea Dix Hospital, if the alleged criminal is white, or to Cherry Hospital if the alleged criminal is colored, and if the alleged criminal is an Indian from Robeson County, to Dorothea Dix Hospital, as provided for mentally ill Indians from Robeson County, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital. As a means of such care and treatment, the said board of directors may make rules and regulations under which the persons so committed to said institutions may be employed in labor upon the farms of said institutions under such supervision as said boards of directors may direct: Provided, that the superintendent and medical director of the hospital shall determine, in each case, that such employment is advantageous in the physical or mental treatment of the particular inmate to be so employed. Their confinement in said hospital shall not be regarded as punishment for any offense. (1899, c. 1, s. 63; Rev., s. 4617; C. S., s. 6236; 1923, c. 165, ss. 2, 3; 1927, c. 228; 1945, c. 952, s. 53; 1959, c. 1028, ss. 1, 2; 1963, c. 1184, s. 25.)

Editor's Note.—

The 1959 amendment changed the names of the State Hospital at Raleigh and the State Hospital at Goldsboro to Dorothea Dix Hospital and Cherry Hospital, respectively.

Section 11 of Session Laws 1963, c. 1166, provides that "State Department of Mental Health" is substituted for "board of directors" in any sections of the General Statutes wherein "board of directors" is

used to refer to the Hospitals Board of Control.

Session Laws 1963, c. 1184, s. 10, effective July 1, 1963, redesignated former article 6 as this article and changed the title thereof from "Mentally Disordered Criminals" to "Mentally Ill Criminals."

Session Laws 1963, c. 1184, s. 25, effective July 1, 1963, substituted the word "ill" for the word "disordered" four times in the first sentence.

§ 122-84. **Persons acquitted of certain crimes or incapable of being tried, on account of mental illness, committed to hospital; return for trial; detention for treatment.**—When a person accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson, or other crime, shall have escaped indictment or shall have been acquitted upon trial upon the ground of mental illness, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witness to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital designated in § 122-83. If upon such inquisition the judge shall find that the mental condition or disease of such person

is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital designated in § 122-83, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under the previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.

When a person committed to a State hospital under this section as unable to plead shall have been reported by the hospital to the court having jurisdiction as being mentally able to stand trial and plead, the said patient shall be returned to the court to stand trial as provided in § 122-87. If the hospital authorities feel that an outright discharge or release of said person (in the event he is found not guilty), would be harmful or dangerous to himself or the public at large involved, and that further care and treatment is necessary, said authorities will when reporting that he is able to stand trial and plead, make a request for his return for further care and treatment, in the event he is found not guilty.

If at the trial it is determined that the defendant is not guilty of a criminal offense and it appears to the trial judge that the State hospital in its report has requested that the defendant be returned to said hospital for further care and treatment as an outright discharge or release of said defendant would be harmful or dangerous to himself or the public at large, the trial judge shall commit said defendant to the proper State hospital for care and treatment and shall require him to remain at said hospital until discharged by the superintendent thereof upon the advice of the medical staff. (1899, c. 1, s. 65; Rev., s. 4618; C. S., s. 6237; 1923, c. 165, s. 4; 1945, c. 952, s. 54; 1951, c. 989, s. 1; 1963, c. 1184, s. 26.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted the word "illness" for the

word "disorder" in the catchline and in the first sentence.

§ 122-85. Convicts becoming mentally ill committed to hospital.—

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

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

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered" in the first and third sentences, substituted

"hospitalization" for "commitment" twice in the second sentence, and substituted "article 7" for "article 3" near the beginning of the second sentence.

§ 122-85.1. Persons on parole.—Any person who has been released from any penal institution on parole who becomes mentally ill or inebriate shall be hospitalized, in the manner provided in article 7 of this chapter, in the appropriate State hospital. (1959, c. 1002, s. 24; 1963, c. 1184, s. 28.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section.

§ 122-86. Persons acquitted of crime on account of mental illness; how discharged from hospital. — No person acquitted of a capital felony on the ground of mental illness, and committed to the hospital designated in § 122-83 shall be discharged therefrom unless an act authorizing his discharge be passed by the General Assembly. No person acquitted of a crime of a less degree than a capital felony and committed to the hospital designated in § 122-83 shall be discharged therefrom except upon an order from the Governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of mental illness, shall be discharged from said hospital except upon the order of the judge of the district or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hospitals designated in § 122-83 from applying to any judge having jurisdiction for a writ of habeas corpus. No judge issuing a writ of habeas corpus upon the application of such person shall order his discharge until the superintendents of the several State hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public. (1899, c. 1, s. 67; Rev., s. 4620; C. S., s. 6239; 1923, c. 165, s. 6; 1945, c. 952, s. 56; 1963, c. 1184, s. 29.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted the word "illness" for

the word "disorder" in the catchline and in the first and third sentences.

§ 122-87. Proceedings in case of recovery of patient charged with crime. — Whenever a person confined in any hospital for the mentally ill, and against whom an indictment for crime is pending, has recovered or has been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in said hospital shall have recovered his mind, the clerk of the court of the county from which he was hospitalized shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of the county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court residing within or holding the courts of said district shall have the power to fix bail. If the person confined in the hospital, and reported sane as aforesaid, shall give the bond fixed by the clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond, he shall be transferred to the jail of the county from which he was hospitalized. The superintendent will notify the sheriff of said county, and the sheriff will remove the person to the jail of his county. The sheriff will pay the expenses of such removal, and the county of the person's residence will repay the sheriff for his expenses and services. (1899, c. 1, s. 64; Rev., s. 4621; C. S., s. 6240; 1923, c. 165, s. 7; 1945, c. 952, s. 57; 1963, c. 1184, s. 30.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered" in the first sentence, substituted "hospital-

ized" for "committed" in the second and third sentences, and substituted "residence" for "settlement" in the last sentence.

§ 122-87.1. Proceedings in case criminal charges are terminated. —Whenever an indictment for crime which has been pending against a person who is confined in a State hospital has been quashed, nol prossed, or otherwise terminated except by trial, the patient shall thereafter be treated in all respects as if he had been hospitalized under the provisions of article 7 of this chapter. (1959, c. 1002, s. 25; 1963, c. 1184, s. 31.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "hospitalized" for "committed" and "article 7" for "article 3" near the end of this section.

§ 122-88. Ex-convicts with homicidal tendency committed to hospital.—Whenever any person who has been confined in the State prison under sentence for the felonious killing of another person, and who has been discharged therefrom at the expiration of his term of sentence, or as the result of executive clemency, shall thereafter so act as to justify the belief that he is possessed of a homicidal tendency, and shall be duly adjudged mentally ill, in accordance with the provisions of article 7 of this chapter, the clerk of the superior court or other officer having jurisdiction of the proceedings in which such person shall be adjudged mentally ill may, in his discretion, hospitalize such person to the State hospital designated in § 122-83, as authorized and provided in this chapter. (1911, c. 169, s. 1; C. S., s. 6241; 1923, c. 165, s. 8; 1945, c. 952, s. 58; 1963, c. 1184, s. 32.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered"

twice and also substituted "hospitalize" for "commit" near the end of the section.

§ 122-89. Hospital authorities to receive and treat such patients.—It shall be the duty of the duly constituted authorities of the State hospitals designated in this law for the mentally ill to receive all such mentally ill persons as shall be committed to said institutions in accordance with the provisions of this law, and to treat and care properly for the same until discharged in accordance with the provisions of the law. (1911, c. 169, s. 2; C. S., s. 6242; 1923, c. 165, s. 9; 1945, c. 952, s. 59; 1963, c. 1184, s. 33.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered."

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

Editor's Note.—

The 1961 amendment inserted the words "and treatment" at the end of the first sentence and near the beginning of the third sentence.

The 1963 amendment, effective July 1, 1963, deleted "who may, on the basis of the report of the superintendent, commit

such alleged criminal in accordance with the provisions of G. S. 122-83" at the end of the fourth sentence and inserted the present fifth sentence.

Applied in *State v. Johnson*, 256 N. C. 449, 124 S. E. (2d) 126 (1962); *State v. Arnold*, 258 N. C. 563, 129 S. E. (2d) 229 (1963).

ARTICLE 12.

John Umstead Hospital.

§ 122-92. **Acquisition of Camp Butner Hospital authorized.**—The State Department of Mental Health is authorized to acquire by purchase, gift or otherwise the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of a modern up-to-date hospital for the care and treatment of the mentally sick of this State. (1947, c. 789, s. 2; 1963, c. 1166, s. 10.)

Editor's Note.—

Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. Session Laws 1959, c. 1028, s. 4, changed the name of the State Hospital at Butner to the John Umstead Hospital. See § 122-7 and note.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control." Session Laws 1963, c. 1184, s. 11, effective July 1, 1963, redesignated former article 7 as this article.

§ 122-93. **Disposition of surplus real property.**—The North Carolina State Department of Mental Health is authorized and empowered to sell, lease, rent or otherwise dispose of surplus real property located at John Umstead Hospital, and to use the funds acquired as a result of such disposition, under such rules and regulations as may be adopted jointly by the North Carolina State Department of Mental Health and the Advisory Budget Commission: Provided, however, that all conveyances of real property shall otherwise comply with the procedures outlined in chapter 146 of the General Statutes of North Carolina and other applicable laws. (1949, c. 71, s. 1; 1955, c. 887, s. 1; 1959, c. 799, ss. 1, 2; c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

The first 1959 amendment inserted in line four the words "and to use the funds acquired as a result of such disposition." The amendment also rewrote the proviso.

The second 1959 amendment changed the name of the State Hospital at Butner to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-94. **Application of State highway and motor vehicle laws to roads, etc., at John Umstead Hospital; penalty for violations.**—All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the grounds of John Umstead Hospital. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on said grounds as is now vested by law in the State Department of Mental Health. (1949, c. 71, s. 2; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

Session Laws 1959, c. 1028, s. 4, changed the name of the State Hospital at Butner to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-95. **Ordinances and regulations for enforcement of article.**—The North Carolina State Department of Mental Health is authorized to make such rules and regulations and to adopt such ordinances, as it may deem necessary, to enforce the provisions of this article and to carry out its true purpose and intent,

for the better administration of the John Umstead Hospital and any adjacent territory owned by it, and in particular may make ordinances and adopt rules and regulations dealing with and controlling the following subjects:

- (1) To regulate the use of streets, alleys, driveways, and to establish parking areas.
- (2) To promote the health, safety, morals and general welfare of those residing on, occupying, renting or using any property or facilities within its limits, and those visiting and patronizing the hospital by:
 - a. Regulating the height, number of stories and size of buildings or other structures, the percentage of lot to be occupied, the size of yards and courts and other open spaces, the density of population, and the location and use of buildings, structures for trade, industry, residence or other purposes, to regulate markets, and prescribe at what place marketable products may be sold, and to condemn and remove all buildings, or cause them to be removed, at the expense of the owner, when dangerous to life, health or other property.
 - b. To prohibit, restrict and regulate theatres, carnivals, circuses, shows, parades, exhibitions of showmen and all other public amusements and entertainments and recreations.
 - c. To regulate, restrict or prohibit the operation of pool and billiard rooms and dance halls.
 - d. To regulate and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, chickens and other animals and fowl of every description.
 - e. To prevent and abate nuisances whether on public or private property. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

Session Laws 1959, c. 1028, s. 4, changed the name of the State Hospital at Butner

to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-96. Recordation of ordinances and regulations; printing and distribution.—All ordinances, rules and regulations adopted pursuant to the authority of this article shall be recorded in the proceedings of the North Carolina State Department of Mental Health and printed copies shall be filed in the office of the Secretary of State, and available for distribution to persons requesting the same. (1949, c. 71, s. 4; 1963, c. 1166, s. 10.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-98. Designation and powers of special police officers.—To enable the North Carolina State Department of Mental Health to enforce the provisions of this article and any rule or regulation adopted pursuant thereto, the said North Carolina State Department of Mental Health is authorized to designate one or more special police officers who shall have the same powers as peace officers now vested in sheriffs and constables within the territory embraced by the John Umstead Hospital site and any adjacent territory thereto owned or leased by the said North Carolina State Department of Mental Health. The powers herein vested in the aforementioned special police officers shall also extend to all property formerly a part of the John Umstead Hospital site which has been subsequently acquired from the North Carolina State Department of Mental Health by purchase

or lease. (1949, c. 71, s. 6; 1955, c. 887, s. 1; 1959, c. 35; c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

The first 1959 amendment added the second sentence to this section.

The second 1959 amendment changed

the name of the State Hospital at Butner to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

ARTICLE 13.

Interstate Compact on Mental Health.

§ 122-99. **Compact entered into; form of compact.**—The Interstate Compact on Mental Health is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but, that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that it would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate

authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(a) No provision of this compact except article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by article VII (b) as to costs or from any supplementary agreement made pursuant to article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any govern-

ment, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1959, c. 1003, s. 1; 1963, c. 1184, s. 12.)

Editor's Note.—This article formerly appeared as §§ 35-64 to 35-69. It was transferred to its present position by Session Laws 1963, c. 1184, s. 12, effective July 1, 1963.

§ 122-100. **Compact Administrator.** — Pursuant to said compact, the Commissioner of Mental Health shall be the Compact Administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The Compact Administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the compact of any supplementary agreement or agreements entered into by this State thereunder. (1959, c. 1003, s. 2; 1963, c. 1184, s. 12.)

§ 122-101. **Supplementary agreements.**—The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (1959, c. 1003, s. 3; 1963, c. 1184, s. 12.)

§ 122-102. **Financial arrangements.**—The Compact Administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the compact or by any supplementary agreement entered into thereunder. (1959, c. 1003, s. 4; 1963, c. 1184, s. 12.)

§ 122-103. **Transfer of patients.**—The Compact Administrator is hereby directed to consult with the immediate family of any proposed transferee. (1959, c. 1003, s. 5; 1963, c. 1184, ss. 12, 38.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, deleted a provision requiring approval of the superior court of the county where the patient is located of a transfer from an institution in this State to an institution in another party state.

§ 122-104. **Transmittal of copies of article.**—Copies of this article shall, upon its approval, be transmitted by the Compact Administrator to the governor of each state, the attorney general of each state, the Administrator of General Services of the United States, and the council of state governments. (1959, c. 1003, s. 6; 1963, c. 1184, s. 12.)

ARTICLE 14.

Mental Health Council.

§ 122-105. **Creation of Council; membership; chairman.** — There is hereby created a Mental Health Council to be composed of the following persons: The Superintendent of Mental Hygiene, the Chairman of the North Carolina State Department of Mental Health, the Commissioner of Public Welfare, the Director of the Division of Psychological Services of the State Board of Public Welfare, the State Health Director, a representative of the North Carolina As-

sociation of Clerks of Court, the State Superintendent of Public Instruction, the Commissioner of Correctional Institutions, the Director of the Division of Vocational Rehabilitation of the State Department of Public Instruction, the Chief of the Mental Health Section of the State Board of Health, a representative of the Medical Society of the State of North Carolina, a dentist licensed to practice in North Carolina appointed by the Governor after requesting recommendations from the president of the North Carolina Dental Society, a representative of the North Carolina Neuropsychiatric Association, a representative of the North Carolina Mental Hygiene Society, a representative of the Department of Psychiatry of each of the four-year medical schools in the State, a representative of the North Carolina Psychological Association, a representative of the North Carolina Conference for Social Service, a representative of the State Congress of Parents and Teachers, and a representative of the Eugenics Board. The Mental Health Council is hereby empowered to invite additional organizations to name representatives to the council. (1945, c. 952, s. 61; 1955, c. 486; 1957, c. 1357, s. 15; 1963, c. 326; c. 1166, s. 10; c. 1184, s. 13.)

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

The 1957 amendment, effective January 1, 1958, substituted "State Health Director" for "State Health Officer."

The first 1963 amendment rewrote the part of this section relating to the dentist member.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

This article formerly appeared as §§ 35-61 to 35-63. It was transferred to its present position by Session Laws 1963, c. 1184, s. 13, effective July 1, 1963.

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

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

Chapter 125.

Libraries.

ARTICLE 1.

State Library.

§ 125-2. Powers and duties of Library.

- (9) To enter into contracts with library agencies of other states for providing library service for the blind in this State and other states, provided adequate compensation is paid for such service and such contract is otherwise deemed advantageous to this State. (1955, c. 505, s. 3; 1961, c. 1161.)

Editor's Note.—The 1961 amendment added subdivision (9). As the rest of the section was not affected it is not set out.

Chapter 126.

Merit System Council.

§ 126-1. Appointment of members of Merit System Council; qualifications; terms; compensation.—The Governor of North Carolina is hereby authorized to appoint a Merit System Council, which shall be composed of five members, all of whom shall be public-spirited citizens of this State of recognized standing in the improvement of public administration and in the impartial selection of efficient government personnel for the Employment Security Commission, the North Carolina Medical Care Commission, the State Board of Health, the State Board of Public Welfare, the State Civil Defense Agency and the State Commission for the Blind. At least one of the members of the Council shall be a person who has had experience in county government. Two of the members of the Council shall also serve as members of the State Personnel Council. No Council member shall have held political office or have been an officer in a political organization during the year preceding his appointment, nor shall he hold such office during his term. No member of the Council shall have been an employee of any of the agencies within one year prior to his appointment. One member appointed hereunder shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years from the date of their appointments, and their successors shall be appointed by the Governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms, the person appointed to fill such vacancy shall be appointed only for the unexpired term. The members of the Merit System Council shall be paid seven dollars (\$7.00) per diem and actual travel expense for each day when they are in attendance on a meeting of the Council but shall receive no other salary. (1941, c. 378, s. 1; 1947, c. 598, s. 1; 1947, c. 933, s. 4; 1949, c. 492; 1957, c. 100, s. 1; c. 1004, s. 1; c. 1037; 1959, c. 1233, s. 1.)

Editor's Note.—

The 1959 amendment inserted the words "the State Civil Defense Agency" in line seven.

Session Laws 1959, c. 1233, s. 2½, provides: "In no event shall this act apply to State or local civil defense directors; members of State and local boards or commissions; members of advisory councils or committees, or similar boards paid only for attendance at meetings; State and local officials serving ex officio and performing incidental administrative duties; janitors; professional personnel who are paid for any form of medical or other professional services, and who are not en-

gaged in the performance of administrative duties; and attorneys serving as legal counsel; nor to those county, city or other local civil defense agencies and offices who do not desire to receive federal matching funds for personnel and administrative costs."

Session Laws 1959, c. 1233, s. 4, provides: "This act shall not become effective unless and until the Congress of the United States shall implement Public Law 85-606, 85th Congress by appropriating federal funds with which to match State and local funds for the cost of personnel and administration for State and local civil defense organizations."

§ 126-14. Authority of Merit System Council. — The Merit System Council appointed under the provisions of this chapter shall have the authority to establish, maintain and provide rules and regulations, in co-operation with the State Board of Health, the State Civil Defense Agency and the State Board of Public Welfare, for the administration of a system of personnel standards on a merit basis, including job descriptions and specifications and a uniform schedule of compensation, for all employees of the county welfare departments, all county, city or other local civil defense offices and the county, city, and district health departments. The rules and regulations governing annual leave, sick leave, hours of employment, and holidays for those employees shall be effective except when modified as follows:

- (1) When a board of county commissioners, or the governing body of a municipality, has adopted rules and regulations governing such matters for other employees under its jurisdiction, that board of county commissioners, or municipal governing body, may modify the rules and regulations of the Merit System Council governing such matters with respect to that county's welfare and/or health employees, or that municipality's health employees, as the case may be, to conform to the rules and regulations applicable to the other employees of the governmental unit; and the modified rules and regulations shall then be in effect in such county or municipality.
- (2) When two or more counties are combined in a district health department, the boards of commissioners of the counties comprising the district may jointly modify the rules and regulations of the Merit System Council governing such matters with respect to the health employees of the district department so as to make them conform generally to the rules and regulations governing other county employees in the counties comprising the district; and the modified rules and regulations shall then be in effect in such district. (1941, c. 378, s. 13; 1957, c. 100, s. 1; c. 1004, s. 4; 1959, c. 1233, s. 2.)

Cross Reference.—See note to § 126-1.

Editor's Note.—

The 1959 amendment inserted the words

“the State Civil Defense Agency” and the words “all county, city or other local civil defense offices” in the first sentence.

Chapter 127.

Militia.

Article 1.

Classification of Militia.

Sec.

- 127-1. Composition and classes of militia.
- 127-3.2. Composition of State defense militia.
- 127-6. [Repealed.]

Article 2.

General Administrative Officers.

- 127-13. [Repealed.]
- 127-16. Bond, duties, etc., of property and fiscal officer.
- 127-17. [Repealed.]

Article 3.

National Guard.

- 127-22. Officers appointed and commissioned; oath of office.
- 127-23. Commissions for commandants and officers at qualified educational institutions.
- 127-24. [Repealed.]
- 127-25. Promotion of officers by seniority and in accordance with regulations.
- 127-26. [Repealed.]
- 127-27. Relative rank among officers of same grade.
- 127-28. [Repealed.]
- 127-29. Elimination and disposition of of-

Sec.

- fficers; efficiency board; transfer to inactive status.
- 127-31. Enlistments in national guard; oath of enlistment.
- 127-32. [Repealed.]
- 127-35. Discipline and training.
- 127-36. Uniforms, arms and equipment.

Article 9.

Care of Military Property.

- 127-88. Property stored in warehouse.
- 127-89. [Repealed.]
- 127-91. Equipment and vehicles.
- 127-95. Member of national guard or militia failing to return property.
- 127-97. Selling or embezzling arms or equipment.
- 127-98. Refusing to deliver military property on demand.
- 127-99. [Repealed.]

Article 10.

Support of Militia.

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

Article 11.

General Provisions.

- 127-105. Orders, rules, regulations and Uniform Code of Military Jus-

Sec. tice applicable to militia when not in service of United States.
 127-106.1. Power of arrest in certain emergencies.

Article 12.

State Defense Militia.

127-111. Authority to organize and maintain State defense militia of North Carolina.

Sec. 127-111.1. State defense militia cadre.

Article 13.

Municipal and County Aid for Construction of Armory Facilities.

127-113. Authority to raise funds when issuance of bonds and levy of tax for payment subject to approval at election.

ARTICLE 1.

Classification of Militia.

§ 127-1. **Composition and classes of militia.**—The militia of the State shall consist of all able-bodied male citizens of the State and of the United States between the ages of twenty-one and forty years who are not exempt by reason of aversion to bearing arms, from religious scruples; together with all other able-bodied persons who are, or have or shall have declared their intention to become, citizens of the United States, subject to such qualifications as may be hereinafter prescribed, who shall voluntarily enlist or accept commission, appointment or assignment to duty therein. The militia shall be divided into five classes: The national guard, the naval militia, historical military commands, the state defense militia, and the unorganized militia. (1917, c. 200, s. 1; C. S., s. 6791; 1949, c. 1130, s. 1; 1957, c. 1043, s. 1; 1963, c. 1016, s. 2.)

Editor's Note.—

The 1963 amendment rewrote this section.

§ 127-2. **Composition of national guard.**—The national guard shall consist of the regularly enlisted militia, commissioned and warrant officers between such ages as may be established by regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 2; C. S., s. 6792; 1949, c. 1130, s. 1; 1957, c. 136, s. 1; 1961, c. 192, s. 1; 1963, c. 1016, s. 2.)

Editor's Note.—

The 1961 amendment rewrote this section.

formerly appearing after "militia" and inserted "and warrant" immediately before "officers."

The 1963 amendment deleted "and"

§ 127-3.2. **Composition of State defense militia.**—The State defense militia shall consist of commissioned, warrant and enlisted personnel called, ordered, appointed, or enlisted therein by the Governor under the provisions of article 12, G. S. 127-111 et seq. (1963, c. 1016, s. 2.)

§ 127-4. **Composition of unorganized militia.**—The unorganized militia shall consist of all other able-bodied citizens of the State and all other able-bodied persons who have or shall have declared their intention to become citizens of the United States, who shall be at least seventeen years of age, and, except as otherwise provided by law, under sixty-four years of age. (1917, c. 200, s. 4; C. S., s. 6794; 1949, c. 1130, s. 1; 1963, c. 1016, s. 2.)

Editor's Note.—

The 1963 amendment rewrote this section.

§ 127-6: Repealed by Session Laws 1963, c. 129.

§ 127-7. **Maintenance of other troops.**—In time of peace the State shall maintain only such troops as may be authorized by the President of the United States; but nothing contained in this chapter shall be construed as limiting the

rights of the State in the use of the national guard or the State defense militia or both within its borders in time of peace. Nothing contained in this chapter shall prevent the organization and maintenance of State police or constabulary. (1917, c. 200, s. 8; C. S., s. 6797; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment inserted the words “or the State defense militia or both” near the end of the first sentence.

ARTICLE 2.

General Administrative Officers.

§ 127-10. **Commander-in-chief to prescribe regulations.**—The commander-in-chief shall have the power and it shall be his duty from time to time to issue such orders and to prescribe such regulations relating to the organization of the national guard, State defense militia and naval militia as will cause the same at all times to conform to the federal requirements of the United States government relating thereto. (1917, c. 200, s. 36; C. S., s. 6800; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment inserted the words “State defense militia.”

§ 127-11. **Division of military staff.**—The military staff shall be divided into two kinds: The personal staff of the Governor and the administrative staff. The Governor may detail from the active list not more than ten national guard officers and two naval militia officers, who shall in addition to their regular duties perform the duties of aides-de-camp on the personal staff of the Governor. There shall be an administrative staff which shall be as is now or may from time to time be authorized by the Secretary of Defense for the national guard and the Secretary of the Navy for the naval militia. (1917, c. 200, s. 12; C. S., s. 6801; 1959, c. 218, s. 1.)

Editor's Note.—The 1959 amendment substituted “Defense” for “War” in line seven.

§ 127-12. **Adjutant General.**—The Governor shall appoint an Adjutant General, which appointment shall carry with it the rank of major general. No person shall be appointed as Adjutant General who has had less than five years' commissioned service in an active status in any component of the armed forces of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia. (1917, c. 200, s. 14; C. S., s. 6802; 1925, c. 54; 1939, c. 14; 1949, c. 1225; 1959, c. 218, s. 2.)

Editor's Note.—

The 1959 amendment rewrote the latter part of the second and third sentences.

§ 127-13: Repealed by Session Laws 1959, c. 218, s. 3.

§ 127-14. **Adjutant General's department.**—There shall be an Adjutant General's department. The Adjutant General shall be the head of the department and as such subordinate only to the Governor in matters pertaining thereto. He shall make such returns and reports to the National Guard Bureau and Secretary of the Navy or to such officers as the National Guard Bureau and Secretary of the Navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make a biennial report to the Governor on or before the thirty-first day of December, including a detailed statement of all expenditures made for military purposes during that biennium. He shall also make a biennial report to the General Assembly. He shall cause

to be prepared and issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the State. The Adjutant General shall perform such other duties not herein specified as may be required by the military laws and regulations or by the Governor. The Adjutant General shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The Adjutant General may appoint an assistant, which appointment may carry with it the rank of brigadier general, and such clerks and employees as may be prescribed by the Governor. An officer detailed as such assistant shall receive during the period of such service such compensation as may be authorized by the Governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard. The Adjutant General may appoint an assistant adjutant general for air national guard, which appointment may carry with it the rank of brigadier general. (1917, c. 200, s. 13; C. S., s. 6803; 1927, c. 217, s. 4; 1957, c. 136, s. 2; 1959, c. 218, s. 2½; 1963, c. 1016, s. 2.)

Editor's Note.—

The 1959 amendment added the last sentence.

The 1963 amendment changed the fifth sentence so as to provide for a biennial, rather than an annual, report.

§ 127-16. **Bond, duties, etc., of property and fiscal officer.**—The property and fiscal officer for the national guard shall be an employee of the Adjutant General's department and he shall be required to give a good and sufficient bond to the State, the amount thereof, to be determined by the Governor, for the faithful performance of his duties and for the safekeeping and proper disposition of such funds and property entrusted to his care. He shall receipt for and account for all funds and property allotted to his custody from the appropriation for military purposes, by the State, and shall make such returns and reports through the Adjutant General concerning same as may be required by the Governor or State laws. All or any disbursement of such moneys will be made by the property and fiscal officer, only upon the approval of the Adjutant General, upon such forms and under such regulations as may be prescribed by proper authority. Blank forms, books, stationery, and other necessary equipment, for use of the property and fiscal officer will be furnished through or by the Adjutant General's Department. Funds from the appropriation for military purposes will be paid to the property and fiscal officer by the State Treasurer upon requisition of the Adjutant General on the State Treasurer in accordance with the State laws, or regulations thereunder as prescribed by the State for the expenditure of appropriations made to the State departments. (1917, c. 200, s. 25; C. S., s. 6805; 1929, c. 317, s. 1; 1963, c. 1016, s. 2.)

Editor's Note. — The 1963 amendment for "disbursing officer" at four places in substituted "property and fiscal officer" the section.

§ 127-17: Repealed by Session Laws 1959, c. 218, s. 3.

ARTICLE 3.

National Guard.

§ 127-19. **Organization of national guard units.**—Except as otherwise specifically provided by the laws of the United States, the organization of the national guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular service subject in time of peace to such general exceptions as may be authorized by the Secretary of Defense. (1917, c. 200, s. 7; C. S., s. 6808; 1959, c. 218, s. 4.)

Editor's Note. — The 1959 amendment "army" and "Secretary of Defense" for substituted "regular service" for "regular "Secretary of War."

§ 127-22. **Officers appointed and commissioned; oath of office.**—All officers of the national guard shall be appointed and commissioned by the Governor as follows, viz.:

- (1) Except as otherwise specifically provided by the laws of the United States, the qualifications for appointment as an officer in the national guard shall be the same as those prescribed for the regular establishment, subject to such general exceptions as may be authorized by the Secretary of Defense.
- (2) Candidates for such appointment shall make written application therefor on such forms as may be prescribed by the secretary of the appropriate service, to the Adjutant General's Department, State of North Carolina, through command channels for comment by endorsements thereon.
- (3) No person shall hereafter be appointed an officer of the national guard unless he has established to the satisfaction of a board of officers his physical, moral, and professional qualifications to perform the duties of the grade and position for which examined, subject to such general exceptions as may be authorized by the Secretary of Defense. The board shall consist of three or more commissioned officers of the appropriate service, appointed under such regulations as may be promulgated by the secretary of the appropriate service.
- (4) Candidates appointed as officers of the national guard shall take and subscribe to the following oath of office: "I, (First Name) (Middle Name) (Last Name) do solemnly swear 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; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of (Grade) (Branch or Arm of Service) in the National Guard of the State of North Carolina upon which I am about to enter; so help me God." (1917, c. 200, s. 15; C. S., s. 6811; 1921, c. 120, s. 3; 1959, c. 218, s. 5.)

Editor's Note. — The 1959 amendment rewrote subdivisions (1) and (2) and added subdivisions (3) and (4).

§ 127-23. **Commissions for commandants and officers at qualified educational institutions.** — The Governor of North Carolina is authorized to appoint and commission, as staff officers of the North Carolina reserve militia, the officers of any university, college, academy or other educational institution which qualifies as herein provided. Any university, college, academy or other educational institution shall be deemed qualified under this section when such institution has been regularly incorporated under and by virtue of the laws of North Carolina; the institution, as a part of its courses of study, regularly teaches military science and tactics; the Department of Defense at Washington, D. C., has detailed an officer of the armed forces as professor or assistant professor of military science and tactics; the institution has been designated as qualified by the Secretary of the appropriate service and has been made a unit of the Senior or Junior Reserve Officers' Training Corps, or the institution, not having a unit of the Reserve Officers' Training Corps, has been approved and authorized by the Secretary of Defense to participate in the National Defense Cadet Corps Training Program or other military training programs under Title 10, United States Code, §§ 3540 and 4651.

Any qualified institution desiring the appointment of officers in the North Carolina reserve militia shall make application to the Governor setting forth all requisite facts as to its qualifications, the names of the persons to be commissioned, the rank desired for each, and the person's position at the institution. The application shall be signed by the chancellor, president, superintendent or other presiding official, under the seal of the institution. Upon receipt of the application, the Governor may appoint and commission the officers of such qualified institution as follows: The chancellor, president, superintendent or other presiding official, as colonel; the vice-president, principal or other officer second in authority, as major; the male professors and members of the faculty, as captains. The persons so commissioned shall have no connection with the national guard or other military forces of the State, nor shall they exercise any military authority other than in the discharge of their duties at their respective institutions. The commissions issued under this section may be terminated at the will of the Governor.

The Governor may annually appoint a committee of three members, one of whom shall be appointed on the recommendation of the Adjutant General, one on the recommendation of the State Superintendent of Public Instruction, and one on the recommendation of the Director of the State Board of Health, with a view to their proficiency in the several departments indicated, and the said committee shall during the school year, and while the said institutions are in session, visit all of the said educational institutions and make a thorough inspection of their military departments, their discipline, courses of study and educational departments, and their sanitary condition, and report to the Governor the result of said inspection. (1919, c. 265, ss. 1, 2, 3; C. S., s. 6812; 1929, c. 61, s. 1; 1963, c. 1095.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 127-23.1. Commissions by brevet for retired officers and enlisted men.—The Governor is authorized to confer commissions by brevet in the North Carolina national guard upon officers and enlisted men of the North Carolina national guard who have been retired and who may hereafter be retired from any reserve component of the armed forces of the United States under the authority of Title III, Public Law 810, 80th Congress, 2nd Session, (Army and Air Force, Vitalization and Retirement Equalization Act of 1948), and who have satisfactorily served as an active member of the North Carolina national guard for a period of ten years. The commissions by brevet shall be in grade as follows: A commissioned officer shall be commissioned by brevet in a grade one grade higher than the highest grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized officer of the North Carolina national guard; a warrant officer shall be commissioned by brevet in the grade of captain or in the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized member of the North Carolina national guard; an enlisted man shall be commissioned by brevet in the grade of first lieutenant or in the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized member of the North Carolina national guard. No officer shall be commissioned by brevet in a grade higher than that of lieutenant general.

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

The provisions of this section shall apply to officers and enlisted men of the North Carolina national guard who have been or who may hereafter be honor-

ably retired from any component of the armed forces of the United States by reason of disability, who have attained the age of 60 years, and who have satisfactorily served as an active member of the North Carolina national guard for a period of 10 years. (1955, c. 255, s. 1; 1957, c. 1003; 1963, c. 1016, s. 2.)

Editor's Note.—

The 1963 amendment substituted "armed forces" for "army" in the first and last paragraphs.

§ 127-24: Repealed by Session Laws 1959, c. 218, s. 6.

§ 127-25. **Promotion of officers by seniority and in accordance with regulations.**—The promotion of all officers shall be by seniority as far as the same is practicable and to the best interest of the service within the organization, and in accordance with regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 17; C. S., s. 6814; 1921, c. 120, s. 4; 1959, c. 218, s. 7.)

Editor's Note. — The 1959 amendment related to the qualifications of national guard officers. rewrote this section, which formerly re-

§ 127-26: Repealed by Session Laws 1959, c. 218, s. 6.

§ 127-27. **Relative rank among officers of same grade.** — Officers of the North Carolina national guard in the same grade rank among themselves according to the date of rank established by regulations promulgated by the secretary of the appropriate service and the Adjutant General of the State of North Carolina. (1917, c. 200, s. 19; C. S., s. 6816; 1921, c. 120, s. 5; 1927, c. 227, s. 1; 1959, c. 218, s. 8; 1961, c. 192, s. 2; 1963, c. 1016, s. 2.)

Editor's Note.—

The 1961 amendment rewrote this section as rewritten by the 1959 amendment. The 1963 amendment added the reference to the Adjutant General at the end of this section.

§ 127-28: Repealed by Session Laws 1959, c. 218, s. 6.

§ 127-29. **Elimination and disposition of officers; efficiency board; transfer to inactive status.**—(a) Whenever the efficiency or general fitness, including physical fitness, of a national guard officer is in question, the Adjutant General, State of North Carolina, may order him to appear before an efficiency board to determine whether or not the appointment of the officer should be withdrawn. The efficiency board will be composed of not less than three commissioned officers, all senior in rank to the officer undergoing investigation. A member of the board serving in a legal or medical advisory capacity may be junior to any person, other than a judge advocate, law specialist, or medical officer being considered. The findings of an efficiency board are not final until reviewed and approved by the Adjutant General, and the Governor of the State of North Carolina.

(b) Commissions of officers of the national guard may be vacated upon resignation, absence without leave for thirty days, pursuant to sentence of a court-martial, or pursuant to regulations promulgated by the secretary of the appropriate service.

(c) Officers of the national guard may, upon their own request, be transferred to the inactive national guard, subject to such exceptions as may be authorized by the Adjutant General, State of North Carolina, or the Secretary of Defense. (1917, c. 200, s. 28; C. S., s. 6818; 1959, c. 218, s. 9.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 127-31. **Enlistments in national guard; oath of enlistment.**—(a) Enlistments in the national guard shall be for such periods and subject to such qualifications as prescribed by the secretary of the appropriate service.

(b) Enlisted men shall not be recognized as members of the national guard un-

til they shall have subscribed to the following oath of enlistment: "I, (First Name) (Middle Name) (Last Name) do hereby acknowledge to have voluntarily enlisted this day of, 19...., in the (Army) (Air National Guard of North Carolina and as a Reserve of the (Army) (Air Force) with membership in the (National Guard of the United States) (Air National Guard of the United States) for a period of years under the conditions prescribed by law, unless sooner discharged by proper authority; and I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and to the State of North Carolina; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the Governor of North Carolina and the orders of the officers appointed over me, according to law and regulations, and/or the Uniform Code of Military Justice." (1917, c. 200, s. 30; C. S., s. 6820; 1921, c. 120, s. 6; 1957, c. 136, s. 6; 1959, c. 218, s. 10.)

Editor's Note.—

The 1959 amendment rewrote this section.

tion and added the provision as to oath of enlistment.

§ 127-32: Repealed by Session Laws 1959, c. 218, s. 11.

§ 127-33. **Discharge of enlisted men.**—(a) An enlisted man discharged from service in the national guard shall receive a discharge in writing, in such form and with such classification as is or shall be prescribed under regulations promulgated by the appropriate service.

(b) Discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by the Adjutant General, State of North Carolina, or pursuant to regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 32; C. S., s. 6822; 1959, c. 218, s. 12.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 127-34. **Membership continued in the national guard.** — When called or ordered into federal service and discharged therefrom, members shall continue their membership in the national guard until the expiration of their enlistment or appointment, unless sooner terminated by proper authority. (1921, c. 120, s. 8; C. S., s. 6822(a); 1959, c. 218, s. 13.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 127-35. **Discipline and training.**—The discipline of the national guard shall conform to the system which is now or may hereafter be prescribed for the armed forces, and the training shall be carried out so as to conform to the laws of the United States. (1917, c. 200, s. 33; C. S., s. 6823; 1959, c. 218, s. 14.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 127-36. **Uniforms, arms and equipment.**—The national guard shall, as far as practicable, be uniformed, armed and equipped with the same type of uniforms, arms and equipment as is or shall be provided for the appropriate regular service. (1917, c. 200, s. 37; C. S., s. 6824; 1959, c. 218, s. 15.)

Editor's Note. — The 1959 amendment substituted the words "appropriate regular service" for "regular army."

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

Editor's Note. — The 1959 amendment substituted the reference to "advisory board" for the words "as herein prescribed," and deleted the former second paragraph.

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

Editor’s Note. — The 1963 amendment “North Carolina national guard” near the substituted “armed forces” for the words middle of the last sentence.

§ 127-38. **Courts-martial for national guard.** — Courts-martial for organizations of the national guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the law and regulations governing the armed forces of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for such similar courts. (1917, c. 200, s. 55; C. S., s. 6825; 1963, c. 1018, s. 1.)

Editor’s Note. — The 1963 amendment substituted “armed forces” for “army” near the end of the section.

§ 127-39. **General courts-martial.** — General courts-martial of the national guard not in the service of the United States may be convened by orders of the Governor of the State, and such courts shall have the power to impose fines not exceeding two hundred dollars; sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of enlisted personnel to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 56; C. S., s. 6826; 1957, c. 136, s. 7; 1963, c. 1018, s. 2.)

Editor’s Note.— hundred dollars, and substituted the words “enlisted personnel” for “noncommissioned officers.”
The 1963 amendment reduced the maximum amount of fines from four to two

§ 127-40. **Special courts-martial.** — In the national guard, not in the service of the United States, special courts-martial may be appointed by the following authorities:

- (1) For an infantry division, by the commanding officers of the regiments or comparable commands.
- (2) For division artillery, by the commander of division artillery.
- (3) For corps artillery, by the commander of corps artillery.
- (4) For all other units of an infantry division, by the commander of the infantry division.
- (5) For the air national guard, by the senior officer of the air national guard.
- (6) For all other units of the national guard, by the Governor of North Carolina.

Such courts-martial shall have the power and authority to try any person subject to military law for any crime or offenses within the jurisdiction of a general military court. A special court-martial may not try a commissioned officer. Such courts-martial shall have the same powers of punishment as general courts-martial

except that fines imposed by such courts-martial shall not exceed one hundred dollars (\$100.00), and such courts-martial shall not have the power of dismissal from the national guard. (1917, c. 200, s. 57; C. S., s. 6827; 1957, c. 136, s. 8; 1963, c. 1018, s. 3.)

Editor's Note.—

The 1963 amendment added at the end of subdivision (1) the words "or comparable commands." It also inserted the sec-

ond sentence of the last paragraph and changed the maximum fine from two hundred to one hundred dollars.

§ 127-41. **Summary courts-martial.**—In the national guard, not in the service of the United States, summary courts-martial may be appointed by the commanding officer of any company, battery, detachment, squadron, or any other federally recognized unit, either army or air. Such court shall consist of one officer, who shall have the power to administer oaths and try enlisted men of each respective command for breaches of discipline and violations of laws governing such organizations. Such courts shall also have the power to impose fines not exceeding twenty-five dollars (\$25.00) for any single offense, may sentence to forfeiture of pay and allowances, or may sentence enlisted personnel to reduction in rank; but in the case of noncommissioned officers above the fourth enlisted grade, may not adjudge reduction except to the next inferior grade. (1917, c. 200, s. 58; C. S., s. 6828; 1957, c. 136, s. 9; 1963, c. 1018, s. 4.)

Editor's Note.—

The 1963 amendment rewrote the last sentence.

§ 127-42. **Powers of courts-martial.**—All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentences of confinement shall not exceed one day for each one dollar (\$1.00) of fine authorized. (1917, c. 200, s. 59; C. S., s. 6829; 1949, c. 1130, s. 3; 1957, c. 136, s. 11; 1963, c. 1018, s. 5.)

Editor's Note.—

The 1963 amendment changed "two dol-

lars" to "one dollar (\$1.00)" near the end of the section.

ARTICLE 5.

Regulations as to Active Service.

§ 127-71. **Regulations enforced on actual service.** — Whenever any portion of the militia shall be called into service to execute the law, suppress riot or insurrection, or to repel invasion, the provisions of the Uniform Code of Military Justice of the United States, governing the armed forces of the United States, and the regulations prescribed for the armed forces of the United States, and the regulations issued thereunder, shall be enforced and regarded as a part of this chapter until said forces shall be duly relieved from such duty. As to offenses committed when such provisions of the Uniform Code of Military Justice of the United States are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such provisions of the Uniform Code of Military Justice of the United States or regulations or laws governing the United States armed forces or the customs and usages thereof; but no punishment under such Code which will extend to the taking of life shall in any case be inflicted except in time of war, invasion, or insurrection, declared by a proclamation of the Governor to exist, and then only after approval by the Governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in county

jails or other prisons designated by the Governor for that purpose. (1917, c. 200, s. 45; C. S., s. 6858; 1963, c. 1018, s. 6.)

Editor's Note. — The 1963 amendment substituted "provisions of the Uniform Code of Military Justice of the United States" in lieu of "articles of war and articles for the government of the navy" in three places. It also substituted "armed forces" for "army and navy" in three places and substituted "Code" for "rules and articles" in the second sentence.

ARTICLE 6.

Unorganized Militia.

§ 127-73. **Unorganized militia ordered out for service.** — The commander-in-chief may at any time, in order to execute the law, suppress riots or insurrections, or repel invasions, in addition to the national guard, the State defense militia, and the naval militia, order out the whole or any part of the unorganized militia. When the militia of this State or a part thereof is called forth under the Constitution and laws of the United States, the Governor shall first order out for service the national guard, the State defense militia or naval militia, or such part thereof as may be necessary, and if the number available be insufficient, he shall then order out such a part of the unorganized militia as he may deem necessary. During the absence of organizations of the national guard or naval militia in the service of the United States, their State designations shall not be given to new organizations. (1917, c. 200, s. 46; C. S., s. 6860; 1963, c. 1016, s. 2.)

Editor's Note. — The 1963 amendment substituted the words "State defense militia" for "national guard reserve" in the first sentence, and inserted the words "the State defense militia" in the second sentence.

§ 127-74. **Manner of ordering out unorganized militia.** — The Governor shall, when ordering out the unorganized militia, designate the number. He may order them out either by calling for volunteers or by draft. He may attach them to the several organizations of the national guard, the State defense militia or naval militia, as may be best for the service. (1917, c. 200, s. 47; C. S., s. 6861; 1963, c. 1016, s. 2.)

Editor's Note. — The 1963 amendment inserted the words "the State defense militia" and made other changes in the second sentence.

§ 127-77. **Promotion of marksmanship.**—The Adjutant General is authorized to detail a commissioned officer of the North Carolina national guard or member of the State defense militia to promote rifle marksmanship among the State defense militia and the unorganized militia of the State. Such officer or member so detailed shall serve without pay and it shall be his duty to organize and supervise rifle clubs in schools, colleges, universities, clubs and other groups, under such rules and regulations as the Adjutant General shall prescribe and in such manner to make them, when duly organized, acceptable for membership in the National Rifle Association. Provided, that such duties and efforts shall in nowise interfere or conflict with clubs of schools or in nowise interfere or conflict with clubs of schools or units operating in R. O. T. C. or similar schools under the supervision of armed forces instructors.

The Adjutant General may reimburse the officer, or member of the State defense militia, so detailed to promote rifle marksmanship, as aforesaid, for such expenses actually incurred, not to exceed the amount appropriated for such purpose by the General Assembly. (1937, c. 449; 1963, c. 1016, s. 2.)

Editor's Note. — The 1963 amendment inserted the references to "the State defense militia" in the first sentence, deleted the words "of the unorganized militia" near the beginning of the second sentence, and substituted "armed forces" for "army" near the end of the first paragraph, and "State defense militia" for "unorganized militia" in the second paragraph.

ARTICLE 7.

Pay of Militia.

§ 127-78. **Rations and pay on service.**—The militia of the State, both officers and enlisted men, when called into the service of the State, shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof. (1813, c. 850, s. 5, P. R.; R. C., c. 70, s. 84; Code, s. 3248; Rev., s. 4856; 1907, c. 316; 1917, c. 200, s. 50; C. S., s. 6864; 1935, c. 452; 1959, c. 218, s. 17.)

Editor's Note.—

The 1959 amendment rewrote this section.

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

Editor's Note.—

The 1959 amendment deleted from the second sentence the words "actual expenses and six dollars (\$6.00) per diem," and inserted in lieu thereof the words "per

diem and subsistence prescribed for lawful State boards and commissions generally."

The 1963 amendment substituted the word "service" for the words "army and navy" in the second sentence.

§ 127-82. **Pay and care of soldiers injured in service.**—A member of the national guard and militia who shall, when on duty or assembled therefor in case of riot, tumult, breach of peace, insurrection, or invasion, or to repel invasion or in aid of the civil authorities, receive any injury, or incur or contract any disease or illness, or disability as a result of disease or illness, by reason of such duty or assembly therefor, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall during the period of such incapacity receive the actual necessary expenses for care and medicine and medical attendance, and the pay of his grade or rank, to be paid out of the contingency and emergency fund, or such other fund as may be designated by law. (1917, c. 200, s. 54; C. S., s. 6868; 1959, c. 218, s. 19; c. 763.)

Editor's Note. — The 1959 amendments rewrote this section.

ARTICLE 8.

Privilege of Organized Militia.

§ 127-86. **When families of soldiers supported by county.**—When any citizen of the State is absent on duty as a member of the national guard, State defense militia or naval militia, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall

make towards their maintenance such allowance as may be deemed reasonable. (1917, c. 200, s. 93; C. S., s. 6873; 1963, c. 1019, s. 2.)

Editor's Note. — The 1963 amendment inserted the words "State defense militia."

ARTICLE 9.

Care of Military Property.

§ 127-88. **Property stored in warehouse.**—All public military property of every description which may not be distributed among the units of the national guard or State defense militia according to law shall be stored and kept in the United States Property and Fiscal Officer for North Carolina Warehouse. (1917, c. 200, s. 39; C. S., s. 6875; 1959, c. 218, s. 20; 1963, s. 3.)

Editor's Note. — The 1959 amendment rewrote this section. The 1963 amendment inserted the words "or State defense militia."

§ 127-89: Repealed by Session Laws 1959, c. 218, s. 21.

§ 127-90. **Property kept in good order.**—Every officer and enlisted man belonging to any unit equipped with public military property shall keep and preserve such property in good order; and for neglect to do so may be punished as a court-martial may direct. (1917, c. 200, s. 40; C. S., s. 6877; 1959, c. 218, s. 22.)

Editor's Note. — The 1959 amendment rewrote this section.

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

Editor's Note. — The 1959 amendment rewrote this section. The 1963 amendment inserted the words "or State defense militia."

§ 127-93. **Replacement of lost or damaged property.**—Whenever any military property issued to the national guard or State defense militia of the State shall have been lost, damaged, or destroyed, and upon report of a disinterested surveying officer it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage or destruction could have been avoided by exercise of reasonable care, the money value of such property shall be charged to the responsible officer or enlisted man, and the pay of such officers and enlisted men from both federal and State funds at any time accruing may be stopped and applied to the payment of any such indebtedness until same is discharged. (1917, c. 200, s. 43; C. S., s. 6880; 1959, c. 218, s. 24; 1963, c. 1019, s. 5.)

Editor's Note. — The 1959 amendment substituted "national guard" for "militia" in line two, omitted a provision as to liability on bond for lost, damaged or destroyed property, and made other changes. The 1963 amendment inserted "or State defense militia" near the beginning of the section.

§ 127-94. **Injuring military property.**—If any person shall wantonly or willfully injure or destroy any arms, equipment, or other military property of the State or the United States and refuse to make good such injury or loss, or shall

sell, dispose of, secrete, or remove the same with intent to sell or dispose thereof, he shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. (1876-7, c. 272, s. 19; Code, s. 3274; Rev., s. 3536; C. S., s. 6881; 1959, c. 218, s. 25.)

Editor's Note. — The 1959 amendment inserted the words "or the United States" in line three and increased the maximum fine from one hundred to five hundred dollars.

§ 127-95. Member of national guard or militia failing to return property.—If any member of the North Carolina national guard or State defense militia shall willfully fail to return any property of the State or the United States to the armory or other place of deposit, when notified by competent authority so to do, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 3537; C. S., s. 6882; 1963, c. 1019, s. 6.)

Editor's Note. — The 1963 amendment inserted "or State defense militia" near the beginning of the section.

§ 127-97. Selling or embezzling arms or equipment.—If any person to whom shall be confided public arms and/or equipment shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be guilty of a misdemeanor. (1831, c. 45, s. 5; R. C., c. 89, s. 8; Code, s. 3556; Rev., s. 3542; C. S., s. 6884; 1959, c. 218, s. 26.)

Editor's Note. — The 1959 amendment substituted "and/or equipment" for "or accouterments."

§ 127-98. Refusing to deliver military property on demand.—Every officer and enlisted man of the national guard or State defense militia, whenever and wherever he shall see or learn that any of the military property issued to the national guard or State defense militia is in the possession of any person other than in whose hands they may be placed for safekeeping, under the provisions of the law, shall make immediate demand for the same personally or in writing; and should such person refuse to deliver them to the officer and/or enlisted man he shall be guilty in like manner, and punished in like manner as for selling or embezzling military property. (1831, c. 45, s. 7; R. C., c. 89, s. 10; Code, s. 3558; Rev., s. 3540; C. S., s. 6885; 1959, c. 218, s. 27; 1963, c. 1019, s. 7.)

Editor's Note. — The 1959 amendment rewrote this section. defense militia" twice near the beginning of this section.

The 1963 amendment inserted "or State

§ 127-99: Repealed by Session Laws 1959, c. 218, s. 28.

ARTICLE 10.

Support of Militia.

§ 127-100. Requisition for federal funds.—The Governor shall make requisition upon the secretary of the appropriate service for such State allotment from federal funds as may be necessary for the support of the militia. (1917, c. 200, s. 23; C. S., s. 6887; 1921, c. 120, s. 10; 1963, c. 1019, s. 8.)

Editor's Note. — The 1963 amendment substituted "secretary of the appropriate service" for "Secretary of War."

§ 127-101. **County appropriations.** — The county commissioners may appropriate such sums of money to the various organizations of the national guard, State defense militia or naval militia in their counties and at such times as the board may deem proper. (1917, c. 200, s. 91; C. S., s. 6888; 1963, c. 1019, s. 9.)

Editor's Note. — The 1963 amendment inserted the words "State defense militia."

§ 127-102. **Allowances made to different organizations and personnel.**—(a) There shall be allowed each year to the following officers, under rules and regulations prescribed by the Adjutant General, as follows: To general officers, and commanders of division, corps, groups, brigades, regiments, separate battalions, squadrons, or similar organizations, not to exceed two hundred and twenty-five dollars (\$225.00); to commanding officers of companies, batteries, troops, detachments, and similar units not to exceed two hundred dollars (\$200.00); to executive officers, adjutants, plans and training officers, logistical officers and commissioned officers in comparable assignments in division, corps, groups, brigades, regiments, battalions, squadrons, and similar organizations, not to exceed two hundred dollars (\$200.00). No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and regulations and has pursued such course of instruction as may from time to time be required.

(b) There shall be allowed annually to each company, battery, troop, detachment and similar organizations federally recognized under regulations prescribed by the Defense Department in its tables of organization for the national guard, not to exceed the sum of three thousand dollars (\$3,000.00), to be applied to the payment of armory rent, heat, lights, stationery, postage, printing and other necessary expenses of the organization, in accordance with rules and regulations prescribed by the Adjutant General.

(c) There shall be allowed annually to the supply sergeant of each company, battery, troop, detachment, and similar organizations, the sum of one hundred dollars (\$100.00).

(d) All payments are to be made by the duly appointed budget officer in semiannual installments on the first day of July and the first day of January of each year; but no payment shall be made unless all training required by law and regulations are duly performed by all organizations named. No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and regulations and has pursued such course of instruction as may from time to time be required.

(e) The commanding officer of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatever for the support of their respective organizations in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly when due the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations.

(f) There shall be allowed annually to each of the following federally recognized commands of the national guard not to exceed the sum of: One thousand dollars (\$1,000.00) to headquarters of division or comparable commands; six hundred dollars (\$600.00) to headquarters of corps, groups, brigades, or comparable commands; and four hundred dollars (\$400.00) to battalions, squadrons and similar organizations. This amount is to be applied to the payment of necessary administrative expenses of the headquarters in accordance with rules and regulations prescribed by the Adjutant General. (1917, c. 200, s. 97; 1919, c. 311; C. S., s. 6889; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227,

s. 2; 1949; c. 1130, s. 5; 1951, c. 1144, s. 1; 1953, c. 1246; 1959, c. 421; 1963, c. 1020.)

Editor's Note.—

The 1959 amendment substituted "Defense" for "War" in line three of subsection (b) and increased the amount named therein from \$1,500.00 to \$3,000.00

The 1963 amendment, effective July 1, 1963, rewrote this section.

ARTICLE 11.

General Provisions.

§ 127-103. **Reports of officers.**—All officers of the national guard, the State defense militia, and the naval militia shall make such returns and reports to the Governor, Secretary of Defense, or to such officers as they may designate, at such times and in such forms as may from time to time be prescribed. (1917, c. 200, s. 21; C. S., s. 6890; 1963, c. 1019, s. 10.)

Editor's Note. — The 1963 amendment inserted the words "the State defense militia" and substituted "Secretary of Defense" in lieu of "Secretary of War, Secretary of the Navy."

§ 127-105. **Orders, rules, regulations and Uniform Code of Military Justice applicable to militia when not in service of United States.**—The national guard, State defense militia and naval militia, when not in the service of the United States, shall, except as to punishments, be governed by the orders, rules and regulations of the Adjutant General, regulations promulgated by the secretary of the appropriate service of the armed forces of the United States, and the Uniform Code of Military Justice, as amended from time to time. (1917, c. 200, s. 34; C. S., s. 6892; 1963, c. 1018, s. 7.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 127-106.1. **Power of arrest in certain emergencies.**—In the event members of the North Carolina national guard or State defense militia are called out by the Governor pursuant to the authority vested in him by the Constitution, they shall have such power of arrest as may be reasonably necessary to accomplish the purpose for which they have been called out. (1959, c. 453; 1963, c. 1019, s. 11.)

Editor's Note. — The 1963 amendment inserted the words "or State defense militia."

Quoted in Harriet Cotton Mills v. Local Union No. 578, 251 N. C. 218, 111 S. E. (2d) 457 (1959).

§ 127-109. **Protection of the uniform.**—It shall be unlawful for any person not an officer or enlisted man in the armed forces of the United States to wear the duly prescribed uniform of the armed forces of the United States, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the armed forces of the United States; provided, that the foregoing provisions shall not be construed so as to prevent officers or enlisted men of the national guard or State defense militia from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men; nor to prevent members of the organization known as the Boy Scouts of America, or the naval militia, or such other organizations as the Secretary of Defense may designate, from wearing their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers of the armed forces of the United States, regular or volunteer, and whose most recent service was terminated by an honorable discharge, mustered out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other

commission in such regular or volunteer service; nor to prevent any person who has been honorably discharged from the armed forces of the United States, regular or volunteer, from wearing his uniform from the place of his discharge to his home within three (3) months after his discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers and enlisted men, or both, of the armed forces of the United States, regular or volunteer, from wearing, upon occasions of ceremony, the uniform duly prescribed by such societies to be worn by members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a State university, State college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of a duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the armed forces of the United States is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval authorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the armed forces of the United States in any playhouse or theater, or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the armed forces of the United States: Provided further that the uniform worn by officers or enlisted men of the national guard, or State defense militia, or by the members of the military societies, or the instructors and members of the cadet corps referred to in the preceding proviso, shall include some distinctive mark or insignia to be prescribed by the Secretary of Defense to distinguish such uniforms from the uniforms of the armed forces of the United States; and provided further, that the members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by the officers of the armed forces of the United States, or any insignia of rank similar thereto. Any person who offends against the provisions of this section, shall on conviction be punished by a fine not exceeding fifty dollars (\$50.00), or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment. (1921, c. 120, s. 12; C. S., s. 6895(a); 1963, c. 1017.)

Editor's Note. — The 1963 amendment substituted "armed forces of the United States" for "United States army, navy or marine corps" throughout this section and inserted "or State defense militia" at two places in the section. It also substituted "Secretary of Defense" for "Secretary of War" at two places in the section.

ARTICLE 12.

State Defense Militia.

§ 127-111. **Authority to organize and maintain state defense militia of North Carolina.**—(a) The Governor is authorized, subject to such regulations as the Secretary of Defense may prescribe, to organize such part of the unorganized militia as a State force, for discipline and training, into companies, battalions, regiments, brigades or similar organizations, as may be deemed necessary for the defense of the State; to maintain, uniform, and equip such military force within the appropriation available; to exercise discipline in the same manner as is now or may be hereafter provided by the State laws for the na-

tional guard; to train such force in accordance with training regulations issued by the Secretary of Defense. Such military force shall be subject to the call or order of the Governor to execute the law, suppress riots or insurrections, or to repel invasion, as may now or hereafter be provided by law for the national guard or for the State militia.

(b) Such military force shall be designated as the "North Carolina State defense militia" and shall be composed of personnel of the unorganized militia as may volunteer for service therein or drafted as provided by law. To be eligible for service in an enlisted status, a person must be at least seventeen years of age and under fifty years of age, or under sixty-four years of age and a former member of the armed forces of the United States. To be eligible for service as an officer, a male must be at least eighteen years of age and under sixty-four, and a female at least twenty-one years of age and under sixty-four. The force and its personnel shall be additional to and distinct from the national guard organized under existing law. A person may not become a member of the defense militia established under this section, if a member of a reserve component of the armed forces.

(c) The Governor is hereby authorized: To prescribe rules and regulations governing the appointment of officers, the enlistment of other personnel, the organization, administration, equipment, discipline and discharge of the personnel of such military force; to requisition from the Secretary of Defense such arms and equipment as may be in possession of and can be spared by the Department of Defense; and to furnish the facilities of available armories, equipment, State premises and property, for the purpose of drill and instruction.

(d) Such force shall not be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of membership therein, be exempt from military service under any federal law.

(e) The Governor is hereby authorized to transfer to the benefit of the State defense militia any available and unexpended funds which he shall find necessary for its use from any appropriations to the national guard by the General Assembly, and for the same purpose to allot moneys from the Contingency and Emergency Fund with the concurrence of the Council of State. Upon disbandment of the State defense militia any moneys or balance to the credit of any unit of this organization shall be paid into the State Treasury for the benefit of the national guard, and all property, clothing, and equipment belonging to the State shall be transferred to the account of the national guard for disposition in accordance with the best interests of the State and as deemed advisable by the Governor. Upon disbandment of any unit of the State defense militia prior to the disbandment of the entire organization, the Governor is authorized to direct the transfer of any State property or balance of funds of the disbanded unit to any other unit, including any new unit or units organized to fill vacancies, or otherwise, as the Governor may direct.

(f) The North Carolina State defense militia shall be subject to the military laws of the State not inconsistent with or contrary to the provisions contained in this article with the following exceptions:

The provisions of §§ 127-84, 127-85, and 127-102, as amended, shall not be applicable to the personnel and units of the State defense militia.

(g) There shall be allowed annually to each unit or company of the State defense militia such funds as may be necessary to be applied to the payment of armory rent, heat, light, stationery, printing, and other expenses. The allowance to each unit annually shall not exceed three thousand dollars (\$3,000.00).

(h) All payments are to be made by the Adjutant General in accordance with State laws in semiannual installments on the first day of July and the first day of January of each year, but no payment shall be made unless all drills and duties required by law are duly performed by all organizations named.

(i) The commanding officer of each organization participating in the appropriation herein named shall render an itemized statement of all funds received from any source whatsoever for the support of the organization in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly, when due, the financial statement of his organization will be sufficient cause to withhold all appropriations for the organization. (1941, c. 43; 1943, c. 166; 1945, c. 209, s. 1; c. 835; 1957, c. 1083; 1963, c. 1016, s. 1.)

Editor's Note.—

The 1963 amendment rewrote this sec-

tion and changed the article heading from "State Guard" to "State Defense Militia."

§ 127-111.1. State defense militia cadre.—(a) The Governor is authorized: To organize and regulate part of the unorganized militia as a State defense militia cadre in units or commands which he may deem necessary to provide a cadre for an active State defense militia; to prescribe regulations for the maintenance of the property and equipment of the cadre, for the exercise of its discipline, and for its training and duties.

(b) The cadre shall be designated the "North Carolina State defense militia cadre" and shall be composed of a force of officers and enlisted personnel raised by appointment of the Governor, or otherwise, as may be provided by law. Personnel of the cadre shall serve without pay. The Adjutant General may reimburse cadre members for expenses actually incurred, not to exceed the amount appropriated and authorized for such purposes by the General Assembly.

(c) The Governor's authority hereunder shall not be subject to regulations prescribed by the Secretary of Defense. Age and membership requirements for the State defense militia generally, as set forth in G. S. 127-111, shall apply. The training of the cadre need not be in accordance with training regulations issued by the Department of Defense. The provisions of § 127-111 (c), (d), (g), and (h) shall apply.

(d) The total authorized strength of the cadre, its authorized officer and enlisted strength, the composition of each of its units or commands, and the allocation of cadre units or commands among the counties, cities, and towns of the State, shall be as prescribed by the Governor in suitable regulations enforced through the Adjutant General, or as otherwise provided by law.

(e) The duties of the State defense militia cadre shall be as ordered and directed by the Governor from time to time, or in regulations, and may include authority to take charge of armories and other military installations and real properties used by the North Carolina national guard, together with such other property as the regulations may provide, when and if the North Carolina national guard, or any part thereof, may be inducted into the service of the United States, or, for any extended period of time, may be absent on any duty from its home station. In addition, the cadre shall have duties appropriate to the organization, maintenance, and training of a military cadre to act as a nucleus for the organization of an active State defense militia whenever the necessity may arise. (1963, c. 1016, s. 1.)

ARTICLE 13.

Municipal and County Aid for Construction of Armory Facilities.

§ 127-113. Authority to raise funds when issuance of bonds and levy of tax for payment subject to approval at election.—Counties and municipalities are hereby authorized to borrow money and issue and sell bonds and notes and to raise by taxation and otherwise, sufficient moneys to carry out the purpose of this article. The principal and interest on such bonds and notes as may be issued may be paid from general or other available funds of the county or municipality concerned; and, if necessary, the governing boards may levy

sufficient taxes to raise funds to meet appropriations and to meet payments of principal and interest on such bonds or notes which may be issued hereunder. Taxes may be levied by the governing body of any county or municipality of the State for the special purpose of this article, for which special approval is hereby given. Counties may issue and sell such bonds or notes under the provisions of the County Finance Act, and municipalities may issue and sell such bonds or notes under the provisions of the Municipal Finance Act. The issuance of such bonds and the levy of a tax for the payment of the principal thereof and interest thereon shall be subject to the approval thereof by a majority of the qualified voters of the county or municipality concerned voting at an election held for such purpose if required by the Constitution or if required pursuant to the provisions of the County Finance Act or the Municipal Finance Act, but such approval at an election shall not be necessary if not required by the Constitution or pursuant to the provisions of the County Finance Act or the Municipal Finance Act. (1955, c. 1181, s. 2; 1961, c. 1042.)

Editor's Note.—The 1961 amendment added the last sentence.

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

Sec.

128-15.2. Appointment of acting heads of certain agencies.

Article 3.

Retirement System for Counties, Cities and Towns.

Sec.

128-29.1. Authority to invest in certain common and preferred stocks.
128-37.1. Membership of employees of county welfare department.

ARTICLE 1.

General Provisions.

§ 128-15.2. **Appointment of acting heads of certain agencies.**—In every case where a State board or commission is authorized by statute to appoint the executive head of a State agency or institution, that board or commission may appoint an acting executive head of that agency or institution to serve

- (1) During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
- (2) During the continued absence of the regular holder of the office, or
- (3) During a vacancy in the office and pending the selection and qualification of a person to serve for the unexpired term.

An acting executive head of a State agency or institution appointed in accordance with this section 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

- (1) Upon the termination of the incapacity of the officer in whose stead he acts,
- (2) Upon the return of the officer in whose stead he acts, or
- (3) Upon the selection and qualification of a person to serve for the unexpired term.

Each State board or commission may determine (after such inquiry as it deems appropriate) that the executive head of a State agency or institution whom it is authorized by statute to appoint is physically or mentally incapable

of performing the duties of his office. Each such board or commission may also determine that such incapacity has terminated. (1959, c. 284, s. 1.)

Editor's Note.—Section 3 of the act inserting this section provides: "Nothing in this act shall be deemed to repeal G. S. 128-39."

ARTICLE 2.

Removal of Unfit Officers.

§ 128-16. **Officers subject to removal; for what offenses.** — Any judge or prosecuting attorney of any court inferior to the superior court; any justice of the peace, any sheriff, police officer, or constable, shall be removed from office by the judge of the superior court, resident in or holding the courts at the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- (1) For willful or habitual neglect or refusal to perform the duties of his office.
- (2) For willful misconduct or maladministration in office.
- (3) For corruption.
- (4) For extortion.
- (5) Upon conviction of a felony.
- (6) For intoxication, or upon conviction of being intoxicated. (P. L. 1913, c. 761, s. 20; 1919, c. 288; C. S., s. 3208; 1959, c. 1286; 1961, c. 991.)

Editor's Note. — The 1959 amendment inserted "any justice of the peace" in the introductory paragraph.

the introductory paragraph.

Cited in Swain v. Creasman, 255 N. C. 546, 122 S. E. (2d) 358 (1961).

The 1961 amendment made changes in

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

Cited in Swain v. Creasman, 255 N. C. 546, 122 S. E. (2d) 358 (1961).

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. **Definitions.**

- (2) "Employer" shall mean any county, incorporated city or town, the light and water board or commission of any incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, the State Association of County Commissioners, county and/or city airport authorities, housing authorities created and operated under and by virtue of chapter 157 of the General Statutes, redevelopment commissions created and operated under and by virtue of article 37, chapter 160 of the General Statutes, county and/or city or regional libraries, county and/or city boards of health, district boards of health, any other separate, local governmental entity, and the retirement system.
- (23) "Year" shall mean the regular fiscal year beginning July 1, and ending June 30 in the following calendar year unless otherwise defined by regulation of the board of trustees. (1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 515, s. 5.)

Local Modification.—By virtue of Session Laws 1959, c. 599, the county of Onslow shall be stricken from Local Modification under this section and under §§

128-22, 128-26 to 128-30 and 128-36.

Editor's Note.—

The 1959 amendment rewrote subdivisions (2) and (23).

The 1961 amendment inserted near the end of subdivision (2) the words "any other separate, local governmental entity."

As only subdivisions (2) and (23) were changed by the amendments the rest of the section is not set out.

Session Laws 1959, c. 599 made this article applicable to Onslow County and validated all acts done with respect to matters covered by Session Laws 1945, c. 526.

§ 128-22. Name and date of establishment.—A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for employees of those counties, cities and towns or other eligible employers participating in the said retirement system. Following the filing of the application as provided in § 128-23 (c), the board shall set a date, effective the first day of a calendar quarter, not more than ninety days thereafter, as of which date participation of the employer may begin, which date shall be known as the date of participation for such employer: Provided, that in the judgment of the board of trustees an adequate number of persons have indicated their intention to participate; otherwise at such later date as the board of trustees may set.

It shall have the power and privileges of a corporation and shall be known as the "North Carolina Local Governmental Employees' Retirement System," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1939, c. 390, s. 2; 1941, c. 357, s. 2; 1943, c. 535; 1945, c. 526, s. 2; 1959, c. 491, s. 3.)

Editor's Note.—

The 1959 amendment rewrote the second sentence down to the proviso.

§ 128-24. Membership.

- (1a) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.
- (4) a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than death or retirement for disability as provided in G. S. 128-27, subsection (c), after completing twenty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of sixty years, or if a uniformed policeman or fireman upon the date he shall have attained the age of fifty-five years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G. S. 128-27, subsection (b), paragraphs (1), (2) and (3).
- b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than

death or retirement for disability as provided in G. S. 128-27, subsection (c), after completing thirty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within sixty days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age sixty years, or if a uniformed policeman or fireman at the attainment of age fifty-five years, upon proper application therefor.

- c. Should an employee who retired on an early retirement allowance be restored to service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 128, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in G. S. 128-28; provided that, should such restoration occur on or after the time he shall have attained the age of fifty-five years, or if a uniformed policeman or fireman after the time he shall have attained the age of fifty years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1.)

Editor's Note.—

The 1959 amendment inserted subdivision (1a).

The 1961 amendment changed paragraph a of subdivision (4) by deleting a former

proviso to the first sentence and also deleting a former last sentence.

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

§ 128-27. Benefits.

(b) Service Retirement Allowances of Persons Retiring before July 1, 1959. - Upon retirement from service before July 1, 1959, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of sixty years or at the actual age at retirement if prior thereto, computed on the basis of contributions made prior to the attainment of age sixty; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years (60), or at the actual age of retirement if prior thereto, by twice the contributions which he would have

made during such period of service had the system been in operation and he contributed thereunder at the rate of five per centum (5%) of his compensation if such certificate is a Class A certificate, or at the rate of four per centum (4%) of his compensation if such certificate is a Class B certificate, or at the prior service benefit percentage rate specified therein if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Persons Retiring on or after July 1, 1959.—Upon retirement from service on or after July 1, 1959, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of sixty-five years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to (the sum of) the annuity which would have been provided at the age of sixty-five years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the system been in operation and he contributed thereunder at the rate of
 - a. Six and twenty-five hundredths per centum (6.25%) of his compensation if such certificate is a Class A certificate, or
 - b. Five per centum (5%) of his compensation if such certificate is a Class B certificate, or
 - c. Four per centum (4%) of his compensation if such certificate is a Class C certificate.

(d) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance, if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;
- (2) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty-five years had the member continued in service to the age of sixty-five years without further change in compensation; and

(f) Return of Accumulated Contributions.—Should a member cease to be an employee except by death or retirement under provisions of this chapter, he shall be paid upon his request the sum of his contributions and one half of the accumulated interest thereon; provided that, if the member at the time of separation from service shall have attained the age of sixty years or is otherwise entitled to a retirement allowance under this chapter, he shall be paid the amount of his accumulated contributions plus the full amount of his accumulated regular interest thereon. Upon payment of such sum his membership in the system shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Should a member or a former member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such person as he shall have nominated by written designation, duly executed and filed with the board of trustees. Notwithstanding any other provision of chapter 128, there shall be deducted from any amount otherwise payable hereunder any amount due any participating employer by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any participating employer;

provided that, notwithstanding any other provisions of this chapter, even if the member fails to demand the return of his accumulated contributions within ninety days from the day he ceases to be an employee, any amount due such participating employer by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such participating employer upon demand; provided, further, that such participating employer shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such participating employer nor for any failure by the Retirement System for any reason to make such deductions.

(g) **Optional Allowance.**—With the provision that no optional election shall be effective in case the beneficiary dies within thirty days after retirement and prior to his attainment of age sixty-five or within thirty days after the date such election is made if such date is after his attainment of age sixty-five, until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions set forth in Option one, two or three below. Neither the election of Option two or three nor the nomination of the person thereunder may be revoked or changed by the member after such option election has become effective, but if such person nominated dies prior to the date the first payment of such benefit becomes normally due the election shall thereby be revoked. Any member dying in service after his optional election has become effective shall be presumed to have retired on the date of his death.

Option one. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option four. **Adjustment of Retirement Allowances for Social Security Benefits.**—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that, with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after he attains age sixty-five (65). A member who makes an election in accordance with this option shall be deemed to have made a further election of **Option one** above.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the board of trustees may adopt, the provisions of chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State on the Retirement System

by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7.)

Editor's Note. — The 1959 amendment rewrote the introductory paragraph of subsection (b), inserted subsection (b1), struck out the first sentence of subsection (f) and inserted the first two sentences in lieu thereof. The amendment struck out the subject matter of former "Option four" of subsection (g) and inserted in lieu thereof the subject matter of former subsection (h). It also redesignated former subsection (i) as (h).

The 1961 amendment substituted "sixty-five" for "sixty" in lines two and three of subdivision (2) of subsection (d), and deleted former subdivision (3) therefrom. It also added the proviso to the present first sentence of subsection (f), rewrote the last sentence of subsection (f) and added present subsection (i).

As subsections (a), (c) and (e) were not affected by the amendments they are not set out.

§ 128-28. Administration and responsibility for operation of System.

(c) Members of Board.—The board shall consist of the board of trustees of the Teachers' and State Employees' Retirement System, and two local governmental officials designated by the Governor. One local governmental official shall be a mayor, a member of the governing body, or a full-time officer of a city or town participating in the Retirement System, and one local governmental official shall be a county commissioner or a full-time officer of a county participating in the Retirement System. The Governor shall designate these two local governmental officers on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the two local governmental officials designated by the Governor shall serve on the board in addition to the regular duties of their city, town, or county office: Provided that if for any reason any local governmental official so designated vacates the city, town, or county office which he held at the time of this designation, the Governor shall designate some other local governmental official to serve until the next regular date for the designation of local governmental officials to serve on the board.

(e) Oath.—Each trustee other than the ex officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State: Provided, that where a local governmental official designated by the Governor has taken an oath of office in connection with the local governmental office that he holds, the oath for his local governmental office shall be deemed to be sufficient, and he shall not be required to take the oath hereinabove provided.

(1961, c. 515, ss. 3, 4.)

Editor's Note.—

The 1961 amendment rewrote subsection (c) and added the proviso to subsection (e).

As only subsections (c) and (e) were affected by the amendment the rest of the section is not set out.

§ 128-29. Management of funds.—

(a) Vested in Board of Trustees.—The board of trustees shall be the trustee of the several funds created by this article as provided in G. S. 128-30, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Cooperatives, and Federal Land Banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services; and
- (7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States Government, or by some other agency of the United States Government.
- (8) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds. (1959, c. 1181, s. 1; 1961, c. 397.)

Editor's Note.—

The 1959 amendment added subdivision (8) of subsection (a).

The 1961 amendment changed subsection (a) by substituting "three" for

"two" in line two of subdivision (6) and rewriting subdivision (7). As only this subsection was changed the rest of the section is not set out.

§ 128-29.1. Authority to invest in certain common and preferred stocks.—In addition to all other powers of investment, the board of trustees, within the limitations set forth in this section, is also authorized to invest Retirement System funds in stocks, preferred or common, issued or guaranteed by a corporation created or existing under the laws of the United States or any state, district, or territory thereof, provided;

- (1) That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation as disclosed by its published fiscal annual statements shall have had an average annual net income plus its average annual fixed charges (as herein used, fixed charges shall mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations shall include all fixed charges and preferred dividend requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend requirement for preferred stock and its average annual fixed charges for the same period; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend requirements for preferred stock and its fixed charges for the same period;
- (2) That such corporation shall have no arrears of dividends on its preferred stock;

- (3) That such common stock is registered on a national securities exchange as provided in the Federal Securities Exchange Act, but such registration shall not be required of the following stocks:
 - a. The common stock of a bank which is a member of Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus and undivided profits, of at least twenty million dollars (\$20,000,000.00);
 - b. The common stock of a life insurance company which has capital funds represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars (\$50,000,000.00);
 - c. The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus and voluntary reserves, of at least fifty million dollars (\$50,000,000.00);
- (4) That the preferred stock of such corporation, if any be outstanding, shall qualify for investment under this section;
- (5) That such corporation, having no preferred stock outstanding, shall have had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence;
- (6) That such corporation shall have paid a cash dividend on its common stock in each year of the ten-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;
- (7) That in applying the earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges and preferred dividends of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;
- (8) That the total value of common and preferred stocks shall not exceed ten per centum of the total value of all invested funds of the Retirement System; provided, further:
 - a. Not more than one and one-half per centum of the total value of such funds shall be invested in the stock of a single corporation, and provided further;
 - b. The total number of shares in a single corporation shall not exceed eight per centum of the issued and outstanding stock of such corporation, and provided further;
 - c. Not more than one and one-half per centum of the total value of such funds shall be invested in stocks during any year;
 - d. As used in this subdivision (8), value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments.

In order to carry out the duties and exercise the powers imposed and granted by this section, the chairman of the board of trustees is authorized to appoint an investment committee consisting of five members, three of whom shall be mem-

bers of the board of trustees designated ex officio by the chairman and two of whom shall not be members of the board. Such investment committee shall have such powers and duties as the board of trustees may prescribe. The members of the investment committee shall receive for their services the same per diem and other allowances as are granted the members of State boards and commissions generally. (1961, c. 626.)

Editor's Note. — The act inserting this section is effective as of July 1, 1961.

§ 128-30. Method of financing.

(b) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payment from the annuity savings fund shall be made as follows:

- (1) Prior to July 1, 1951, each participating employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member or a Class C member, and four per centum (4%) in the case of a Class B member; provided, however, that with respect to any member who is covered under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his actual compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955 and December 1, 1955, to be transferred into the contribution fund established under G. S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty (60) years and has completed thirty-five (35) years of service. In determining the amount earned by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer monthly, or at least quarterly, each year as to the amount of fees received by such member as compensation during the period, and each month, or at least quarterly, such member shall pay to his employer the proper per centum of such compensation received from fees, which shall be considered as deductions by the employer as provided in paragraphs (1) and (2) of this subsection.

(2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(3) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this article, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity, which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not to exceed one half of his average final compensation at age sixty. Such additional amounts so deposited shall become a part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(d) Pension Accumulation Fund. — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the board of trustees, an amount equal to a certain percentage of the actual compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation for any employer whose participation commenced prior to July 1, 1951, the normal contribution shall be three per cent (3%) for general employees and five per cent (5%) for firemen and policemen, and the

- accrued liability contribution shall be three per cent (3%) for general employees and six per cent (6%) for firemen and policemen. Until the first valuation for any employer whose participation commenced on or after July 1, 1951, the normal contribution shall be four per cent (4%) for general employees and six and two-thirds per cent ($6\frac{2}{3}\%$) for firemen and policemen, and the accrued liability contribution shall be four per cent (4%) for general employees and eight per cent (8%) for firemen and policemen.
- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the actual compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the prorata share of the cost of administration of the Retirement System. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
 - (3) The "accrued liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately thirty years, provided that the length of the period of payment for each employer after contributions begin shall be the same for all employers and shall be determined by the board of trustees as the result of actuarial valuations.
 - (4) At the end of the first year following the date of participation for each employer, the accrued liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "accrued liability contribution" rate for such employer shall be the per centum of the total annual compensation of all members employed by such employer which is equivalent to four per centum (4%) of the amount of such accrued liability. The expense of making such actuarial valuation to determine the accrued liability contribution for each employer shall be paid by such employer. The accrued liability contribution rate shall be increased on the basis of subsequent valuation if benefits are increased over those included in the valuations on the basis of which the original accrued liability contribution rate was determined.
 - (5) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution

rate of the total earned compensation of all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

- (6) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.
- (7) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.
- (8) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(h) Merger of Annuity Reserve Fund, and Pension Reserve Fund into Pension Accumulation Fund.—Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the board of trustees shall determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the board of trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System. (1939, c. 390, s. 10; 1941, c. 357, s. 8; 1943, c. 535; 1945, c. 526, s. 6; 1951, c. 274, ss. 7-9; 1955, c. 1153, s. 7; 1959, c. 491, s. 9.)

Editor's Note.—

The 1959 amendment substituted the word "actual" for the word "earnable" in lines fourteen and seventeen of subdivision (1) of subsection (b), and in lines four and six of subdivision (1) of subsection (d), and in line six of subdivision (2) of subsection (d). It struck out the last two sentences of paragraph (1) of subsection (b) and inserted in lieu thereof the present last sentence. It also struck out the words "total compensation earnable by"

and inserted in lieu thereof the words "total earned compensation of" in line four of subdivision (5) of subsection (d), and added new subsection (h). As only subsections (b), (d) and (h) were affected by the amendment the rest of the section is not set out.

The words "subsection three" near the end of subdivision (2) of subsection (g) in the Replacement Volume should read "subsection (d)."

§ 128-37.1. Membership of employees of county welfare department.—Under such rules and regulations as the board of trustees shall establish and promulgate, the board of county commissioners of any county may elect that employees of the county welfare department may be members of the North Carolina Local Governmental Employees' Retirement System; provided, that such membership may be elected jointly with such county health department employees as provided under G. S. 128-37. (1959, c. 1179.)

ARTICLE 4.

Leaves of Absence.

§ 128-39. **Leaves of absence for State officials.**

Editor's Note.—Session Laws 1959, c. 285, which amended subdivision (3) of G. S. 147-12, provided that “nothing in this act shall be construed to repeal G. S. 128-39.”

Chapter 129.

Public Buildings and Grounds.

Article 2.1.

State Legislative Building.

Sec.

129-12.1. Official name.

Article 3.

State Legislative Building Commission.

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129-17.5. Officers; employees; per diem and expenses.

Article 4.

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129-18. Heritage Square established.

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129-22. Per diem and allowances of members of Commission.

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Article 5.

State Capital Planning Commission.

129-26. Commission created; membership; chairman.

129-27. Powers and duties of Commission.

129-28. Per diem and allowances.

129-29. Expenses.

129-30. Expiration.

ARTICLE 1.

General Services Division.

§ 129-5. **Powers and duties of Division.**

(6) : Struck out by Session Laws 1959, c. 68, s. 3.

(9) To establish and operate a central motor pool and such subsidiary related facilities as the Director may deem necessary, and to that end:

a. To establish and operate central facilities for the maintenance, repair, and storage of State-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Director may deem necessary.

b. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Division shall become part of a central motor pool. The Director of the Budget is authorized to trans-

fer the appropriations, made to the several agencies for the purchase of passenger motor vehicles during the 1957-1959 biennium, to the Division for use in acquiring motor vehicles for the motor pool.

- c. With the approval of the Governor, to require any State agency to transfer ownership, custody, and control of any or all passenger motor vehicles within the ownership, custody, or control of that agency to the General Services Division.
- d. To maintain, store, repair, dispose of, and replace State-owned motor vehicles under the control of the Division.
- e. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
- f. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.
- g. To adopt, with the approval of the Governor and Council of State, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all State-owned motor vehicles under the control of the Division, and to enforce those rules and regulations; and to adopt, with the approval of the Governor and Council of State, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Division, with the approval of the Governor and Council of State, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Division the duty of enforcing the rules and regulations adopted by the Division pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Division and approved by the Governor and Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
- h. To require any State agency to keep such records and make such reports to the Director as the Director may require regarding motor vehicle use.
- i. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Division.
- j. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Director, of prison labor for use in connection with the operation of a central motor pool and related activities.

(1959, c. 1326.)

Editor's Note. — The first 1959 amendment struck out subdivision (6), and the second 1959 amendment rewrote paragraph "i" of subdivision (9). As only subdivisions (6) and (9) were affected the rest of the section is not set out.

ARTICLE 2.1.

State Legislative Building.

§ 129-12.1. **Official name.**—The building constructed under the direction of the State Legislative Building Commission in Raleigh, and which is used to

house the legislative branch of the State government is officially designated as the State Legislative Building, and all references in publications issued by the State of North Carolina or any agency, department or institution thereof shall refer to the building as the State Legislative Building. (1963, c. 8.)

ARTICLE 3.

State Legislative Building Commission.

§ 129-13. Creation; composition; appointment of members; vacancies; chairman.—There is hereby created the State Legislative Building Commission, which shall consist of two persons who have served in the State Senate, appointed by the President of the Senate; two persons who have served in the House of Representatives, appointed by the Speaker of the House of Representatives; and three persons appointed by the Governor. All members shall be appointed on July 1, 1959, or as soon thereafter as is practicable, and shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership of the Commission shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this article for the appointee whom he succeeds. The members of the Commission shall elect one of their number as chairman. (1959, c. 938, s. 1.)

§ 129-14. Powers and duties generally.—The State Legislative Building Commission shall have the following powers and duties:

- (1) To acquire on behalf and in the name of the State a suitable site in the city of Raleigh for a State Legislative Building and related facilities and grounds.
- (2) To employ architects to prepare plans for the State Legislative Building, to assist and advise the architects in the preparation of those plans, and to approve on behalf of the State all plans for the State Legislative Building. No plans shall be made or included for quarters for the Governor.
- (3) To enter on behalf of the State into contracts for the purchase of all real property and interests therein, services, materials, furnishings, and equipment required in connection with the location, design, construction, furnishing, and equipping of the State Legislative Building.
- (4) To supervise generally the location, construction, furnishing, and equipping of the State Legislative Building.
- (5) To call upon the Department of Administration, the Attorney General, and any other State agency or officer for such assistance as the Commission may require in carrying out its duties.
- (6) To appoint such advisory committees, composed of persons not members of the Commission, as the Commission deems necessary.
- (7) To report to the General Assembly at each regular Session concerning action taken by the Commission during the previous biennium in carrying out the provisions of this article, and to make such special reports as may be requested by the General Assembly or the Governor. (1959, c. 938, s. 2.)

§ 129-15. Right of eminent domain.—Whenever the State Legislative Building Commission finds it necessary to acquire land, rights of way, or easements in order to carry out the purposes of this article, and the Commission is unable to purchase the same from the owners at an agreed price, or is unable to obtain a good and sufficient title therefor by purchase from the owners, then

the Commission may exercise the right of eminent domain and acquire any such lands, rights of way, or easements necessary for the aforesaid purpose by condemnation in the manner prescribed in chapter 40 of the General Statutes. The provisions of G. S. 40-53 shall not apply to any proceeding had under this article. (1959, c. 938, s. 3.)

§ 129-16. **Funds and expenditures.**—All moneys expended by the State Legislative Building Commission, including the expenses of the Commission, shall be paid by the State Treasurer upon warrant drawn by the chairman of the Commission, from funds appropriated by the General Assembly. The Governor and Council of State are authorized to advance to the Commission from the Contingency and Emergency Fund, and subject to repayment, such sums as may be required to meet the expenses of the Commission prior to the availability of funds appropriated for the use of the Commission. (1959, c. 938, s. 4.)

§ 129-17. **Per diem and allowances for members.**—The members of the State Legislative Building Commission shall receive for their services the same per diem and other allowances as are granted the members of State boards and commissions generally. (1959, c. 938, s. 5.)

ARTICLE 3.1.

Legislative Building Governing Commission.

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

§ 129-17.2. **Terms of members; vacancies.** — One of the members of the Legislative Building Governing Commission initially appointed by the President of the Senate shall hold office for a term of two years and the other member of said Commission initially appointed by the President of the Senate shall hold office for a term of four years; thereafter the members appointed by the President of the Senate shall hold office for terms of four years. One of the members of the Legislative Building Governing Commission initially appointed by the Speaker of the House shall hold office for a term of two years and the other member of said Commission initially appointed by the Speaker of the House shall hold office for a term of four years; thereafter the members appointed by the Speaker of the House shall hold office for terms of four years. The terms of the President of the Senate and the Speaker of the House as members of the Legislative Building Governing Commission shall expire when their successors in office as President and Speaker have been elected and qualified. Provided, that in the event a vacancy occurs on the Commission by reason of death, resignation or other cause, the remaining members of the Commission shall appoint a member, with the same status qualifications as his predecessor, to fill said vacancy who shall serve until the convening of the next session of the General Assembly, or until his successor is duly appointed. (1963, c. 1, s. 2.)

§ 129-17.3. **Powers and duties generally; delegation of maintenance work; posting and filing rules and regulations; violations.** — The Legislative Building Governing Commission shall (i) determine policy governing the use of the State Legislative Building, (ii) make allocations of space within the State Legislative Building, (iii) be responsible for the maintenance and care of the State Legislative Building and (iv) promulgate rules and regulations govern-

ing the use of the State Legislative Building and its facilities. In discharging the responsibilities of maintenance and care of the building, the Legislative Building Governing Commission may delegate to the Department of Administration the duty of performing the actual work of maintenance and care of the building, and the Department of Administration shall provide proper maintenance and care, subject to the general direction of the Legislative Building Governing Commission.

The rules and regulations promulgated by the Legislative Building Governing Commission, as authorized by this article, shall be posted in conspicuous places in the State Legislative Building and a copy of the same certified by the Legislative Building Governing Commission shall be filed in the office of the Secretary of State and in the office of the clerk of the Superior Court of Wake County, and when so posted and filed shall constitute notice to all persons of the existence of said regulations. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who shall knowingly violate any of the rules or regulations promulgated under the authority of this article shall be guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court or by both such fine and imprisonment. Any person, firm, corporation, partnership or association who shall combine, confederate, conspire, aid, abet, solicit, urge, instigate, counsel, advise, encourage or procure another or others to knowingly violate any of the rules and regulations promulgated under the authority of this article shall be guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court or by both such fine and imprisonment. (1963 c. 1, s. 3; c. 716.)

Editor's Note. — Session Laws 1963, c. 716, added the second paragraph.

§ 129-17.4. Assignment of offices to members of legislature.—Notwithstanding any other provision of this article, assignment of an office in the Legislative Building shall be made to each member of the legislature for his or her use only, during his or her term of office. (1963, c. 1, s. 4.)

§ 129-17.5. Officers; employees; per diem and expenses.—The Legislative Building Governing Commission shall organize by electing a chairman, a vice-chairman and a secretary. The Commission is authorized to employ such clerical and other assistants as may be deemed necessary in the performance of its duties and the members of the Commission shall be paid the sum of seven dollars per day and such necessary travel expenses and subsistence and other expenses as may be incurred by them in the performance of their duties, all to be paid out of the Contingency and Emergency Fund. (1963, c. 1, s. 7.)

ARTICLE 4.

Heritage Square and Commission.

§ 129-18. Heritage Square established.—As a means of preserving, fostering, and transmitting to present and future generations the historical, literary, artistic, and scientific heritage of the people of North Carolina, there is hereby established a center, to be designated "Heritage Square", wherein may ultimately be provided suitable buildings for the North Carolina State Library, the State Department of Archives and History, the North Carolina Museum of Art, and the State Museum of Natural History of the Department of Agriculture. (1961, c. 385.)

§ 129-19. Heritage Square Commission created; appointment and terms of members; vacancies; chairman.—There is hereby created "The Heritage Square Commission", which shall consist of nine persons appointed by

the Governor. At least two members shall be persons who have served in the General Assembly. All members shall be appointed on July 1, 1961, or as soon thereafter as is practicable. Of the initial appointments to the Commission, four shall be for terms of four years and five shall be for terms of six years; thereafter all regular appointments shall be for terms of six years. The Governor shall appoint to fill for the unexpired term any vacancy occurring in the membership of the Commission. The chairman of the Commission shall be designated by the Governor from among the Commission membership. (1961, c. 385.)

§ 129-20. **General powers and duties of the Commission.** — The Heritage Square Commission shall have the following powers and duties:

- (1) To select and acquire in the name of the State a suitable site for Heritage Square, after consultation with the agency responsible for the development of a long-range capital improvement program for State agencies in the city of Raleigh.
- (2) To prepare and adopt a general plan for the development of Heritage Square, including the location of the structures to be situated thereon.
- (3) To approve the plans for the buildings to be erected on Heritage Square.
- (4) To advise the Department of Administration with respect to the letting of contracts by that Department for the purchase of services, materials, utilities, and equipment required in connection with the design, construction, and equipping of the buildings to be erected on Heritage Square.
- (5) To call upon the Department of Administration, and to employ such architects and other persons as may be necessary, to advise and assist the Commission in the execution of its duties.
- (6) To accept upon such terms and conditions as the Commission deems proper and see to the proper application of gifts, grants, devises, and bequests of money and property for the development of Heritage Square and its buildings.
- (7) To consult frequently with the administrative heads of the several State agencies for which buildings are ultimately to be erected on Heritage Square.
- (8) To submit a biennial report of its activities to the Governor and the General Assembly. (1961, c. 385.)

§ 129-21. **Eminent domain.**—Whenever the Heritage Square Commission finds it necessary to acquire land, rights of way, easements, or other interests in land in order to carry out the purposes of this article, and the Commission is unable to purchase the same from the owners at an agreed price, or is unable to obtain a good and sufficient title thereto by purchase from the owners, then the Commission may exercise the right of eminent domain and acquire such lands, rights of way, easements, or other interests necessary for those purposes by condemnation in the manner prescribed in article 9 of chapter 136 of the General Statutes. The provisions of article 9, chapter 136, are hereby incorporated into this article by reference with the following changes: The words "Heritage Square Commission" are substituted for the words "State Highway Commission" or "Highway Commission" wherever they appear in that article; the words "chairman of the Heritage Square Commission" are substituted for the words "Director of Highways, State Highway Commission" in G. S. 136-106 (b) and 136-111; and title to all land, rights of way, easements, or other interests in land, taken under the provisions of this article, shall vest in the State of North Carolina. (1961, c. 385.)

§ 129-22. **Per diem and allowances of members of Commission.**—The members of the Heritage Square Commission shall receive for their services the same per diem and allowances as are granted the members of State boards and commissions generally. (1961, c. 385.)

§ 129-23. **Expenses of Commission.** — All operating expenses of the Commission not provided for by legislative appropriation shall be paid from the Contingency and Emergency Fund, upon application in the manner prescribed in G. S. 143-12. (1961, c. 385.)

§ 129-24. **Exemption from chapter 100.**—The provisions of article 1, chapter 100, of the General Statutes shall not apply to plans prepared for Heritage Square or for the buildings to be erected thereon. (1961, c. 385.)

§ 129-25. **Expiration of Commission.**—The Heritage Square Commission shall expire upon certification by the chairman of the Commission to the Governor that, in the opinion of the Commission, it has performed all of the duties assigned to it by this article. (1961, c. 385.)

ARTICLE 5.

State Capital Planning Commission.

§ 129-26. **Commission created; membership; chairman.** — There is hereby created "The State Capital Planning Commission", which shall consist of nine persons appointed by the Governor. At least two members shall be persons who have served in the General Assembly. All members shall be appointed on July 1, 1961, or as soon thereafter as is practicable, and shall serve until the completion of the duties assigned to the Commission. The Governor shall appoint to fill any vacancy occurring in the membership of the Commission. The chairman of the Commission shall be designated by the Governor from among the Commission membership. (1961, c. 361.)

§ 129-27. **Powers and duties of Commission.** — The State Capital Planning Commission shall have the following powers and duties:

- (1) To make a thorough investigation of present State laws, policies and practices with respect to the financing, location, planning and construction of buildings and other capital improvements for State governmental agencies in the city of Raleigh.
- (2) To analyze the building requirements of State governmental agencies in the city of Raleigh over such period as the Commission deems advisable, and to formulate and recommend to the Governor and the General Assembly a long-range capital improvement policy and program to aid the Governor and the General Assembly in meeting those requirements and a master plan for the future development of the physical plant of State government in the city of Raleigh over such period as the Commission deems advisable.
- (3) To call upon the Department of Administration for assistance and to employ such other assistance as the Commission may find necessary in the execution of its duties. (1961, c. 361.)

§ 129-28. **Per diem and allowances.**—The members of the State Capital Planning Commission shall receive for their services the same per diem and allowances as are granted the members of State boards and commissions generally. (1961, c. 361.)

§ 129-29. **Expenses.**—All expenses of the Commission shall be paid from the Contingency and Emergency Fund, upon application in the manner prescribed in G. S. 143-12. (1961, c. 361.)

§ 129-30. **Expiration.**—The State Capital Planning Commission shall expire upon certification by the chairman of the Commission to the Governor that, in the opinion of the Commission, it has performed all of the duties assigned to it by this article, but shall in any event expire not later than July 1, 1965. (1961, c. 361.)

Chapter 130.
Public Health.

Article 1.

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130-3. Definitions, as used in this chapter.

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130-22.1. Method of appointment and terms of office of members of municipal board of health.

Article 5.

Mental Health Outpatient Clinics.

130-27 to 130-29. [Repealed.]

Article 7.

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130-47. Death without medical attendance; duty of funeral director and officials; approval required for cremation within seventy-two hours of death.

130-49. Funeral director to file death certificate and obtain burial-transit permit; extension of time for filing death certificate, etc., and obtaining burial-transit permit.

130-52.2. Registration of marriage certificates; duty of registers of deeds; forms; furnishing copies; copies as evidence.

130-69.1. State Registrar to forward copies of certificates.

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Article 9A.

Poliomyelitis (Infantile Paralysis).

130-93.1. Vaccination of young children against poliomyelitis (infantile paralysis).

Article 10.

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Part 1. Venereal Disease.

130-95. Physicians and others to report cases or positive laboratory tests.

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ARTICLE 1.

General Provisions.

§ 130-3. **Definitions, as used in this chapter.**—(a) “Person” means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(b) “Board” or “State Board” means “State Board of Health.”

(c) “State Health Director” means the executive officer of the State Board of Health.

(d) “Local health department” includes district health department, county health department, city health department, and city-county health department.

(e) “Local board of health” includes district board of health, county board of health, city board of health, and city-county board of health.

(f) “Local health director” includes local health officer, county health officer, district health officer, city health officer, city-county health officer, county superintendent of health, county health director, or any other title by which the administrative head of a local health department is designated.

(g) “Licensed physician” means a physician licensed to practice medicine in North Carolina.

(h) “Funeral director” means a person licensed in accordance with the provisions of article 13 of chapter 90 of the General Statutes of North Carolina. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6.)

Editor’s Note. — The 1963 amendment added subsection (h).

ARTICLE 2.

Administration of Public Health Law.

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

(e) **Nursing Homes.**—

(1) **Licensing.**—The State Board of Health shall establish standards, provide rules and regulations for the operation of, and to inspect and license nursing homes as the same are hereinafter defined.

(2) **Nursing Home Defined.**—For the purposes of this section, a “nursing home” is defined as an institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A “nursing home” is a home for chronic or convalescent patients who, on admission, are not as a rule, acutely ill and who

- do not usually require special facilities, such as an operating room X-ray facilities, laboratory facilities, and obstetrical facilities. A "nursing home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care is indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.
- (3) Penalties.—Any person establishing, conducting, managing, or operating any nursing home without a license shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.
- (4) Home for the Aged and Infirm Distinguished.—A "home for the aged and infirm," usually designated as a boarding home, as distinguished from a "nursing home" is a place for the care of aged and infirm persons whose principal need is a home with such sheltered and custodial care as their age and infirmities require. In such homes, medical care is only occasional or incidental, such as may be required in the home of any individual or family for persons who are aged and infirm. The residents of such homes will not, as a rule, have remedial ailments or other ailments for which continuing skilled planned medical and nursing care is indicated. A major factor which distinguishes these homes is that the residents may be given congregate services as distinguished from the individualization of medical care required in "patient" care. A person may be accepted for sheltered or custodial care because of a disability which does not require continuing planned medical care, but which does make him unable to maintain himself in individual living arrangements. In further distinguishing between a "nursing home" and a "home for the aged and infirm," it is recognized that a "nursing home" is not a place for the care of aged and infirm persons whose principal need is a home with such custodial and sheltered care as their age and infirmities require. In such "nursing homes" medical care is not merely occasional and incidental, such as may be required in the home of any individual or family. The residents of these "nursing homes" will, as a rule, have remedial ailments, or other ailments, for which continuing planned medical and skilled nursing care is indicated. A major factor which distinguishes these "nursing homes" is that the residents will require the individualization of medical care required in "patient" care.
- (5) Operation of Nursing Home and Home for the Aged and Infirm in Same or Adjoining Buildings.—Any person may operate a nursing home, as defined in subdivision 2 of this section, and a home for the aged and infirm, as defined in subdivision 4 of this section, in the same building or in two or more buildings adjoining or next to each other on the same site. In such cases, both the nursing home and the home for the aged and infirm must comply with standards prescribed by, and be licensed by, the State Board of Health; it shall not be necessary for these combination homes to secure a license from any other state agency; and other state agencies shall accept the standards prescribed by, and the license issued by, the State Board of Health. The State Board of Health shall consult with the State Board of Public Welfare regarding the standards for the boarding home area of the homes licensed by the State Board of Health as combination nursing homes and boarding homes for the aged and infirm.

- (6) Evaluation of Residents in Homes for the Aged and Infirm.—It shall be the duty of the State Board of Health, in cooperation with the State Board of Public Welfare, to prescribe the method for the evaluation of residents in homes for the aged and infirm in order to determine when any such residents are in need of professional medical and nursing care as provided in licensed nursing homes. (1957, c. 1357, s. 1; 1961, c. 51, s. 3; 1963, c. 859.)

Editor's Note. — The 1961 amendment added subsection (e).

The 1961 amendatory act provided that it should not apply to any facility operated by or in conjunction with any hospital required to be licensed by the Medical Care Commission.

The 1963 amendment added subdivisions (5) and (6) of subsection (e).

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

§ 130-11. Duties of the administrative staff of the State Board of Health.

- (5) To conduct studies and research concerning the prevention of disease, the promulgation of life and the promotion of physical health and mental efficiency of the people of the State; including occupational health hazards and occupational diseases arising in and out of the course of employment in industry; and to make recommendations for the elimination or the reduction of such occupational health hazards. The industrial hygiene unit of the State Board of Health shall, under the direction and supervision of the Industrial Commission, carry out all of the provisions of the Workmen's Compensation Act with respect to occupational disease work, and the State Board of Health shall file with the Industrial Commission sufficient reports to enable it to carry out the provisions of the occupational disease law. After all occupational disease work required by the Industrial Commission has been completed, the State Board of Health may use the services of the industrial hygiene unit for such other work as the Board may deem advisable.
- (13) To perform the duties set forth in G. S. 130-9 (e) in accordance with rules and regulations established by the State Board of Health. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c. 833, s. 14.)

Editor's Note.—The first 1961 amendment added subdivision (13). The second 1961 amendment, effective July 1, 1961, added the last two sentences to subdivision (5). Only subdivisions (5) and (13) are set out.

The first 1961 amendatory act provided that it should not apply to any facility operated by or in conjunction with any hospital required to be licensed by the Medical Care Commission.

ARTICLE 3.

Local Health Departments.

§ 130-13. **County health departments.** — Each county is hereby authorized to operate a health department. The policy-making body for the county health department shall be a county board of health composed of three or more ex officio and four public members. The ex officio members are the chairman of the board of county commissioners; the mayor of the city or town which is the county seat (if there is no such mayor, then the clerk of the superior court of the county) and the mayors of all other incorporated cities within the jurisdiction of the county health department which have a population in excess of 15,000 according to the latest decennial census; and the county superintendent of schools. The public members, heretofore selected for staggered four-year terms by the ex officio members, are to include a licensed physician, a licensed

pharmacist, a licensed dentist, and a public-spirited citizen. Beginning with January, 1958, the ex officio members shall hold a meeting the first week in January of each year for the purpose of electing or appointing a public member to fill the vacancy created by the expiration of the term of a public member. When any of the three specified public members, namely a physician, a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, such place shall be filled with a public-spirited citizen. The terms of all members of a county board of health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified. If a vacancy shall arise among the public members, a majority of the ex officio members may call a meeting of all the ex officio members for the purpose of selecting such public members as may be necessary to fill the said vacancies, and such selection of public members shall be by majority vote of the ex officio members of the county board.

Upon the formation of a new county health department, the ex officio members shall name the four public members; one of the public members of the county board of health shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years; thereafter, all appointments shall be for a term of four years. The county board of health shall elect its own chairman. The county health director shall act as secretary to the county board of health, and a majority of the members of the county board of health shall constitute a quorum.

Those counties which now have special city-county boards of health, as authorized by any Private, Local, or Public-Local Act of the General Assembly, for the purpose of carrying on a joint health program, shall be exempted from the terms of this section, unless the special city-county board of health shall vote by a two-thirds majority of all members to dissolve said special board of health, and shall so notify the State Health Director, in writing; in which event, the provisions of this section shall apply.

All vacancies in the membership of the public members of the county board of health shall be filled by the ex officio members at the next meeting of the county board of health following the creation of the vacancy. In case any public member is a public official or officer, his duties as a member of said county board of health shall be deemed to be ex officio. Public members of any county board of health shall be eligible for reelection or reappointment. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7064; 1931, c. 149; 1941, c. 185; 1945, c. 99; 1945, c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359.)

Editor's Note. — The 1963 amendment graph. Compare the first sentence of the added the last sentence of the first para- last paragraph.

§ 130-17. Powers and duties of local boards; expenditures.

(d) Before any rules and regulations of a local board of health, or any amendments or alterations thereof, hereafter adopted, amended, or altered, shall have the force and effect of law, they shall be posted at the courthouse door of each county within the jurisdiction of the board of health, and a statement setting out the title of such rules and regulations together with a statement indicating that the same have been adopted, amended, or altered, and that a copy is posted at the courthouse door of each county within the jurisdiction of the said board of health and that a copy is on file in the office of each health department under the jurisdiction of the said board of health shall be published at least once a week for two successive weeks in a newspaper having general circulation within the area over which the board of health has jurisdiction.

(e) The local boards of health are hereby authorized to enter into contracts with the Veterans' Administration or any other governmental or private agency, or with any person, whereby the local board of health agrees to render services to or for such agency or person in exchange for a fee to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received, and shall not apply to services required by statute, regulation, or ordinance to be rendered or received. The fees to be charged under the authority of this subsection are to be based upon a plan recommended by the local health director and approved by the local board of health and the State Health Director, and in no event is the fee charged to exceed the cost to the health department of rendering the service.

The fees collected under the authority of this subsection are to be deposited to the account of the health department so that they may be expended for public health purposes in accordance with the provisions of the County Fiscal Control Act. No individual employee is to receive any compensation over and above his regular salary as a result of rendering services for which a fee is charged. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087.)

Local Modification. — Franklin, as to subsection (d): 1959, c. 1024, s. 1½.

As only subsections (d) and (e) were affected by the amendments, the rest of the section is not set out.

Editor's Note. — The 1959 amendment rewrote subsection (d).

The 1963 amendment added subsection (e).

§ 130-22.1. Method of appointment and terms of office of members of municipal board of health.—From and after the first day of June, 1959 the governing body of any municipality then having or operating a municipal board of health is authorized by ordinance to fix the method of appointment or selection of the members of said board of health. The mayor and city manager, if there be a city manager, shall be ex officio members of the board with the power to vote. The remaining members of the board shall consist of three members of the governing body of such municipality, two licensed physicians and one licensed dentist.

This section shall not be construed as authorizing any municipality not having or operating a board of health on said date to establish, have or operate the same. (1959, c. 802.)

ARTICLE 5.

Mental Health Outpatient Clinics.

§§ 130-27 to 130-29: Repealed by Session Laws 1963, c. 1166, s. 1.

Cross Reference. — For present provisions as to local mental health clinics, see §§ 122-35.1 to 122-35.12.

ARTICLE 7.

Vital Statistics.

§ 130-39. Control of State Registrar over local districts.

Cited in *State v. Wilson*, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

§ 130-40. Appointment of local registrar.

Local Modification.—Henderson: 1959, c. 256, s. 3; Transylvania: 1959, c. 661.

§ 130-41. Local health director may act as registrar.

Local Modification.—Henderson: 1959,
c. 256, s. 4.

§ 130-46. Contents of death certificate.—The certificate of death shall contain, as a minimum, those items prescribed and specified in the standard certificate of death as prepared by the national agency in charge of vital statistics except as the same may be changed or amended by the North Carolina State Registrar of Vital Statistics.

The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the funeral director or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial-transit permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted.

It shall be the duty of the physician making the medical certification as to the cause of death to complete the medical certification prior to interment but in no event more than seventy-two (72) hours after death. The said physician may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, with the physician designating the cause of death as unknown being responsible for sending the supplementary information to the local registrar as soon as it is obtained. (1913, c. 109, c. 7; C. S., s. 7094; 1949, c. 161, s. 1; 1955, c. 951, s. 11; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 4.)

Editor's Note: — The 1963 amendment "funeral director" for "undertaker" in the added the last paragraph and substituted third paragraph.

§ 130-47. Death without medical attendance; duty of funeral director and officials; approval required for cremation within seventy-two hours of death.—In case of death occurring without medical attendance, it shall be the duty of the funeral director or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the burial-transit permit, inform the local health director and refer the case to him for immediate investigation and certification; provided, the board of county commissioners of any county may designate the coroner to perform such duties in lieu of the local health director, if the coroner is a licensed physician, and when such designation is made by the board of county commissioners, the registrar shall, prior to the issuance of the burial-transit permit inform the coroner and refer the case to him for immediate investigation and certification. When any board of county commissioners designates the coroner to perform such duties in lieu of the local health director, the board of county commissioners may pay the coroner a fee or salary for such investigation, in an amount to be determined by the board of county commissioners. Nothing herein contained shall prevent any medical examiner appointed under the provisions of article 21 of this chapter from making such investigation and certification when required to do so under the provisions of said article. When there is no medical examiner, local health

director or person acting as local health director, the registrar shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial-transit permit, stating therein the name of the disease causing death; or, if from external causes, (i) the means of death, and (ii) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death.

No cremation of a dead body, in cases of death without medical attendance, may take place within a period of seventy-two (72) hours following death without approval of either the county medical examiner or local health director, or district solicitor of the superior court of the district solicitor of the superior court of the district in which the person died. (1913, c. 109, s. 8; C. S., s. 7095; 1951, c. 1091, s. 2; 1955, c. 972, s. 4; 1957, c. 1357, s. 1; 1963, c. 492, ss. 3, 4.)

Editor's Note. — The 1963 amendment tuted "funeral director" for "undertaker" added the second paragraph and substi- near the beginning of the section.

§ 130-49. Funeral director to file death certificate and obtain burial-transit permit; extension of time for filing death certificate, etc., and obtaining burial-transit permit.—The funeral director or any other person disposing of or removing a dead body or the remains, shall file the certificate of death, or fetal death, with the local registrar of the district in which the death occurred. He shall obtain a burial-transit permit prior to any disposition or removal of the body or remains. He shall file the certificate of death or fetal death with the local registrar prior to obtaining the burial-transit permit unless otherwise authorized by the State Registrar. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, and if none to the medical examiner, local health director or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in G. S. 130-46 and 130-47. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a burial-transit permit for burial, removal or other disposition of the body. He shall deliver the burial-transit permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the burial-transit permit to the box containing the corpse, when shipped by any transportation company, this burial-transit permit to accompany the corpse to its destination, where, if within the State, it shall be delivered to the person in charge of the place of burial.

The State Registrar may, by regulation and upon such conditions as he may prescribe to assure compliance with the purposes of the Vital Statistics Laws of North Carolina, provide for the extension of the time periods prescribed in this article for the filing of death certificates, fetal death certificates, medical certifications of cause of death, and for the obtaining of burial-transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship. (1913, c. 109, s. 9; C. S., s. 7096; 1955, c. 951, s. 12; 1957, c. 1357, s. 1; 1963, c. 492, ss. 2, 4.)

Editor's Note. — The 1963 amendment tuted "funeral director" for "undertaker" added the second paragraph and substi- near the beginning of the section.

§ 130-50. Sales of coffins or caskets regulated.—Every person, firm, or corporation selling a coffin or casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the State Registrar or his agent at all times. On the first day of each month the person, firm, or corporation selling coffins or caskets shall report to the State Registrar

each sale for the preceding month, on a blank provided for that purpose. But no person, firm, or corporation selling coffins or caskets to dealers or funeral directors only shall be required to keep such record, nor shall such report be required from funeral directors when they have direct charge of the disposition of a dead body. Every person, firm, or corporation selling a coffin or casket at retail, and not having charge of the disposition of the body, shall enclose within the casket a notice furnished by the State Registrar, calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the State Board of Health concerning the burial or other disposition of a dead body. (1913, c. 109, s. 9; C. S., s. 7097; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note. — The 1963 amendment substituted "funeral directors" for "undertakers" in two places in the third sentence.

§ 130-52. Interment without burial-transit permit forbidden.—No person in charge of any premises in which interments are made shall inter or permit the interment, disinterment, or other disposition of any body unless it is accompanied by a burial-transit permit, as herein provided. Such person shall endorse upon the burial-transit permit the date of interment, or disinterment over his signature, and shall return all burial-transit permits so endorsed to the local registrar of his district within ten days from the date of disposal. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and the name and address of the funeral director; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the funeral director, or person acting as such, shall sign the burial-transit permit, giving the date of burial, and shall write across the face of the burial-transit permit the words "No person in charge," and file the burial-transit permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S., s. 7099; 1955, c. 951, s. 14; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note. — The 1963 amendment substituted "funeral director" for "undertaker" in the third and fourth sentences.

§ 130-52.2. Registration of marriage certificates; duty of registers of deeds; forms; furnishing copies; copies as evidence.—On or before the fifteenth day of each month the registers of deeds of the several counties of this State shall transmit to the Office of Vital Statistics of the State Board of Health in Raleigh, on forms prescribed and furnished by it, a record of each and every marriage ceremony performed in his county during the preceding calendar month, a record of which has been filed in his office as required by applicable law. The form prescribed by the Office of Vital Statistics of the State Board of Health in Raleigh shall contain and set forth in substance the forms and information required by G. S. 51-16, as amended, as a minimum requirement, and shall be the official form of a marriage license, certificate of marriage, and application for marriage license, issued by the register of deeds. The form so prescribed shall contain additional information in order to conform to the minimum requirements of the national agency in charge of vital statistics. Each form signed and issued by the register of deeds, assistant register of deeds, or deputy register of deeds shall constitute an original or duplicate original. Upon request, the Office of Vital Statistics shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the office of a fee of one dollar (\$1.00), and such true copy shall be competent evidence in any court or other proceeding in this State with like force and effect as the original. The moneys received pursuant to this section shall be paid into the general fund of

the State. The Office of Vital Statistics is authorized to do all things necessary to implement and carry out the provisions of this section. (1961, c. 862.)

Editor's Note.—The act inserting this section is effective as of Jan. 1, 1962.

§ 130-57. Register of deeds may perform notarial acts. — The register of deeds is hereby authorized to take acknowledgments, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration or issuance of certificates relating to births, deaths or marriages. The register of deeds shall be entitled to a fee of fifty cents (50¢) for each acknowledgment, oath, affirmation, or other notarial act performed by him, when such acknowledgment, oath, affirmation, or other notarial act is sealed with his official seal, such fee or fees to be paid by the applicant.

All acknowledgments taken, affirmations or oaths administered, or other notarial acts performed by the register of deeds relating to the registration of certificates of births, deaths or marriages, prior to June 16, 1959, are hereby validated and in all respects confirmed. (1945, c. 100; 1957, c. 1357, s. 1; 1959, c. 986.)

Editor's Note. — Prior to the 1959 amendment this section related only to birth certificates.

§ 130-64. State Registrar to supply blanks; to perfect and preserve birth and death certificates.—The State Registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificate received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants, or funeral directors, and all other persons having knowledge of the facts are hereby required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the State Registrar, in person, by mail, or through the local registrar.

The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous index of all births and deaths registered. Adequate fire-proof space in one of the State buildings for filing the birth and death records made and returned under this article shall be provided by the General Services Division. No persons other than those authorized by the State Registrar shall have access to any original birth and death records. (1913, c. 109, s. 17; S. C., s. 7105; 1941, c. 297, s. 2; 1949, c. 160, s. 3; 1955, c. 951, s. 17; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note. — The 1963 amendment "takers" in the last sentence of the first substituted "funeral directors" for "under- paragraph.

§ 130-69. Duties of local registrar as to birth and death certificates; reports.—Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the State Registrar; and if any certificate of death, or fetal death, is incomplete or unsatisfactory, it shall be his duty to call attention

to the defects in the return, and he may withhold the burial-transit permit until such defects are corrected. All certificates, either of birth or of death, shall be typed or written legibly, in permanent black or blue-black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, the local registrar shall then issue a burial-transit permit to the funeral director: Provided, that in case the death occurred from some disease which is held by the State Board of Health to be infectious, contagious, or communicable and dangerous to the public health, no burial-transit permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Board of Health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, or attendant, and require him to supply the missing items of information if they can be obtained. He may number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make one or more complete and accurate copies of each birth and each death certificate registered by him. Such copies may be made on blanks supplied by the State Registrar; or, in lieu thereof, subject to the approval of the register of deeds, he may cause photocopies to be made in such manner and form, and on paper of such standard grade and quality as the State Registrar may approve. The State Registrar shall not be responsible for any expenses incurred in preparing such photocopies. The local registrar shall within seven (7) days of the date of his receipt of a certificate of birth or death transmit to the register of deeds of the county or his agent a copy of each certificate registered by him, and he may also retain one copy of the certificate for his own files. On the fifth day of each month he shall transmit to the State Registrar all original certificates registered by him for the preceding month. If no births or no deaths occurred in any month, the local registrar shall, on the fifth day of the following month, report that fact to the State Registrar and the register of deeds of the county, on cards provided for such purpose. (1913, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1955, c. 951, s. 20; 1957, c. 1357, s. 1; 1963, c. 492, ss. 4, 8.)

Editor's Note. — The 1963 amendment substituted "one or more" for "two" near the beginning of the seventh sentence and rewrote the next-to-last sentence. It also substituted "funeral director" for "undertaker" in the fourth sentence.

§ 130-69.1. State Registrar to forward copies of certificates.

Editor's Note.—The above catchline has been reprinted to correct an error.

§ 130-70. Register of deeds to preserve copies of birth and death records.

Local Modification.—Orange: 1961, c. 771.

§ 130-72. Pay of local registrars.

Local Modification. — Lenoir: 1961, c. 665.

§ 130-76. Violations of article; penalty.—(a) Grounds for Suspension or Revocation of Embalmer's or Funeral Director's License.—A violation of any of the provisions of this article by any licensed embalmer or licensed funeral director shall constitute grounds for suspension or revocation of such license or licenses by the State Board of Embalmers and Funeral Directors.

(b) Misdemeanors.—Any person, who for himself or as an officer, agent, or

employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

- (1) Shall remove the dead body of a human being, or permit the same to be done, from the primary registration district in which the death occurred or the body was found without such authorization as is provided in this article;
- (2) Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate of record, required by this article;
- (3) Wilfully alter otherwise than as provided by G. S. 130-64 or falsify any certificate, or record required by this article; or wilfully alter, falsify, or change any photocopy, certified copy, extract copy, or any document containing information obtained from an original, or copy, of any certificate or record required by this article, or wilfully make, create or use any altered, falsified, or changed record, reproduction, copy or document, for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown thereon;
- (4) Fail, neglect, or refuse to perform any act or duty as required by this article or by the instructions of the State Registrar prepared under authority of this article;
- (5) Inter, cremate, remove from the State, or otherwise finally dispose of the dead body of a human being, or permit the same to be done without authority of a burial-transit permit issued by the local registrar of the district in which the death occurred or in which the body was found;

shall, upon conviction thereof, be guilty of a general misdemeanor and punished in the discretion of the court. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S., s. 7112; 1955, c. 673; c. 951, s. 25; 1957, c. 1357, s. 1; 1963, c. 492, s. 7.)

Editor's Note. — The 1963 amendment division (1) of subsection (b). It also rewrote subsection (a), which formerly added subdivision (5) of subsection (b). made certain violations felonies, and sub-

§ 130-79.1. Establishing facts relating to birth of abandoned children.—(a) In the event a person who was abandoned, deserted, or forsaken as a child by his or her parent(s) in North Carolina and the name and address of the abandoning parent(s) are unknown, and the place and date of birth are unknown, such person may file a duly verified petition with the clerk of the superior court in the county where he was abandoned, deserted or forsaken, setting forth the facts and petitioning the clerk to hear evidence and find the facts concerning the abandonment, the name or assumed name, date and place of birth of the person, and the names of the person or persons acting in loco parentis to the individual.

(b) The clerk shall find such facts as the evidence may warrant and, if there is insufficient evidence to establish the place of birth, it shall be conclusively presumed that such person was born in the county where he was abandoned. The clerk shall enter a judgment as to his findings and record the same in the record of special proceedings in his office. The clerk shall certify the same to the State Office of Vital Statistics and the same shall thereupon be recorded in the State Office of Vital Statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was abandoned. The clerk may charge a fee not to exceed two dollars (\$2.00) for his services under this section.

(c) The record of birth established by a person under this section, when recorded, shall become a public record and shall be accepted as such by the courts and other agencies of this State in the same manner as other public records.

(d) The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1959, c. 492.)

ARTICLE 9A.

Poliomyelitis (Infantile Paralysis).

§ 130-93.1. **Vaccination of young children against poliomyelitis (infantile paralysis).**—(a) The parent, parents, guardian or any person in loco parentis of any child in North Carolina between the ages of two months and six years shall have administered to such child an adequately immunizing dose as determined by the North Carolina State Board of Health of a prophylactic agent against poliomyelitis (infantile paralysis) which meets the standard approved by the United States Public Health Service for such biological products, and which is approved by the North Carolina State Board of Health.

(b) The parent, parents, guardian or person in loco parentis of such child who has not previously received such vaccination or immunization shall present the child to a physician licensed to practice medicine in North Carolina and request such physician to administer the necessary vaccination or immunization against poliomyelitis (infantile paralysis) as above provided.

(c) If the said parent, parents, guardian or person in loco parentis of such child are unable to pay for the services of a private physician, or for such prophylactic poliomyelitis agent, such parent, parents, guardian or person in loco parentis shall present such child to the county physician of the county in which the child resides, or to the physician health director serving such county, who shall then administer or authorize a competent agent to administer such prophylactic agent without charge. As authorized by and with the approval of the Governor and the Council of State, the vaccine necessary for immunizations under this subsection shall be purchased and furnished to the local health directors by the State Board of Health and the cost of such vaccine shall be paid for from the Contingency and Emergency Fund for the fiscal year in which such expense is incurred.

(d) The physician who administers such prophylactic agent against poliomyelitis (infantile paralysis) to such children shall submit a certificate of such vaccination or immunization to the local health director and shall give a copy of the same to the parent, guardian or person in loco parentis of the child.

(e) No principal or teacher shall permit any child to attend a public, private or parochial school without the certificate provided for in subsection (d) above, or some other acceptable evidence of the child's vaccination or immunization against poliomyelitis (infantile paralysis).

(f) If any physician licensed to practice medicine in North Carolina certifies that such vaccination or immunization may be detrimental to a child's health, the requirements of this article shall be inapplicable until such vaccination or immunization is found no longer to be detrimental to the child's health.

(g) Any person violating this article or any part thereof shall be guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not more than thirty (30) days in the discretion of the court.

(h) This article shall not apply to children whose parent, parents, or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any private, public or parochial school shall be required as to them. (1959, c. 177.)

ARTICLE 10.

Venereal Disease.

Part. 1. Venereal Disease.

§ 130-95. **Physicians and others to report cases or positive laboratory tests.**—Any physician or other person responsible for diagnosis or treatment of a patient with venereal disease, or any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a patient or inmate with a venereal disease, or laboratory performing a positive laboratory test for venereal disease, shall make a report of such case or positive laboratory test for venereal disease to the local health director in such form and manner as the State Board of Health shall direct, and shall cooperate with the State Board of Health and local boards of health in preventing the spread of venereal diseases. (1919, c. 206, s. 2; C. S., s. 7192; 1957, c. 1357, s. 1; 1961, c. 753.)

Editor's Note. — The 1961 amendment rewrote this section.

ARTICLE 12.

Sanitary Districts.

§ 130-123. **Creation by State Board of Health.**

When Sanitary District May Occupy Same Territory as City.—A sanitary district may with, but only with, the consent of a municipality, occupy the same territory as the city. *State v. Lenoir*, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

§ 130-124. **Procedure for incorporating district.** — A sanitary district shall be incorporated as hereinafter set out. Fifty-one per cent (51%) or more of the resident freeholders within a proposed sanitary district may petition the board of county commissioners of the county in which all or the major portion of the petitioning freeholders of the proposed district are located, setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, through its chairman, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the proposed district lies, of the receipt of said petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, or in the event the land to be affected lies in more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place within the proposed district named by the representative of the State Board of Health. (1927, c. 100, ss 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 1.)

Editor's Note. — The 1959 amendment inserted the word "resident" in line three. Section 3 of the amendatory act provides: "The powers granted by this act are in addition to and not in substitution for any other powers heretofore or hereafter granted."

§ 130-126. Election and terms of office of sanitary district boards.

—The State Board of Health shall cause copies of the resolution adopted creating the sanitary district to be sent to the board or boards of county commissioners of the county or counties in which all or parts of the territory within the district is located, whereupon the said board or boards of county commissioners shall hold a meeting or joint meeting for the purpose of electing a sanitary district board of three members, residents within the district, which shall thereafter be the governing body of the sanitary district. At this meeting or joint meeting of said board or boards of county commissioners there shall be elected three members of said sanitary district boards who shall serve until their successors are elected and qualified. At the next general election following said appointment by the board of county commissioners, candidates for said district board shall be nominated in the primary and elected at the general election as are county officers, except that the nomination and election shall be confined to said district.

When more than six candidates qualify for a primary, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the general election, and the three candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidate in the primary or general election: Provided, that this paragraph shall apply only to sanitary districts located wholly within the limits of a single county, and which adjoin and are contiguous to cities having a population of fifty thousand or more. The said board of elections shall canvass the returns from any primary or general election and within ten days thereafter certify the results thereof to the clerk of the superior court. The clerk of the superior court in each county is authorized, directed and empowered to take and file the oaths of office of those persons elected.

Prior to the appointment of a sanitary district board by the board or boards of county commissioners or prior to the election of the members of a sanitary district board at any general election, the board or boards of county commissioners may by resolution determine that such sanitary district board shall consist of five members, residents within such district. In such case, when more than ten candidates for membership on such sanitary district board qualify for a primary, then the ten candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the next general election, and the five candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board; when ten or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without his name being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the greater portion of the qualified voters of the sanitary district are located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election.

The members of the board so nominated and elected shall be residents of the district. They shall qualify by taking the oaths of office on the first Monday in December following their election. The term of office shall be two years and until their successors qualify.

Prior to the appointment of a sanitary district board by the board or boards of county commissioners or prior to the election of the members of a sanitary district board at any general election, the board or boards of county commissioners may by resolution and upon the request of the sanitary district board determine that such sanitary district board shall consist of five members, residents within such district, that the term of office of the members of such sanitary district board shall be four (4) years and until their successors qualify, that the terms be staggered so that at the first biennial election after the adoption of such resolution, and every four (4) years thereafter, three members of the sanitary district board shall be elected, and that at the next biennial election, and every four (4) years thereafter, two members of the sanitary district board shall be elected. Upon the adoption of such a resolution by the board or boards of county commissioners, said board or boards of county commissioners shall elect two members of said sanitary district board who shall serve until their successors are elected and qualified. In case of the adoption of such a resolution, when more than six candidates qualify for a primary at the next election following such adoption, and every four (4) years thereafter, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the general election, and the three candidates receiving the highest number of votes in the general election shall be elected as members of the sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general elections shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election. When more than four candidates qualify for a primary, preceding the second general election after the adoption of such a resolution, and every four (4) years thereafter, then the four candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the general election, and the two candidates receiving the highest number of votes in the general election shall be elected as members of the sanitary district board and when four or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. This primary and general election shall also be nonpartisan, and shall be conducted by the board of elections in the county in which the sanitary district is located and said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644.)

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

§ 130-128. Corporate powers.

- (9) a. To contract with any person, firm, corporation, city, town, village or political subdivision of the State both within or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political subdivision of the State in consideration of said person, firm, corporation, city, town, village or political subdivision permitting the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or convenient to effect the delivery of said water at the expense of the district when in the opinion

of the sanitary district board and the State Board of Health, it will be for the best interest of the district.

- b. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district to supply raw or filtered water to said person, firm, corporation, city, town, village, or political subdivision of the State where the service is available: Provided, however, that for service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water.
 - c. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district for the treatment of the district's sewage in a sewage disposal or treatment plant owned and constructed or to be constructed by such person, firm, corporation, city, town, village or political subdivision of the State and upon such terms and conditions as the governing body of such district and person, firm, corporation or the governing body of such city, town, village or political subdivision of the State shall agree upon.
- (16) To establish a capital reserve fund for the district in accordance with the following provisions:
- a. The district board shall pass a resolution declaring that a capital reserve fund is thereby established, which resolution shall state that said fund shall consist of unencumbered balances and unappropriated surplus revenues evidenced by money derived from collections of ad valorem taxes of the district or from service charges and rates applied by the district board in accordance with law or from proceeds of the sale of real or personal property of the district, that it shall take effect when the provisions thereof are approved by the Local Government Commission, and the district board shall designate therein some bank or trust company as depository in which the capital reserve fund shall be placed to the credit of a special account to be known as "..... District, Capital Reserve Fund."
 - b. Upon adoption of a resolution by the district board providing therefor and with the approval of the Local Government Commission, the capital reserve fund may be increased at any time with money from like source or sources as those stated in establishing resolution.
 - c. Withdrawal and the capital reserve fund shall be of two kinds, temporary and permanent. Temporary withdrawal may be made:
 - 1. In anticipation of the collections of taxes and other revenues of the district of the current fiscal year in which such withdrawal is made and for the purpose of paying principal or interest of bonds of the district falling due within three months, but the amount of such withdrawal shall be repayable to the capital reserve fund not later than thirty days after the close of the fiscal year in which such withdrawal is made, and
 - 2. For investment or reinvestment in bonds, notes or certificates of indebtedness of the United States of America,

in bonds or notes of the State of North Carolina, in bonds of the district, or in bonds of any city, town or county in North Carolina.

Permanent withdrawal may be made for the purpose of acquiring property for the district by purchase or otherwise, or for extending, enlarging, improving, replacing or reconstructing any properties of the district incident to or deemed necessary for the exercise of the powers granted by law to the district board. Each withdrawal shall be authorized by resolution of the district board and approved by the Local Government Commission and shall be by check drawn on the designated depository of the capital reserve fund upon which such approval by the Commission shall be endorsed by the secretary of the Commission or by an assistant designated by him for that purpose: Provided, however, the State of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such endorsement, such endorsement only being prima facie evidence of approval of the withdrawal authorized. No permanent withdrawal shall be made unless, after such withdrawal, there shall remain in the capital reserve fund an amount equal to the sum of the principal and interest of bonds of the district maturing either in the fiscal year in which the withdrawal is made or in the ensuing fiscal year, whichever is greater, except that, when the amount of authorized and unissued bonds of the district is determined by the sanitary district board to be insufficient for financing the cost of the improvements or properties for which such bonds were authorized, all or any part of such remaining amount may be withdrawn for the purpose of meeting such insufficiency.

- d. All moneys stated in the establishing resolution or in a resolution providing for increase of the capital reserve fund, when the provisions of such resolutions are approved by the Local Government Commission, and all realizations and earnings from temporary withdrawals shall be deposited in the designated depository of the capital reserve fund by the officer or officers having the charge and custody of such moneys, and it shall be the duty of such officer or officers to simultaneously report each of such deposits to the Local Government Commission.
- (18) For the purpose of promoting the public health, safety, morals, and the general welfare of the State, the sanitary district boards of the various sanitary districts of the State are hereby empowered, within the areas of said districts and not under the control of the United States or the State of North Carolina or any agency or instrumentality thereof, to designate, make, establish and constitute as zoning units any portions of said sanitary districts in accordance with the manner, method and procedure as follows:
- a. No sanitary district board, under the provisions of this subsection, shall designate, make, establish and constitute any area in their respective sanitary districts a zoning area until a petition signed by two-thirds ($\frac{2}{3}$) of the qualified voters in said area as shown by the registration books used in the last general election, together with a petition signed by two-thirds ($\frac{2}{3}$) of the owners of the real property in said area as shown

- by the records in the office of the register of deeds for the county on the date said petition is filed with any sanitary district board, and a public hearing after twenty days' notice has been given. Such notice must be published in a newspaper of general circulation in said county at least two times, and a copy of said notice posted at the courthouse of said county and in three other public places in the sanitary district for twenty days before the date of the hearing. The petition must be accompanied by a map of any proposed zoning area.
- b. When any portion of any sanitary district has been made, established and constituted a zoning area, as herein provided, the sanitary district boards as to any such zoning areas shall have, exercise and perform all of the rights, privileges, powers and duties granted to municipal corporations under article 14, chapter 160, of the General Statutes of North Carolina, as amended, provided, however, the sanitary district boards shall not be required to appoint any zoning commission or board of adjustment, and upon the failure to appoint either said sanitary district boards shall have, exercise and perform all the rights, privileges, powers and duties granted to said zoning commission and board of adjustment.
 - c. The governing body of any city, town or sanitary district is hereby authorized to enter into agreements with any other city, town or sanitary district for the establishment of a joint zoning commission, and to cooperate fully with each other.
 - d. The sanitary district boards are hereby authorized to appropriate such amounts of money as they deem necessary to carry out the effective provisions of this subsection, and are authorized to enforce its rules and regulations in order to give effect to this subsection, and for such purposes to use the income of the district or cause taxes to be levied and collected upon the taxable property within the district to pay such costs.
 - e. None of the provisions of chapter 176 of the Public Laws of North Carolina, Session 1931 (the proviso to G. S. 160-173), shall apply to any sanitary district.
 - f. This subdivision shall apply only to sanitary districts which adjoin and are contiguous to any incorporated town and are located within three miles or less of the boundaries of two other cities or towns. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; 1949, cc. 1130, 1145; 1951, c. 17, s. 1; 1951, c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232.)

Local Modification.—Dare (and municipalities and sanitary districts therein), as to subdivision (13): 1959, c. 1079.

Editor's Note.—

The first 1961 amendment rewrote paragraph f of subdivision (18). The second 1961 amendment added paragraph c to subdivision (9). The third 1961 amendment

added the exception clause at the end of subdivision (16), paragraph c.

The 1963 amendment made paragraph c of subdivision (9) applicable to contracts with persons, firms or corporations.

Only subdivisions (9), (16) and (18) are set out.

§ 130-129. Organization of board.

Local Modification.—Halifax: 1961, c. 883.

§ 130-130. Power to condemn property.

Section Requires Just Compensation for Damages.—When a sanitary district, in the exercise of its power of eminent domain, took easements and rights of way for sewer lines over the lands of defendants, it became obligated by the North Carolina Constitution and this section, under which it acted, to pay to defendants just compensation for the damage done. *North Asheboro-Central Falls Sanitary Dis. v. Canoy*, 252 N. C. 749, 114 S. E. (2d) 577 (1960).

Measure of Compensation. — Where a sanitary district condemns an easement for sewer lines, together with the perpetual right to enter upon the land for the purpose of inspecting its lines and making necessary repairs, replacements, additions and alterations thereon, with right of the land-

owners to use the land for all lawful purposes not inconsistent with the rights acquired by the district, the measure of compensation is the difference in the market value of the land free of the easement and the market value of the land subject to the easement. *North Asheboro-Central Falls Sanitary Dist. v. Canoy*, 252 N. C. 749, 114 S. E. (2d) 577 (1960).

Proper Use of Easements.—A sanitary district, acting under this section to acquire easements to construct and maintain sanitary sewer lines, can use the property taken for only the limited purpose described in the petition, and any other use by it or anyone else would require additional compensation. *North Asheboro-Central Falls Sanitary Dis. v. Canoy*, 252 N. C. 749, 114 S. E. (2d) 577 (1960).

§ 130-134. Resolution authorizing bond issue and purposes for which bonds may be issued. — Either before or after the adoption of the plan as aforesaid, the sanitary district board may pass a resolution or resolutions (hereinafter sometimes referred to as "bond resolution" or "bond resolutions") authorizing the issuance of bonds of the sanitary district, but bonds for two or more unrelated purposes shall not be authorized by the same bond resolution; provided, however, that bonds for two or more improvements or properties mentioned together in any one or more of the clauses of this section may be treated as being for a single purpose and may be authorized by the same bond resolution. The negotiable bonds of a sanitary district may be issued for any one or more of the following purposes, which purposes may include land, rights in land or other rights necessary for the establishment thereof:

- (1) Acquisition, construction, reconstruction, enlargement of, additions or extensions to a water system or systems, a water purification or treatment plant or plants, a sanitary sewer system or systems, or a sewage treatment plant or plants, including interest on the bonds during construction and for one year after completion of construction if deemed advisable by the sanitary district board.
- (2) Construction, reconstruction or acquisition of an incinerator or incinerators or other facilities for the disposal of garbage, waste and other refuse.
- (3) Purchase of firefighting equipment and apparatus.
- (4) Acquisition, construction, reconstruction, enlargement of, additions or extensions to, a district building or buildings which may include a fire station and office and other district facilities.

Such resolution shall state:

- (1) In brief and general terms, the purpose for which the bonds are to be issued.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually divided and collected on all taxable property within the sanitary district.
- (4) That the resolution shall take effect when and if it is approved by the voters of the sanitary district at an election.

Such resolution shall be published once a week for three successive weeks: Provided, however, the first of such publications shall be not later than the first publication of the notice of election required in G. S. 130-137. A statement in

substantially the following form (the blanks being first properly filled in), with the printed signature of the secretary of the sanitary district board appended thereto, shall be published with the resolution:

The foregoing resolution was adopted by the sanitary district board of
..... Sanitary District on the day of, 19.....,
and was first published on the day of, 19.....
Any action or proceeding questioning the validity of said resolution must be commenced within thirty days after its first publication.

.....
Secretary, Sanitary
District Board.

(1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; c. 846, s. 1; 1957, c. 1357, s. 1; 1963, c. 1247, s. 1.)

Editor's Note. — The 1963 amendment inserted the first subdivision (4).

§ 130-138. **Bonds.**—The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice, prescribe by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, and the place or places of payment of principal and interest which may be at any bank or trust company within or without the State of North Carolina. The bonds shall not be sold at less than par and accrued interest nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said board in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A sanitary district may keep in the office of the secretary of the sanitary district board, or in the office of a bank or trust company appointed by said board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A sanitary district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest the bond register shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been cancelled. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. The officer or officers having charge or custody of funds of the district shall re-

quire said bank to furnish security for the protection of deposits of the district as provided in G. S. 159-28.

Bonds issued for any purpose pursuant to this article shall mature within the period of years as hereinafter provided, each such period being computed from the date of the election upon the issuance thereof held under the provisions of G. S. 130-137. Such periods shall be for the purposes stated by clauses in G. S. 130-134 as follows: Clause (1), forty years; clause (2), twenty years; clause (3), ten years; clause (4), thirty years. Such bonds shall mature in annual installments or series, the first of which shall be made payable not more than five years after the date of the first issued bonds of such issue, and the last within the aforesaid period. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of any issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. Such bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. Bonds issued pursuant to this article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1927, c. 100, s. 15; 1949, c. 880, s. 1; 1951, c. 17, s. 1; c. 846, s. 2; 1957, c. 1357, s. 1; 1963, c. 1247, s. 2.)

Editor's Note.—

The 1963 amendment inserted at the end of the second sentence of the second paragraph the words "clause (4), thirty years."

§ 130-141. Valuation of property; determining annual revenue needed. — Upon the creation of a sanitary district and after each assessment for taxes thereafter the board or boards of county commissioners of the county or counties in which the sanitary district is located shall file with the sanitary district board the valuation of assessable property within the district. The sanitary district board shall then determine the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G. S. 130-144 below to provide payment of interest and the proportionate part of the principal of all outstanding bonds, and retire all outstanding certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of its lawful undertakings.

The sanitary district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per one hundred dollars (\$100.00) so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected and every month the amount of tax so collected shall be remitted to the sanitary district board and deposited by the said board in a bank in the State of North Carolina separately from other funds of the district. Such levy may include an amount for reimbursing the county for expenses of levying and collecting said taxes, which amount shall be based upon such percentage of the collection of said taxes, not exceeding five per centum (5%) thereof, as may be agreed upon by the sanitary district board and the board of county commissioners, to be deducted from the collections and stated with each remittance to the sanitary district board, and such percentage of collections shall remain the same until revised or abolished by further agreement between said boards. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G. S. 159-28.

The sanitary district board of any sanitary district, in lieu of collecting the taxes in the manner as hereinbefore provided, may cause to be listed by all the taxpayers residing within the district with the person designated by the district

board, all the taxable property located within the district, and after determining the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G. S. 130-144 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings, to determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount. The said sanitary district board in its next annual levy shall levy against all taxable property in the district the number of cents per one hundred dollars (\$100.00) necessary to raise the amount with which to pay the obligations of the district, including principal and interest on bonds, certificates of indebtedness, revenue anticipation notes and other lawful obligations of the district, which tax shall be collected in the same manner as taxes of other political subdivisions of the State of North Carolina are collected by a tax collector, to be selected by the sanitary district board of the sanitary district electing to assess, levy and collect its taxes in the manner herein provided. The tax collector selected by said sanitary district board and the depository, in which said taxes so collected are deposited, shall qualify in the same manner and give the necessary surety bonds as are required of tax collectors and depositories of county funds in the county or counties in which said sanitary districts are located.

In any sanitary district located in two or more counties any one or more of which have different assessment ratios for tax purposes, the sanitary district board of such sanitary district shall, in order that all taxable property within the sanitary district shall be subject to taxation for sanitary district purposes the same as if the same assessment ratio were used throughout the entire sanitary district, (i) certify to the boards of commissioners of such counties such different determinations as to the numbers of cents per one hundred dollars (\$100.00) to be levied against the taxable property within the portion of the sanitary district located within such county or counties as will provide the amount of funds to be raised for the ensuing year for sanitary district purposes as hereinabove mentioned, or (ii) in the event the sanitary district board shall elect to levy and collect such sanitary district taxes itself, adjust the valuations of assessable property within the sanitary district as filed with the sanitary district board by the respective boards of commissioners. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1959, c. 994; 1963, c. 1226.)

Editor's Note. — The 1959 amendment inserted the third sentence of the second paragraph. The 1963 amendment added the fourth paragraph.

§ 130-148. Procedure for extension of district.—(a) If, after any sanitary district shall have been created pursuant to the provisions of this article or the provisions of this article shall have been made applicable to any sanitary district, a petition signed by not less than fifteen per centum (15%) of the freeholders resident within any territory contiguous to and adjoining any such sanitary district shall be presented to the sanitary district board of such sanitary district praying that the territory described therein be annexed to and included within such sanitary district, the sanitary district board shall certify a copy thereof to the board of commissioners of the county in which such sanitary district is located and to the North Carolina State Board of Health, and said sanitary district board, through its chairman, shall request that a representative of the State Board of Health hold a joint public hearing with the sanitary district board on the question of such annexation. The State Health Director and the chairman of the sanitary district board shall name a time and place at which such public hearing shall be held. The chairman of said sanitary district board shall publish a notice of such public hearing once in a newspaper or newspapers

published or circulating in the territory proposed to be annexed and in such sanitary district stating that a public hearing concerning such annexation will be held jointly by the State Board of Health and the sanitary district board on a date not less than fifteen (15) days after the publication of such notice. If, after the holding of such public hearing, the State Board of Health shall approve the annexation of the territory described in said petition, the State Board of Health shall advise said board of commissioners of such approval and, upon its receipt of such advice, the board of commissioners shall order and provide for the holding of a special election within the territory proposed to be annexed upon the question of such annexation.

If at or prior to such public hearing there shall be filed with the sanitary district board a petition signed by not less than fifteen per centum (15%) of the freeholders residing in the sanitary district requesting an election to be held therein on the question of such annexation, the sanitary 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 sanitary district. Any such election may be held on the same day as the election in the territory proposed to be annexed, and both such elections and the registration therefor may be held pursuant to a single notice.

The date or dates of any such election or elections, the election officers, the polling places and the election precincts shall be determined by the board of commissioners who shall also provide any necessary registration and polling books, and the expenses of holding any such elections shall be paid from the funds of the sanitary district.

Notice of any such election shall be given by publication once a week for three successive weeks, the first publication to be at least thirty (30) days before any such election, in a newspaper published or circulating in the territory to be annexed and, if an election is to be held in the sanitary district, in a newspaper published or circulating in said sanitary district. The notice shall state

- (1) The boundary lines of the territory proposed to be annexed to the sanitary district,
- (2) The boundary lines of the sanitary district after the annexation of such additional territory, and
- (3) That if a majority of the qualified voters voting at said election in the territory to be annexed and, if an election is being held in the sanitary district, a majority of the qualified voters voting at said election in such sanitary district, shall vote in favor of such annexation, the territory so annexed to such sanitary district shall be subject to all debts of such sanitary district.

A new registration of the qualified voters in the territory to be annexed shall be ordered by the board of commissioners and, if an election is to be held in the sanitary district and such election is the first election held in said sanitary district after its organization, a new registration of the qualified voters of said sanitary district shall be ordered. If an election has already been held in said sanitary district, a supplemental registration of all qualified voters not theretofore registered may, at the discretion of the board of commissioners, be ordered and held in accordance with the provisions for registration as herein set forth. Notice of any such registration shall be given by the board of commissioners by publication once at least thirty (30) days before the close of the registration books and such notice of registration may be considered one of the three notices required of the election. The time and manner of any such registration shall, as near as may be, conform with that of the registration of voters provided in G. S. 163-31. The notice of any such registration shall state the days on which the books will be open for the registration of voters and the place or places at

which they will be open on Saturdays. The books for any such registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and, except as otherwise provided in this article, any such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in any such election, which ballot may contain the words "For Annexation to Sanitary District" and the words "Against Annexation to Sanitary District", with squares opposite said affirmative and negative forms of the question of annexation submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed.

If a majority of the qualified voters voting at said election in the territory to be annexed and, if an election has been held in the sanitary district, a majority of the qualified voters voting at said election in such sanitary district, shall vote in favor of the annexation of such territory to such sanitary district, the sanitary district shall be deemed to be enlarged from and after the date of the declaration of the result of the election or elections by the sanitary district board and the territory so annexed to the sanitary district shall be subject to all debts of such sanitary district.

The returns of any such election shall be canvassed by the board of commissioners and certified to the sanitary district board which shall declare the result thereof.

A statement of the result of any such election shall be prepared and signed by a majority of the members of the sanitary district board, which statement shall show the date of any such election, the number of qualified voters within the territory to be annexed who voted for and against the annexation and, if an election has been held within the sanitary district, the number of qualified voters within said sanitary district who voted for and against the annexation. If a majority of the qualified voters voting at the election in the territory to be annexed and, if an election has been held in the sanitary district, a majority of the qualified voters voting at the election in the sanitary district shall vote in favor of the annexation, the statement of result shall so declare the result of the election and state that such territory is from the date of such declaration a part of such sanitary district and subject to all debts thereof. Such statement shall be published once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty (30) days after the publication of such statement.

If a sanitary district is located in more than one county, or if a sanitary district and all or any part of the territory proposed to be annexed is located in more than one county, or if the territory proposed to be annexed is located in more than one county, any petitions to be filed with, or requests to be made to, or actions or proceedings to be taken by the board of commissioners under the provisions of this section, shall be filed with, made to, or taken severally by the board of commissioners of each county in which any part of the sanitary district or of the territory to be annexed is located.

In any case where additional territory shall have been annexed to a sanitary district and the proposition of issuing bonds of the sanitary district after such annexation shall not be approved by the qualified voters at an election held within one year subsequent to such annexation fifty-one per cent (51%) or more of the resident freeholders within the territory so annexed may petition the sanitary district board for the removal and exclusion of such territory from the sanitary district, provided, however, that no such petition may be filed after bonds of the sanitary district shall have been approved in an election held at any time after such annexation. If the sanitary district board shall approve such petition it shall certify a copy thereof to the State Board of Health requesting that the

petition be granted and shall certify additional copies to the board or boards of commissioners of the county or counties in which all or any part of the sanitary district is located. If, after a public hearing, conducted under the same procedure as provided herein for the annexation of additional territory, the State Board of Health shall deem it advisable to comply with the request of such petition, said Board shall adopt a resolution to that effect and shall redefine the boundaries of the sanitary district, which shall be the boundaries of the sanitary district as it existed before the annexation of such additional territory.

(b) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by not less than fifty-one per centum (51%) of the freeholders resident within the territory proposed to be annexed, it shall not be necessary to hold any election provided for by this section on the question of the extension of the boundaries of the sanitary district.

(c) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by the owners of all the real property within the territory proposed to be annexed, it shall not be necessary to hold any election or any hearings provided for by this section on the question of the extension of the boundaries of the sanitary district. (1927, c. 100, s. 24; 1943, s. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 2; 1961, c. 732.)

Editor's Note. — The 1959 amendment rewrote this section. Section 3 of the amendatory act provides: "The powers granted by this act are in addition to and not in substitution for any other powers

heretofore or hereafter granted."

The 1961 amendment placed "(a)" immediately preceding "If" in line one and added subsections (b) and (c).

§ 130-151.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.—In any sanitary district established under this chapter which has no outstanding indebtedness and the boundaries of which are wholly located within or coterminous with the corporate limits of a city or town, fifty-one per cent (51%) or more of the resident freeholders within said district may petition the board of commissioners within the county in which all or the greater portion of the resident freeholders of the district are located to dissolve said district. Upon receipt of such petition, said board of commissioners through its chairman shall notify the State Board of Health, the chairman of the board of commissioners of any other county or counties in which any portion of the district lies and the governing body of the city or town within which such district lies of the receipt of such petition, and shall request that a representative of the State Board of Health hold a joint public hearing with said board or boards of commissioners and said governing body of such city or town. The State Health Director, the chairman of the board of commissioners of the county in which all or the greater portion of the resident freeholders are located and the presiding officer of the governing body of such city or town shall name a time and place within the boundaries of the district and such city or town at which the public hearing shall be held. The chairman of said 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 published in said county and circulating in said district at least once a week for four successive weeks and, in the event such hearing is to be before a joint meeting of the boards of commissioners of more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place determined by the representative of the State Board of Health. If, after such hearing, the State Board of Health, the board or boards of commissioners of the county or counties concerned and the governing body of such city or town shall deem it advisable to comply with

the request of said petition, the State Board of Health shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved and all taxes levied by such sanitary district which were levied prior to but which are collected after such dissolution shall vest in and inure to such city or town and all property, real, personal and mixed, of whatsoever character or description, or wheresoever situate, held, owned, controlled or used by such sanitary district upon such dissolution or which may thereafter be vested in such sanitary district, and any and all judgments, liens, rights of liens and causes of action of any and all kinds in favor of such sanitary district shall vest in and remain and inure to such city or town. From and after such dissolution, any taxes owing to such sanitary district shall be collected by such city or town and the proper officers thereof. (1963, c. 512, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provides: "The powers granted by this act are in addition to and not in substitution for any other powers heretofore or hereafter granted by any other law."

§ 130-152. Further validation of creation of districts.—All actions prior to June 6, 1961, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the formation and creation, of sanitary districts in the State wheresoever situate, and the formation and creation, or the attempted formation and creation, of any and all such sanitary districts are hereby in all respects legalized, ratified, approved, validated and confirmed, and each and all such sanitary districts are hereby declared to be lawfully formed and created and to be in all respects legal and valid sanitary districts. (1953, c. 596, s. 1; 1957, c. 1357, s. 1; 1961, c. 667, s. 1.)

Editor's Note.—The 1961 act, although not referring to this section, has been treated as an amendment hereof, because its language was identical to this section as it appeared in the 1957 act, except that the 1961 act substitutes "June 6, 1961" for "April 1, 1957."

Section 3½ of the 1961 act provides that nothing therein shall be construed to create, revive, or renew proceedings to create a sanitary district where a court of competent jurisdiction has ruled that such district was not legally or properly created.

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

§ 130-156. Further validation of appointment or election of members of district boards.—All actions and proceedings prior to June 6, 1961, had and taken in the appointment or election of any members of any sanitary district board are hereby in all respects legalized, ratified, approved, validated and confirmed, and any and all members of any such board heretofore appointed or elected shall have all the powers and may perform all the duties required or permitted of them to be performed by this article until their respective successors are elected and qualified: Provided, however, that any vacancy in any sanitary district board may be filled as provided in G. S. 130-127. (1953, c. 596, s. 4; 1957, c. 1357, s. 1; 1961, c. 667, s. 2.)

Editor's Note.—The 1961 act, although not referring to this section, has been treated as an amendment hereof, because its language was identical with this sec-

tion as it appeared in the 1957 act, except that the 1961 act substitutes "June 6, 1961" for "April 1, 1957."

Section 3½ of the 1961 act provides that nothing therein shall be construed to

create, revive, or renew proceedings to create a sanitary district where a court of competent jurisdiction has ruled that such district was not legally or properly created.

§ 130-156.1. Additional validation of appointment or election of members of district boards.—All actions and proceedings prior to May 1, 1959, had and taken in the appointment or election of any members of any sanitary district board and the appointment or election of any such members are hereby in all respects legalized, ratified, approved, validated and confirmed, and any and all members of any such board heretofore appointed or elected shall have all the powers and may perform all the duties required or permitted of them to be performed pursuant to the provisions of this article, until their respective successors are elected and qualified; provided, however, that any vacancy in any sanitary district board may be filled as provided in G. S. 130-127. (1959, c. 415, s. 1.)

§ 130-156.2. Merger of district with contiguous city or town; election.—A sanitary district created under the provisions of this article may merge with a contiguous city or town in the following manner:

- (1) The sanitary district board of commissioners and the governing board of the contiguous city or town may both resolve that it is advisable and feasible to call an election within both the sanitary district and said city or town to determine if the sanitary district and said contiguous city or town shall merge.
- (2) If the sanitary district board and the governing board of the contiguous city or town shall so resolve that it is advisable or expedient to call for such election, both boards shall adopt a resolution calling upon the board of county commissioners in the county or counties in which the district and the town or city or any portion thereof is located to call for an election on a date named by the sanitary district board and the governing board of the contiguous city or town, and request said board of commissioners to call to be held on the said date an election within the sanitary district and an election within the contiguous city or town on the proposition of merger of the sanitary district with the contiguous city or town.

- (3) If an election is called as provided in subdivision (2) above, the board of commissioners of such county shall provide ballots for such election in substantially the following form:

"FOR merger of the Town of and the Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged."

"AGAINST merger."

- (4) If at such election a majority of the registered voters of the sanitary district who shall vote thereon at such election shall vote in favor of the proposition submitted, and if a majority of the registered voters of the contiguous city or town who shall vote thereon at such election shall vote in favor of the proposition submitted, the sanitary district shall merge with the city or town on July 1 following said election. Should the majority of the registered voters of either the san-

itary district or the contiguous city or town vote against the proposition, then the merger authorized under this statute shall not be effected. The sanitary district board and governing board of the contiguous city or town may, however, adopt resolutions and call for election on similar propositions of merger at any time not less than one year from the date of the last election thereon.

- (5) If the majority of the registered voters who shall vote at said election of both the sanitary district and the contiguous city or town vote in favor of said merger, and the merger becomes effective the following July 1, the city or town shall then assume all of the obligations of the sanitary district, and the sanitary district shall convey all property rights to the city or town, and a vote for such merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. The residents of the sanitary district shall from and after July 1 following the said election enjoy all of the benefits of the municipality and shall after that date assume their share of the obligations of the city as merged with the sanitary district. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all of the territory embraced in the enlarged municipality.
- (6) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewage disposal system. Upon making such determination, the governing board shall send a certified copy to the local government commission in order that said commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G. S. 160-383.
- (7) The board of commissioners of the county in which said sanitary district and town or city is located may in their discretion conduct said election through the city board of elections or they may appoint such special election officials as in their discretion they may deem advisable, and may create such voting precincts as to them seems best to suit the convenience of the voters. The board of commissioners of the county in their discretion and on the recommendation of the board for the sanitary district and the contiguous city or town, either call for special registration in either or both the sanitary district and said city or town, or the board of commissioners may declare eligible to vote all those registered and eligible to vote in the city election for the contiguous city or town and those registered and eligible to vote in the general election within said sanitary district. The notice of the election shall be given by publication once a week for three successive weeks, the first to be at least thirty days before the election.
- (8) Opportunity shall be provided for new registration of qualified voters within the sanitary district and contiguous city or town and notice of such new registration shall be deemed to be sufficiently given if given at least thirty days before the close of the registration books by publication once in some newspaper published or circulated in said sanitary district and contiguous city or town. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in the municipal elections as provided in G. S. 160-37. The published notice of registration shall state the days

on which the books shall be open for registration of voters and place or places at which they will open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections. (1961, c. 866.)

ARTICLE 13.

Water and Sewer Sanitation.

§ 130-159. Board of Health to control and examine waters; rules.—The State Board of Health shall have the general oversight and care of all inland waters to cause examination of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to imperil the public health. The State Board of Health shall make reasonable rules and regulations governing the location, construction, and operation of public water and sewer facilities. Provided, that after the "effective date" applicable to any watershed as provided for in G. S. 143-215, any rules and regulations adopted by the State Board of Health under this section governing the location, construction, and operation of public sewerage facilities shall be effective only with respect to the administration of said Board's responsibilities as set forth by G. S. 143-215.1 (a) (5). (1911, c. 62, s. 24; C. S., s. 7117; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor's Note. — The 1959 amendment added the proviso.

§ 130-161. Systems of water supply and sewerage; plans submitted.—The State Board of Health shall from time to time consult with and advise the boards of all State institutions, the authorities of cities and towns, and persons already having or intending to introduce systems of water supply, drainage, or sewerage, or intending to make major alterations to existing systems of water supply, drainage, or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewerage, having regard to the present and prospective needs and interests of other cities, towns, and persons which may be affected thereby. All such boards of directors, authorities, and persons are hereby required to give notice to the State Board of Health of their intentions to introduce or alter a system of water supply, drainage or sewerage, and to submit to the Board such plans, surveys, and other information as may be required by rules and regulations promulgated by the State Board of Health. No such board of directors, authorities, or persons may enter into a contract for the introduction or alteration of a system of water supply, sewage disposal, or drainage until such plans and other information have been received, considered and approved by the State Board of Health. Provided, that prior to the "effective date" applicable to any watershed whenever the State Board of Health is advised by a municipality that application is being filed with the State Stream Sanitation Committee for a certificate of approval covering a voluntary pollution abatement project pursuant to G. S. 143-215.2, the plans will be reviewed by said Board if the effluent from the proposed works is to be discharged into waters used as a source of public water supply and if approved, said plans shall be referred to the State Stream Sanitation Committee for final approval. If no water supply is involved, such plans will be referred directly to the State Stream Sanitation Committee and the approval of the Board of Health will not be prerequisite to the entering of a contract. Provided, further, that after the "effective date" applicable to any watershed as provided for in G. S. 143-215, the State Stream Sanitation Committee,

rather than the State Board of Health, shall carry out the provisions of this section relating to sewage and waste disposal, except as otherwise provided by G. S. 143-215.1 (a) (5), with regard to:

- (1) Incorporated municipalities served by public sewerage systems;
- (2) Unincorporated communities served by a community sewerage system;
- (3) Sanitary districts created pursuant to law which are served by public sewerage systems;
- (4) Industries of all types, except raw milk dairies, farm slaughterhouses, shellfish processing plants and similar establishments; and those food and/or lodging establishments which are supervised by the State Board of Health under other State laws and which are not served by public or community sewerage systems;
- (5) Housing developments served by community sewerage systems; and
- (6) Military installations, parks, institutions, and other reservations which are maintained and operated by the federal government. (1911, c. 62, s. 24; C. S., s. 7118; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor's Note. — The 1959 amendment added the part of the section beginning with the first proviso in line seventeen.

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

Power to Condemn Not Limited to Easement.—The power of a municipal corporation to condemn land for its watershed in order to protect from contamination its water supply is not limited to an easement, but it has been given power to condemn

the fee for that purpose, and the reference in § 40-19 to an easement relates to procedure and is not a limitation upon the power of the municipality. *Morganton v. Hutton & Bourbonnais Co.*, 251 N. C. 531, 112 S. E. (2d) 111 (1960).

§ 130-163. Sanitation of watersheds; rules. — The State Board of Health is hereby authorized, empowered and directed to adopt rules and regulations governing the sanitation of watersheds from which public domestic or drinking water supplies are obtained. In promulgating such regulations the Board is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population, need for frequency of sampling of raw water, and particular needs for public health protection. The regulations shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply, provided, that regulations concerning the disposal of sewage shall not conflict with G. S. 130-161.

Any municipality or person furnishing water for domestic uses and human consumption, which secures its water from unfiltered surface supplies, shall have inspections made of the watershed area at least quarterly, and more often when, in the opinion of the State Board of Health, such inspections are necessary. (1899, c. 670; 1903, c. 159, s. 2; Rev., ss. 3045, 3046; 1911, c. 62, s. 28, 1919, c. 71, s. 14; C. S. s. 7121; Ex. Sess. 1921, c. 49, s. 1; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor's Note. — The 1959 amendment added the proviso at the end of the first paragraph.

§ 130-165. Discharge of sewage or industrial waste.—No person or municipality shall flow or discharge sewage or industrial waste above the intake into any source from which a public drinking water supply is taken, unless said sewage or industrial waste shall have been passed through some system of purification approved by the State Board of Health and State Stream Sanitation Committee; and the continued flow and discharge of such sewage may be en-

joined. (1903, c. 159, s. 13; Rev., ss. 3051, 3858; 1911, c. 62, ss. 33, 34; C. S., s. 7125; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor's Note. — The 1959 amendment and the words "and State Stream Sanitation Committee." inserted the words "or industrial waste"

ARTICLE 13A.

Sanitation of Agricultural Labor Camps.

§ 130-166.1. **Definitions.**—For the purpose of this article, the following definitions shall apply:

- (1) "*Agricultural labor camp or camps.*" — The term "agricultural labor camp or camps" means and includes one or more buildings or structures, tents, trailers, or vehicles, together with the land appertaining thereto, established, operated or used as living quarters for ten or more seasonal or temporary workers engaged in agricultural activities, including related food processing.
- (2) "*Camp operator.*"—The term "camp operator" means a person having charge or control of the camp housing for migrant agricultural workers.
- (3) "*Crew leader.*" — The term "crew leader" means the individual who handles the contract and is recognized by the group as the leader. (1963, c. 809, s. 1.)

Editor's Note.—The act inserting this article is effective as of Jan. 1, 1964.

§ 130-166.2. **Permit required for operation of camp; posting.**—No person shall operate directly or indirectly, an agricultural labor camp unless he has obtained a permit to operate such camp from the local health department having jurisdiction over the area in which the agricultural labor camp is located, and unless such permit is in full force and effect and is posted and is kept posted in the camp to which it applies at all times during the maintenance and operation of the camp. (1963, c. 809, s. 1.)

§ 130-166.3. **Application for permit; issuance; duration; assignability; hearing on denial or revocation.**—An application for a permit to operate an agricultural labor camp shall be made to the local health department having jurisdiction over the area in which the proposed agricultural labor camp is located, and shall be in writing and conform to the provisions of this article. The local health department to which the application is made shall issue, free of cost, a permit for the operation of the agricultural labor camp, if the health director of such department is satisfied, after investigation or inspection, that the camp meets the minimum standards prescribed by this article. Such permits shall be valid for a period of one (1) year, unless sooner revoked. Such permit shall not be transferable.

If an applicant for a permit to operate an agricultural labor camp is denied said permit, or if the holder of a permit has his permit revoked in accordance with the provisions of this article, the applicant or holder shall be entitled upon due request, to a fair hearing before the local board of health having jurisdiction over the area in which the agricultural labor camp is located. (1963, c. 809, s. 1.)

§ 130-166.4. **Responsibility for sanitary standards and maintenance.**—The camp operator shall be responsible for complying with the provisions of this article concerning sanitation standards. The crew leader shall be responsible for maintaining the agricultural labor camp in a sanitary condition. (1963, c. 809, s. 1.)

§ 130-166.5. **Duties of camp employees and occupants.**—Every employee or occupant of a camp shall use the sanitary facilities provided and shall maintain in a sanitary manner that part of the housing or camp premises which he occupies. (1963, c. 809, s. 1.)

§ 130-166.6. **Cleanliness of camp area.**—The camp area shall be well drained and maintained in a clean, safe and sanitary manner. (1963, c. 809, s. 1.)

§ 130-166.7. **Water supply.** — An adequate, convenient, and safe water supply, approved by the State Board of Health, shall be available at all times at each camp. Water under pressure shall be provided, and water outlets shall be located not farther than 200 feet from each housing unit. The well or spring shall be constructed in accordance with the State Board of Health Bulletin #476, "Protection of Private Water Supplies." The supply shall be adequate to provide a minimum of 35 gallons per person per day. (1963, c. 809, s. 1.)

§ 130-166.8. **Sewerage facilities.**—Toilet facilities for each sex shall be provided in accordance with the provisions of G. S. 130-160. The minimum number of toilet seats shall be one for 20 users for each sex. Privies, when used, shall be located no farther than 200 feet from the dwelling units. (1963, c. 809, s. 1.)

§ 130-166.9. **Bathing facilities.**—Warm water (at least 90°) shall be made available for bathing facilities at each camp. In camps housing more than 15 workers, showers shall be provided on the ratio of one shower head for each 15 persons. Separate facilities shall be provided for each sex. (1963, c. 809, s. 1.)

§ 130-166.10. **Construction of buildings; minimum area of dormitories.**—In rooms for living and sleeping purposes, there shall be at least one window for each room opening to the outer air. The minimum total window area shall be ten per cent (10%) of the floor area for new buildings, and five per cent (5%) for existing buildings. All buildings shall be constructed in a safe manner with provisions against fire hazards and shall protect the occupants against the elements. The roof and walls shall be water resistant. In dormitory type construction, a minimum of 20 square feet per person shall be provided. (1963, c. 809, s. 1.)

§ 130-166.11. **Lighting; outlets.**—Every camp operator shall provide for artificial illumination in a safe and adequate manner. At least one outlet shall be provided for each housing unit used for sleeping or cooking purposes. (1963, c. 809, s. 1.)

§ 130-166.12. **Sanitary food facilities.**—Where central feeding facilities are provided, and operated for pay, they shall be operated in accordance with the requirements of the State Board of Health for food handling establishments. (1963, c. 809, s. 1.)

§ 130-166.13. **Garbage and refuse disposal.** — Water-tight receptacles shall be provided for storage of garbage and refuse. Containers must be emptied daily and the contents buried or disposed of in a sanitary manner. (1963, c. 809, s. 1.)

§ 130-166.14. **Enforcement by Board of Health.**—The responsibility for the enforcement of this article shall rest upon the North Carolina State Board of Health or its duly authorized representative. (1963, c. 809, s. 2.)

§ 130-166.15. **Posting provisions of article.** — The State Board of Health shall cause the provisions of this article to be prominently displayed on the premises of each agricultural labor camp. (1963, c. 809, s. 2A.)

ARTICLE 14A.

Swimming Pools.

§ 130-169.1. **Definitions.**—For the purpose of this article the following definitions shall apply:

- (1) "Person": Any individual, firm, partnership, cooperative organization, corporation, municipality, any other political subdivision or other organized entity.
- (2) "Swimming pool": Any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, or recreational bathing.
- (3) "Public swimming pool": Any swimming pool, other than a residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, operated by any person as defined herein, whether he be owner, lessee, operator, licensee, or concessionaire, regardless of whether or not a fee is charged for such use.
- (4) "Residential swimming pool": Any swimming pool located on private property under the control of the home owner; the use of which is limited to swimming or bathing by members of his family or their invited guests. (1963, c. 397.)

Editor's Note.—The act inserting this article is effective as of Jan. 1, 1964.

§ 130-169.2. **State Board of Health to prepare minimum standards.**—For the protection of the public health and safety, the State Board of Health is hereby authorized, empowered and directed to prepare minimum standards regarding the design, construction, maintenance and operation of public swimming pools. These standards shall include and be restricted to such items as water supply, sewer and waste connections, bathing load, recirculation equipment, piping and appurtenances, filtration equipment, disinfection and chemical feed equipment, bathhouse, showers and toilet facilities, safety operation equipment, and water quality and operation of such sanitation equipment. (1963, c. 397.)

§ 130-169.3. **Minimum standards to be made available to local governmental units; adoption by reference.**—The minimum standards established by the State Board of Health are to be made available to local governmental units as a recommended guide in the development of local ordinances governing the design, construction, and maintenance of public swimming pools and may be adopted by reference by the local governmental units as the standards of the local governmental unit. (1963, c. 397.)

§ 130-169.4. **Local ordinances and regulations.**—Local governmental agencies with authority to enact ordinances or regulations for the protection of the public health are authorized to adopt and enforce ordinances governing the design, construction, and maintenance of public swimming pools using the minimum standards adopted by the State Board of Health under authority of G. S. 130-169.2 as their standards guide. (1963, c. 397.)

§ 130-169.5. **Lakes, ponds, streams, etc.**—The standards provided by this article shall not apply to lakes, ponds, streams and other natural places used for swimming; the approval or acceptance of such places as not being dangerous to the public health is to be based on the results of a sanitary survey and the bacteriological quality of the water. (1963, c. 397.)

§ 130-169.6. **Residential swimming pools exempted.**—The provisions of this article shall not apply to residential swimming pools. (1963, c. 397.)

ARTICLE 16.

*Regulation of the Manufacture of Bedding.***§ 130-171. Definitions.**

The word "bedding" means: Any mattress, upholstered spring, quilt, comforter, pad of a thickness of more than one inch, cushion or pillow used principally for sleeping, or like item of a thickness of more than one inch used principally for sleeping. Dual purpose furniture such as sofa beds and studio couches shall be included within this definition.

(1959, c. 619.)

Editor's Note. — The 1959 amendment inserted "quilt" in the first line of the second paragraph. As only this paragraph was affected by the amendment the rest of the section is not set out.

§ 130-173. Manufacture regulated.

No person shall manufacture any bedding to which is not securely sewed a tag of durable material approved by the State Board of Health, which tag shall be at least two inches by three inches in size, and to which is affixed the adhesive stamp provided for in G. S. 130-177. Such stamp shall be so affixed as not to interfere with the wording on the tag.

(1959, c. 619.)

Editor's Note. — The 1959 amendment deleted the words "except as otherwise provided in this article" formerly appearing after "which" in line one of the fourth paragraph. As only this paragraph was affected by the amendment the rest of the section is not set out.

§ 130-176. Registration numbers, licenses.

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

(1959, c. 619.)

Editor's Note. — The 1959 amendment substituted "this article" for "G. S. 130-172" in the fifth line of the second paragraph. As only this paragraph was affected by the amendment the rest of the section is not set out.

ARTICLE 17.

Cancer Control Program.

§ 130-184.1. Reporting of cancer by pathologists. — It shall be the duty of every pathologist diagnosing any case of any type of cancer (malignant neoplasm) to report the same to the Central Office of Vital Statistics of the State Board of Health. Such reports shall be made within five (5) days of the time such diagnosis of cancer is established on forms prescribed and furnished by the Central Office of Vital Statistics of the State Board of Health, and shall contain such items of information as may be specified by the State Board of Health. (1963, c. 254.)

Editor's Note.—The act from which this section was codified became effective July 1, 1963.

ARTICLE 20A.

Treatment of Self-Inflicted Injuries upon Prisoners.

§ 130-191.1. **Procedure when consent is refused by prisoner.** — When a board comprised of the Director of Prisons, the chief medical officer of a prison hospital or penal institution, and a representative of the State or county welfare department of the county where the prisoner is confined, shall convene and find as a fact that the injury to any prisoner was wilfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings made by this board have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the local health director, as defined by G. S. 130-3, or in the event a local health director is not immediately available then the local health director of any adjoining or nearby area, shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this article, the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. (1959, c. 1196.)

Cross Reference.—As to punishment of self-injury resulting in incapacity to perform assigned duties, see § 148-46.1.

ARTICLE 21.

Post-Mortem Medicolegal Examinations.

§ 130-197. **County medical examiner.**—The chairman of the committee shall appoint, subject to the approval of the committee and of the board of county commissioners of each county of the State that elects to come under this article, a qualified and practicing physician as medical examiner for the county to serve at the pleasure of the board of county commissioners and until his successor has been appointed and qualified, and said person so appointed may be the county coroner, and any coroner who may be so appointed shall serve as such as a part of his duties as a coroner and shall not be considered as holding a separate office within the meaning of article 14, § 7, of the Constitution of North Carolina. Each county medical examiner may appoint one or more assistant county medical examiners, with the concurrence of the chairman of the committee, to serve at the pleasure of the county medical examiner who makes such appointment.

Upon the death of any person on or after January 1, 1956, apparently by the criminal act or default of another, or apparently by suicide, or suddenly when apparently in good health, or while an inmate of any penal or correctional institution, or under any suspicious, unusual or unnatural circumstances, the medical examiner of the county in which the body of the deceased is found shall be notified by the physician in attendance, by any law enforcement officer having knowledge of such death, by the funeral director, by a member of the family of the deceased, by any person present, or by any person having knowledge of such deaths, and no person shall disturb the body at the scene of death until authorized by the county medical examiner. In cases which come under G. S. 152-7, the medical examiner shall notify the coroner.

A similar procedure shall be followed upon discovery of anatomical material suspected of being or determined to be a part or parts of a human body. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note. — The 1963 amendment "taker" in the first sentence of the second substituted "funeral director" for "under- paragraph."

§ 130-200. When medical examiner's permission necessary before embalming, burial and cremation.

(b) It shall be unlawful to embalm or to bury a dead body, or to issue a burial-transit permit, when any fact within the knowledge of, or brought to the attention of, the embalmer, the funeral director, or the local registrar of vital statistics charged with the issuance of burial-transit permits, is sufficient to arouse suspicion of crime in connection with the death of the deceased, until the written permission of the county medical examiner has first been obtained.

(1963, c. 492, s. 4.)

Editor's Note. — The 1963 amendment substituted "funeral director" for "undertaker" near the middle of subsection (b). As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 24.

Mosquito Control Districts.

§ 130-210. Creation and purpose.

Editor's Note.—In Pamlico and Currituck counties the board of county commissioners of each county is clothed with and given all the powers and authority given to the governing bodies of mosquito control districts for mosquito control purposes under this article. See Session Laws 1961, c. 238.

§ 130-211. Nature of district; procedure for forming districts.

(b) If the proposed district lies wholly within a single county, ten per cent (10%) or more of the resident freeholders within the proposed district may petition the board of county commissioners of the county in which the proposed district lies setting forth the boundaries of the district and a suggested name for the district. Upon receipt of such petition, the board of county commissioners shall consider it and if the formation of the district appears feasible and in the interest of public health, it shall forward said petition or a copy thereof to the State Board of Health which shall consider the advisability of the formation of such district. If the State Board of Health deems the formation of such district advisable and in the interest of public health, it shall so notify the board of county commissioners whereupon said board shall give notice of a public hearing upon the question of the formation of such district by advertising the time, place and purpose of the hearing once each week for four (4) successive weeks prior to such hearing in some newspaper either published in the county or having a general circulation therein. The public hearing shall be presided over by the chairman of the board of county commissioners and shall be attended by a representative of the State Board of Health, and said hearing may be continued from time to time as may be necessary to hear the proponents and opponents of the formation of such district. If, after such hearing and after consultation with the representative of the State Board of Health, the board of county commissioners deems it advisable that such district should be created and established, it shall submit to the qualified voters residing within the proposed district at an election called for that purpose, the question of whether or not the district shall be created. Upon determining that the district should be created and established, and prior to the submission of the question of the formation of the district to the voters of the proposed district, the board of county commissioners may determine the maximum amount of special tax to be levied for mosquito control purposes should the formation of the district be approved by the voters; provided, however, that in no event shall the maximum authorized levy exceed thirty-five cents (35¢) upon the one hundred dollar (\$100.00) assessed valuation. If the board of county commissioners determines that the maximum amount of special tax to be levied for mosquito control purposes should the voters approve the formation of the proposed district is to be less than thirty-five

cents (35¢) on the one hundred dollar (\$100.00) valuation, the maximum amount thus determined must appear on the ballot to be used by the voters voting on the question of the creation of the district.

Prior to the submission of the question of the formation of the district to the voters within the proposed district, the board of county commissioners may make minor deviations in defining the boundaries of the proposed district upon a determination that such minor deviation from the boundaries described in the petition is in the interest of public health, provided that ten per cent (10%) of the resident freeholders within the revised boundaries shall have signed the petition proposing the creation of said district or additional resident freeholders within the revised boundaries of the proposed district shall sign the petition to bring the total number of petitioners within the proposed revised boundaries to not less than ten per cent (10%) of the qualified electors therein.

At the election provided for herein, the board of county commissioners shall provide one or more polling places within the proposed district, shall provide for a registrar and for judges of election at the polling places, shall provide for the registration of all qualified voters residing in said proposed district, shall cause to be prepared the necessary ballots, shall fix the time for holding the election, and shall conduct said election in every other respect according to the provisions of the laws governing general elections, so far as same may be applicable. The cost of holding the election shall be paid from the general or health fund of the county or from both as may be determined by the board of county commissioners. Notice of the time and purpose of the election and of the location of the polling place or places shall be published in some newspaper published or circulated within the proposed district at least three (3) times, the first of such notices to be published not less than thirty (30) days preceding the election.

The form of the question to be stated on the ballot shall be in substantially the following words:

FOR creation of the (here insert name) Mosquito Control District and the levy of a special tax [here insert the words "not to exceed" and the maximum amount of special tax to be levied for mosquito control purposes if the board of county commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation] for mosquito control purposes.

AGAINST creation of the (here insert name) Mosquito Control District and the levy of a special tax [here insert the words "not to exceed" and the maximum amount of special tax to be levied for mosquito control purposes if the board of county commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation] for mosquito control purposes."

Such affirmative and negative forms shall be printed on one ballot and the voters shall make a mark of an "X" in one of the squares preceding the form.

If a majority of the qualified voters voting at the election vote in favor of creation of the district and the levy of the special tax, the board of county commissioners shall declare that such district exists, and shall adopt a resolution to that effect.

(1959, c. 622, s. 1.)

Editor's Note. — The 1959 amendment added the last two sentences of paragraph one of subsection (b). It also inserted the words in brackets in paragraph four relating to form of question. Only subsection (b) is set out.

§ 130-213. Corporate powers.

(1) To levy ad valorem taxes upon all the taxable property within the dis-

trict at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation. Provided, that where a mosquito control district lies solely within a single county and includes the entire county, the board of county commissioners may, in their discretion, levy and determine the rate of ad valorem tax to be levied at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation; provided further, that where a mosquito control district lies wholly within a single county and the maximum authorized special tax approved by the voters at the time of voting on the creation of the district was less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation, the ad valorem tax levy shall not exceed such lesser amount.

In the case of a district lying wholly within a single county, the valuations assessed by the county tax authorities shall be used by the mosquito control district or the board of county commissioners as the basis for its tax assessment and the mosquito control district or the board of county commissioners shall certify its tax rate to the county tax collector or supervisor in time to have such rate and the amount of tax due thereupon entered upon the official county tax receipts and stubs or duplicates. It shall be the duty of the county tax collector to collect said taxes at the same time as county taxes are collected and deposit same to the credit of the mosquito control district in a depository or depositories designated by the governing board of said district.

In the case of a district lying in two or more counties, the commissioners of the mosquito control district shall horizontally equalize the assessed valuations of the property in the several counties in which the district lies by adjusting the ratio of assessed valuation in the several counties to the true values of the taxable property in the several counties. From such adjusted and equalized valuations, any board of commissioners of any county may appeal to the State Board of Assessment as in the case of an appeal by a property owner from a county board of equalization and review to the State Board of Assessment as provided in chapter 310 of the Public Laws of 1939 as amended. Upon such equalized assessed valuations, the board of commissioners of the mosquito control district shall levy its tax and shall certify the amount of the levy against each taxpayer to the appropriate county tax collector or supervisor in time for the amount of such mosquito control district tax to be entered upon the county tax receipts and stubs or duplicates, and it shall be the duty of the several county tax collectors to collect said tax and deposit same to the credit of the mosquito control district in some depository or depositories designated by the commissioners of said district.

The taxes levied by virtue of this article shall become due, shall be subject to the same discounts and penalties and interest, and shall have the same remedies for the collection of the taxes and for the refund of such taxes as provided for county and municipal ad valorem taxation by chapter 310 of the Public Laws of 1939 as amended. Said taxes shall constitute a lien to the same extent and with the same force and effect as county and municipal ad valorem taxes and shall have equal priority with said taxes. Such taxes shall be deemed to be for a special purpose and for a necessary expense for which the special approval of the General Assembly is hereby given.

(1959, c. 622, s. 2.)

Editor's Note. — The 1959 amendment added the provisos to paragraph one of subdivision (1). It also inserted the words "or the board of county commissioners"

in the first sentence of the second paragraph thereof. Only subdivision (1) is set out.

§ 130-214. Adoption of plan of operation.

Local Modification. — Onslow: 1961, c. 750.

§ 130-220. **Dissolution of certain mosquito control districts.** — In any mosquito control district established under this chapter which has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders therein may petition the board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located to dissolve said district. Upon receipt of such petition, the board of county commissioners through its chairman, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the district lies, of the receipt of such petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the said county commissioners concerning the dissolution of the district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the dissolution of the mosquito control district cannot be concluded at the hearing, any such hearing may be continued to a time and place determined by the representative of the State Board of Health. If, after such hearing, the State Board of Health and the county commissioners concerned shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved. (1959, c. 622, s. 3.)

ARTICLE 25.

State Air Hygiene Program.

§ 130-221. **Short title.**—This article may be cited as the "State Air Hygiene Program Act." (1963, c. 536.)

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

§ 130-222. **Definitions.**—(a) "Person" shall include any individual, firm, partnership, cooperative organization, corporation, municipality, any other political subdivision of the State, or other organizational entity.

(b) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration which are injurious to human, plant, or animal life, or property. (1963, c. 536.)

§ 130-223. **Creation of State air hygiene service; personnel; expenditure of funds.**—The State Board of Health is hereby authorized and empowered:

- (1) To create a State air hygiene service and to administer the provisions of this article;

- (2) To employ or appoint such personnel as are necessary for the carrying out of the provisions of this article; and,
- (3) To expend such State funds, federal grants-in-aid, or donations as are made to the State Board of Health for the purpose of establishing a State air hygiene service and otherwise carrying out the provisions of this article. (1963, c. 536.)

§ 130-224. **Authority of State air hygiene service.**—The State air hygiene service to be established by the State Board of Health is authorized to:

- (1) Advise, consult, and cooperate, within the limitations of this article, with other State agencies, local governmental units, industries, the federal government, and other affected agencies or groups in matters relating to air pollution;
- (2) Collect and disseminate information relative to air pollution prevention and control;
- (3) Initiate, supervise and encourage research and studies of existing air quality methods of examination and appraisal, and develop procedures and standards for State-wide application with special emphasis on the effect of air contaminants;
- (4) Encourage local agencies to handle air pollution problems to the maximum extent that their resources will permit; and
- (5) Provide technical assistance and cooperation to local and regional air pollution control programs. (1963, c. 536.)

§ 130-225. **Authority of State Health Director.**—The State Health Director or his duly authorized deputy or agent shall have authority to:

- (1) Enter at reasonable times and inspect any building or equipment, for the purpose of investigating a known or suspected source of or contributing factor to air pollution. Nothing in this article shall authorize entry into noncommercial private dwellings without the consent of the occupants thereof.
- (2) Require persons engaged in operations which may result or contribute to air pollution to supply information when available about the pollution such as, but not limited to, composition of effluent sources of emission and rate of discharge; provided, however, that no person shall be required to disclose any secret formulae processes or methods used by any manufacturing operation carried on by him or under his direction. (1963, c. 536.)

§ 130-226. **Article cumulative; municipal powers unaffected.**—This article shall be in addition to all other laws relating to air hygiene or air pollution and shall not be construed to affect or modify the authority of any municipality to adopt ordinances pursuant to any other provisions of law. (1963, c. 536.)

**Chapter 131.
Public Hospitals.**

Article 3.

County Tuberculosis Hospitals.

- Sec.
131-33.2. Conversion of tuberculosis hospital to other uses; approval by voters; change of name.
131-33.3. Use of funds for maintenance of converted hospital or facility; special tax levy authorized; approval of tax levy by voters.
131-33.4. Elections for conversion or special tax levy; declaring results; asserting invalidity of election.
131-33.5. Issuance of bonds and anticipation notes; approval by voters; submission of several questions at same time.
131-33.6. Board of managers for converted hospital or facility; property vested in county.
131-33.7. Powers granted by §§ 131-33.2 to 131-33.6 are additional to other powers.

Article 12.

Hospital Authorities Law.

- Sec.
131-93.1. Change of name by authority.
131-115. Conveyance, lease or transfers of property by a city or municipality to an authority; right to name commissioners of authority.

Article 13.

Medical Care Commission and Program of Hospital Care.

- 131-119. [Repealed.]
131-121.2. Scholarships for graduate nurses who complete courses in anesthesiology.
131-122. [Repealed.]

Article 13C.

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

- 131-126.40b. Alternative procedures.

ARTICLE 2A.

The County Hospital Act.

§ 131-28.8. Appointment of board of trustees; terms of office; vacancies.

Local Modification.—Pasquotank: 1959, c. 203.

ARTICLE 3.

County Tuberculosis Hospitals.

§ 131-33.2. Conversion of tuberculosis hospital to other uses; approval by voters; change of name.—If the board of commissioners of any county maintaining a county tuberculosis hospital under the provisions of this article exclusively for the care and treatment of persons suffering from tuberculosis shall determine by a majority vote of the board that the operation and maintenance of such hospital for such purpose is no longer desirable or necessary, such board of commissioners is hereby authorized and empowered to convert such hospital to any one or more of the following hospitals or facilities: General hospital; hospital or medical institution for the treatment of specific diseases, illnesses or deformities; institution for the care and treatment of the chronically ill or convalescent patients; nursing home or other similar institution or facility; provided, however, that such conversion shall be approved by a majority of the qualified voters of the county voting on such question at any general election or at any special election called by the board of commissioners for such purposes. If such conversion is approved by the voters the board of commissioners may change the name of such county tuberculosis hospital to such name as the board may select. (1959, c. 623.)

§ 131-33.3. Use of funds for maintenance of converted hospital or facility; special tax levy authorized; approval of tax levy by voters.—The board of commissioners of any county so converting any such hospital is hereby authorized and empowered, in its discretion and to the extent permitted by law, to pledge, encumber or appropriate funds from any surplus funds, unappropriated funds, or funds derived from profits of Alcoholic Beverage Control Stores, for the operation and maintenance of the hospital or facility to which such hospital is converted. The board of commissioners is also authorized and empowered to levy a special annual tax not to exceed ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property, the proceeds of such tax to be used for an operation or maintenance fund or for capital improvements to such hospital or facility, and any such tax shall be in addition to any other tax authorized or levied for such purpose; provided, however, that the levy of such special tax shall be approved by a majority of the qualified voters of the county voting on such question at any general election or at any special election called by the board of commissioners for such purpose. The special approval of the General Assembly is hereby given to the levy of such special tax. (1959, c. 623.)

§ 131-33.4. Elections for conversion or special tax levy; declaring results; asserting invalidity of election.—Any election held on the question of converting a county tuberculosis hospital as hereinabove authorized, or for levying any such special tax shall be held in accordance with the applicable provisions of chapter 163 of the General Statutes; provided, however, that the board of commissioners shall prepare a statement showing the number of votes cast for and against any such question submitted and the number of voters qualified to vote in any such election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board of commissioners and delivered to the clerk, who shall record it in the minutes of the board, and file the original in his office and publish it once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in any action or proceeding commenced within thirty days after the publication of such statement or result. (1959, c. 623.)

§ 131-33.5. Issuance of bonds and anticipation notes; approval by voters; submission of several questions at same time.—Subject to the approval by the vote of a majority of the qualified voters of any county who shall vote thereon at any general or special election called for such purpose the board of commissioners of any county converting its tuberculosis hospital as herein provided is hereby authorized and empowered to issue bonds of the county then or at any time thereafter for the purpose of erecting additional buildings or facilities, improving, remodeling or enlarging existing buildings and facilities, and acquiring necessary land and equipment, and to levy property taxes for the payment of such bonds and the interest thereon, and the special approval of the General Assembly is hereby given to the issuance of such bonds and the levy of such taxes. Any bonds so voted and any bond anticipation notes that may be issued to anticipate the receipt of the proceeds of such bonds shall be issued in accordance with the provisions of the County Finance Act, as amended, and the Local Government Act, as amended. The question of approving such conversion, the question of levying a special tax for operation, maintenance and capital improvements, and the question of issuing bonds under the provisions of this article may be submitted at the same election; provided, however, that no such special tax shall be levied nor any such bonds or notes issued unless such conversion is approved by the voters. (1959, c. 623.)

§ 131-33.6. Board of managers for converted hospital or facility; property vested in county.—If the conversion of a county tuberculosis hos-

pital is approved by the voters, the board of commissioners of such county shall, by a majority vote, elect a board of managers of the converted hospital or facility as provided in § 131-31 of the General Statutes for the election of boards of managers for county tuberculosis hospitals, and such board of managers shall serve for the terms and receive such compensation as is provided in said section of the General Statutes, and shall have all of the powers and duties and be subject to all of the limitations, to the extent applicable, contained in this article for boards of managers of county tuberculosis hospitals; provided, however, that all property, both real and personal, pertaining to any such hospital shall be vested in the county in which the converted hospital or facility is located. (1959, c. 623.)

§ 131-33.7. Powers granted by §§ 131-33.2 to 131-33.6 are additional to other powers.—The powers granted by §§ 131-33.2 to 131-33.6, inclusive, are in addition to and not in substitution for any other powers heretofore or hereafter granted to counties for the conversion of county tuberculosis hospitals to any other purposes. (1959, c. 623.)

ARTICLE 12.

Hospital Authorities Law.

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

§ 131-115. Conveyance, lease or transfers of property by a city or municipality to an authority; right to name commissioners of authority.—Any city or municipality in order to provide for the construction, reconstruction, improvement, repair or management of any hospital or hospital project, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority, within the territorial boundaries of which such city or municipality is wholly or partly located, any real, personal or mixed property including, but not limited to, any existing hospital or hospital project as a going concern or otherwise, and including the assignment and transfer of any part of or all money, choses in action and other assets used or held for the use of such hospital or hospital project, and in connection with any such transaction the authority involved may accept such lease, transfer, assignment and conveyance and bind itself to the performance and observation of any agreements and conditions attached thereto.

In the event any municipality or city shall sell, convey or otherwise irrevocably transfer to an authority property pursuant to this section having a market value in excess of one hundred thousand dollars (\$100,000.00) and in the event the authority accepts the conveyance, the chairman or mayor of the governing body of such municipality or city shall thereafter have the right to name to the authority, to serve as commissioners, for three-year terms such number of per-

sons as, when compared with the existing membership of the authority, will, in the sole opinion of the governing body of such municipality or city and the authority, fairly represent the approximate relationship of the total value of the property being transferred to the total value of the property already held by the authority, but in no event shall fewer than two persons nor more than nine persons be added to the authority. The size of the authority shall be increased by the number thus added. The times of commencement and of expiration of the initial terms of those being added shall be determined by agreement between the authority and the governing body, and copies of the agreement setting out the number of persons being added and the terms shall be filed with the clerk of such municipality or city, and thereafter copies of reports referred to in G. S. 131-111 shall be filed with the clerk of such municipality or city. (1943, c. 780, s. 26; 1961, c. 988, s. 2.)

Editor's Note.—The 1961 amendment added the second paragraph.

ARTICLE 13.

Medical Care Commission and Program of Hospital Care.

§ 131-117. **North Carolina Medical Care Commission.**—There is hereby created a State agency to be known as "The North Carolina Medical Care Commission," which shall be composed of twenty members nominated and appointed as follows:

Three members shall be nominated by the Medical Society of the State of North Carolina; one member by the North Carolina Hospital Association; one member by the North Carolina Nurses' Association; one member by the North Carolina Pharmaceutical Association, and one member by the Duke Foundation, for appointment by the Governor. One member shall be a dentist licensed to practice in North Carolina appointed by the Governor after requesting recommendations from the president of the North Carolina Dental Society.

Ten members of said Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interests and groups in North Carolina. In appointing the members of said Commission, the Governor shall designate the term for which each member is appointed. Four of said members shall be appointed for a term of one year; four for a term of two years; four for a term of three years; five for a term of four years; and thereafter, all appointments shall be for a term of four years. All vacancies shall be filled by the Governor for the unexpired term. The Commissioner of Public Welfare, and the State Health Director shall be ex officio members of the Commission, without voting power.

The Commission shall elect, with the approval of the Governor, a chairman and a vice-chairman. All members, except the Commissioner of Public Welfare, and the State Health Director shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses. (1945, c. 1096; 1957, c. 1357, s. 17; 1963, c. 325.)

Editor's Note.— of the second paragraph relating to the
The 1963 amendment rewrote the part dentist member.

§ 131-119: Repealed by Session Laws 1961, c. 138, s. 1, effective May 1, 1961.

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

Cited in Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

§ 131-121. **Medical and other students; loan fund.**—The North Carolina Medical Care Commission is hereby authorized and empowered, in accordance with such rules as it may promulgate, to make loans to students who may

wish to become physicians, dentists, pharmacists, or nurses and who are accepted for enrollment in any standard school or college giving approved courses in medicine, dentistry, pharmacy or nursing, and is approved by the Commission provided such student or students shall agree, that upon graduation and being duly licensed, to practice medicine, dentistry, pharmacy or nursing in some rural area of North Carolina for one calendar year of twelve months for each academic year or fraction thereof for which the student receives a loan. Rural area, for the purpose of this section, shall mean any town or village having less than 2,500 population according to the most recent decennial census, or area outside and around any such town or village, or area approved by the Medical Care Commission that is considered to meet the spirit and intent of the student loan program, except that loans may be approved for students of nursing and for graduate nurses enrolled in specialized courses in nursing upon the condition that they practice in any community in North Carolina regardless of population. Such loans shall bear such rate of interest as may be fixed by the Commission, not to exceed four per cent (4%) per annum. The Commission shall have the authority to cancel any contract made between it and any applicant for loans upon cause deemed sufficient by the Commission. In such cases, the applicant shall repay the loan in full with interest at four per cent (4%) per annum.

For the purpose of carrying out the provisions of this section, there is hereby appropriated from the general fund for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, to the North Carolina Medical Care Commission the sum of fifty thousand dollars (\$50,000.00). The State Treasurer shall set up on his records an account to which shall be deposited said amount, and from which withdrawals shall be made upon vouchers made by the State Auditor upon request of the North Carolina Medical Care Commission. This appropriation shall not lapse at the end of any biennium, but shall remain available for the purposes herein stated.

For the purpose of encouraging medical students and student nurses to specialize in psychiatry, and to extend the provisions of this section and to provide sufficient funds to accomplish the purposes of this paragraph, there is hereby allocated out of the appropriations contained in chapter 1165 of the 1953 Session Laws for Student Loan Fund in section 1 under Title VI-16(2), for each year of the 1953-1955 biennium, the sum of fifty thousand dollars (\$50,000.00). Loans provided for in this paragraph shall be made only to students in the Schools of Medicine and Nursing who are specializing in psychiatry upon the following express conditions and limitations:

- (1) Loans shall be made only to medical students specializing in psychiatry and student nurses who are specializing in psychiatry and who are enrolled in or engaged in training at the Duke University Medical School, Durham, North Carolina; the Bowman Gray Medical School at Winston-Salem, North Carolina; or at the Medical School of the University of North Carolina at Chapel Hill. Loans shall be made only to bona fide residents of this State.
- (2) No loan shall be made to any one person in excess of two thousand dollars (\$2,000.00) for each scholastic year, not to exceed four years.
- (3) Under rules promulgated by the North Carolina Medical Care Commission, any loans made hereunder shall be cancelled on the basis of a credit of the amount of one year's loan for each year of satisfactory service performed as a member of staff of any of the institutions, clinics or other facilities under the administration of the North Carolina Hospitals Board of Control; the provisions of this section, relative to cancellation of loans on the basis of service performed, shall be applicable with respect to service performed since July 1, 1960. Loans or any parts thereof not so cancelled shall be repaid by the borrower and shall bear interest at the rate of four per cent (4%) per annum.

The North Carolina Medical Care Commission is hereby authorized, in its discretion, to approve transfers between rural and State hospitals programs so as to enable a student, after completing his training, to liquidate his obligations to the State under either program he prefers subject to the approval of the Commission and the State Hospitals Board of Control.

The North Carolina Medical Care Commission is hereby authorized and empowered to establish and promulgate rules and regulations fixing fair and reasonable standards, systems and plans whereby physicians, dentists, pharmacists, and nurses receiving loans under this section shall receive a credit on the principal and/or interest of such loan in an amount fixed by such Commission for each year, or other period of time as fixed by regulation, of practicing his or her profession in a rural area as defined in this section: Provided, however, in the case of nurses a rural area shall mean any community in North Carolina regardless of population. (1945, c. 1096; 1947, c. 933, s. 2; 1949, c. 1019; 1953, c. 1222; 1959, c. 1028, ss. 1-4; c. 1165; 1963, c. 365, s. 1; c. 493.)

Editor's Note.—

The first 1959 amendment changed the names of the State Hospital at Butner, the State Hospital at Goldsboro, the State Hospital at Morganton and the State Hospital at Raleigh to John Umstead Hospital, Cherry Hospital, Broughton Hospital and Dorothea Dix Hospital, respectively.

The second 1959 amendment made changes in the latter part of the first and second sentences of the first paragraph

and added the last two sentences thereof. It also inserted the next to the last paragraph.

The first 1963 amendment rewrote subdivision (3) of the third paragraph of this section. The second 1963 amendment added the exception clause as to students of nursing and graduate nurses at the end of the second sentence of the first paragraph, and added the proviso at the end of the last paragraph.

§ 131-121.1. Graduate students in sociology and psychology; loan fund.—The North Carolina Medical Care Commission is hereby authorized and empowered in accordance with such rules as it may promulgate to make loans to students who wish to do graduate work in the field of sociology or psychology and who are enrolled in or accepted for enrollment in the appropriate graduate school of Duke University, Durham, North Carolina; Wake Forest College, Winston-Salem, North Carolina; or the University of North Carolina at Chapel Hill, North Carolina. Loans shall be made only to bona fide residents of this State and no loan shall be made to any one student in excess of two thousand dollars (\$2,000.00) for each scholastic year. Under rules promulgated by the North Carolina Medical Care Commission any loan made hereunder shall be cancelled on the basis of a credit of the amount of one year's loan for each year of satisfactory service performed as a member of the staff of any of the institutions, clinics or other facilities under the administration of the North Carolina Hospitals Board of Control; the provisions of this section, relative to cancellation of loans on the basis of service performed, shall be applicable with respect to service performed since July 1, 1960. Loans or any part thereof not so cancelled shall be repaid by the borrower and shall bear interest at the rate of four per cent (4%) per annum. Any appropriation made in furtherance of the program set forth in G. S. 131-121 shall likewise be used for the purpose of providing loans made pursuant to the provisions of this section. (1957, c. 1425; 1963, c. 365, s. 2.)

Editor's Note.—The 1963 amendment rewrote the latter part of the third sentence.

§ 131-121.2. Scholarships for graduate nurses who complete courses in anesthesiology.—The North Carolina Medical Care Commission is hereby authorized and empowered, in accordance with such rules and regulations as it may promulgate, to grant scholarships to graduate nurses who complete courses in the field of anesthesiology in accredited schools for nurses in anesthesia and who are enrolled in or accepted for enrollment in any of the accredited schools appropriate for this purpose. The scholarships herein provided shall be made to

bona fide residents of this State who are graduate nurses and who agree in such contracts or agreements as may be formulated by the North Carolina Medical Care Commission to reside and render service in such field in North Carolina for a period of five (5) years after graduation from such accredited schools teaching courses in the field of anesthesia. The said grant of scholarships shall be paid to such graduate nurses who apply to and are accepted by the North Carolina Medical Care Commission on the following basis: Two hundred fifty dollars (\$250.00) for the first month; fifty dollars (\$50.00) a month for eleven (11) months; seventy-five dollars (\$75.00) per month for six (6) months. The said scholarship payments may be arranged by the North Carolina Medical Care Commission in such manner and to suit the conditions of the graduate nurses who are accepted for this purpose, and in the event any graduate nurse fails or refuses to complete the course herein provided in an accredited school for nurses in the field of anesthesia, then such graduate nurse shall be required to refund or pay back to the North Carolina Medical Care Commission the total amount of funds advanced to her in the form of scholarships at the rate of interest of six per cent (6%) per annum. The North Carolina Medical Care Commission shall determine what schools are properly accredited and are available to graduate nurses who wish to study and complete a course or courses in the field of anesthesiology. Any refunding or repayment of scholarship funds advanced under this section shall again be used for scholarships for the purposes herein provided. (1963, c. 1246.)

§ 131-122: Repealed by Session Laws 1963, c. 448, s. 17, effective July 1, 1963.

ARTICLE 13A.

Hospital Licensing Act.

§ 131-126.1. **Definitions and distinctions.**

(3), (4): Repealed by Session Laws 1961, c. 51, s. 1.

Editor's Note.—

The 1961 amendment repealed subsections (3) and (4) relating to convalescent home and home for the aged and infirm.

Design of Article.—This and the follow-

ing sections are designed to protect the public health and do not constitute the licensee an instrumentality of the State. *Eaton v. Grubbs*, 216 F. Supp. 465 (1963).

§ 131-126.2. **Purpose.**

Statutes Designed to Protect Health of Persons Licensed by Facility.—As in the case of licenses issued to restaurants, the hospital licensing statutes and regulations are designed to protect the health of persons served by the facility, and do not authorize any public officials to exert any

control whatever over management of the business of the hospital, or to dictate what persons shall be served by the facility. *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

Quoted in *Eaton v. Grubbs*, 216 F. Supp. 465 (1963).

§ 131-126.3. **Licensure.—**After July 1st, 1947, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this State without a license. None of the provisions of chapter 104C of the General Statutes shall apply to X-ray facilities in or as a part of any hospital or medical facility which is, or will upon its completion become, subject to the provisions of law relating to the licensing thereof by the North Carolina Medical Care Commission pursuant to this article. (1947, c. 933, s. 6; 1963, c. 66.)

Editor's Note. — The 1963 amendment added the second sentence.

Both private and public hospitals are required to be licensed under this section. *Eaton v. Grubbs*, 216 F. Supp. 465 (1963).

Licensing Does Not Change Character of Institutions from Private to Public.—

The license requirement for hospitals in North Carolina in no way changes the character of the institution from private to public. *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

Or Make Them Instrumentalities of Government.—The various contacts that

hospitals licensed by the state have with governmental agencies, both federal and state, do not make them instrumentalities of government in the constitutional sense, or subject them to either the Fifth Amend-

ment or the Fourteenth Amendment to the United States Constitution. *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

§ 131-126.6. Denial or revocation of license; hearings and review.

Quoted in *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

§ 131-126.9. Inspections and consultations.

Cited in *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

§ 131-126.17. Article not applicable to §§ 122-72 to 122-75.—The provisions of this article shall not apply to §§ 122-72 through 122-75, inclusive, of the General Statutes, which give to the State Department of Mental Health, in addition to other responsibilities, authority to license privately owned and operated hospitals for the mentally disordered. (1947, c. 933, s. 6; 1949, c. 920, s. 2; 1963, c. 1166, s. 14.)

Editor's Note.—

The 1963 amendment substituted "State Department of Mental Health" for "State Board of Public Welfare."

ARTICLE 13C.

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

§ 131-126.31. Petition for formation of hospital district; hearing.

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

Editor's Note.—

The 1959 amendment added the above paragraph at the end of this section. Only this paragraph is set out.

§ 131-126.40b. Alternative procedures. — (a) Notwithstanding any other provisions of this article, a hospital district may be created by a board of county commissioners, in its own discretion, by appropriate resolution, without following the procedure set forth in G. S. 131-126.31 and G. S. 131-126.32. This authority shall exist only when one hospital district already exists or when a special tax levy for hospital purposes has heretofore been authorized or is now authorized with respect to a portion of the county and the power herein granted to create a hospital district is limited to establishing as a hospital district all the area or territory in the county lying outside of the existing hospital district or outside the portion or area with respect to which a hospital tax levy has heretofore been authorized or is now authorized.

(b) After a district is established by the adoption of the above-referred-to resolution, the board of county commissioners, in its discretion, may call for an election or elections, as authorized by this article, without receiving any petition therefor. The first publication of the notice of an election shall be at least twenty days before the election, but is not required to be earlier. It shall not be necessary to order a new registration for the purpose of any such election unless the board of county commissioners, in its discretion, shall determine to do so, and said board of county commissioners may designate judges, registrars and other election officers for general election purposes to hold and con-

duct said election. The board of county commissioners may use the registration books and other election records available for the hospital district. In the event no new registration is ordered, registration books shall be kept open, and need be kept open only, for a fifteen-day period preceding the election, but said period shall include at least the three Saturdays immediately preceding the election and the registrar of each precinct shall attend at the precinct polling place with his registration books between the hours of nine o'clock A. M. and six o'clock P. M. The last day the registration books are open which shall be the third Saturday described above, shall be challenge day.

(c) The provisions of this section shall be supplemental to all other provisions of this article and when a board of county commissioners exercises power pursuant to this section, all of the provisions of this article shall be applicable except as modified in this section. (1959, c. 1074.)

Chapter 132. Public Records.

<p>Sec. 132-8. Assistance by and to State Department of Archives and History.</p> <p>132-8.1. Records management program administered by Department of Archives and History; establishment of standards, procedures, etc.; surveys.</p>	<p>Sec. 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.</p>
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§ 132-8. Assistance by and to State Department of Archives and History.—The State Department of Archives and History shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. When requested by the State Department of Archives and History, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Director of the State Department of Archives and History, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the State Department of Archives and History shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semi-current records so scheduled and in its archives for non-current records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled. (1935, c. 265, s. 8; 1943, c. 237; 1959, c. 68, s. 2.)

Editor's Note.—

The 1959 amendment added the second and third sentences.

§ 132-8.1. Records management program administered by Department of Archives and History; establishment of standards, procedures, etc.; surveys.—A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the State Department of Archives and History. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work opera-

tions, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the State Department of Archives and History in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government. (1961, c. 1041.)

§ 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.—In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the State Department of Archives and History shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the State Department of Archives and History. (1961, c. 1041.)

Chapter 133.

Public Works.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.—(a) In the interest of public health, safety and economy, every officer, board, department or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of twenty thousand dollars (\$20,000.00) for the construction or repair of public buildings, or State-owned and operated utilities, shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of chapter 83 of the General Statutes, or by a registered engineer, in accordance with the provisions of chapter 89 of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all such plans and specifications.

(1963, c. 752.)

Editor's Note.—

The 1963 amendment inserted the words "or State-owned and operated utilities"

near the middle of subsection (a). As only subsection (a) was affected by the amendment the rest of the section is not set out.

Chapter 134. Reformatories.

Article 6A.

State Training School for Negro Girls.

Sec.
134-84.2. Under control of North Carolina Board of Juvenile Correction.

Article 9.

State Board of Juvenile Correction.

Sec.
134-90. State Board of Juvenile Correction created.
134-91. Powers and duties of the State Board of Juvenile Correction.
134-96. Commissioner of Juvenile Correction.

ARTICLE 6A.

State Training School for Negro Girls.

§ 134-84.2. **Under control of North Carolina Board of Juvenile Correction.**—The said institution shall be under the control of the North Carolina Board of Juvenile Correction, and wherever the words “board,” “directors” or “board of directors” are used in this article with reference to the governing board of said institution, the same shall mean the North Carolina Board of Juvenile Correction, and said board shall exercise the same powers and perform the same duties with respect to the State Training School for Negro Girls as it exercises and performs with respect to the other institutions under its control, except as may in this article be otherwise provided. (1943, c. 381, § 2; 1963, c. 914, s. 4.)

Editor’s Note — The 1963 amendment substituted “Board of Juvenile Correction” for “Board of Correction and Training” in two places in this section.

ARTICLE 9.

State Board of Juvenile Correction.

§ 134-90. **State Board of Juvenile Correction created.**—There is hereby created a State Board of Juvenile Correction to be composed of nine members, all of whom shall be appointed by the Governor of North Carolina. The Commissioner of Public Welfare shall be an ex officio member without voting power.

The original membership of the Board shall consist of three classes, the first class to serve for a period of two years from the date of appointment, the second class to serve for a period of four years from the date of appointment, and the third class to serve for a period of six years from the date of appointment. At the expiration of the original respective terms of office, all subsequent appointments shall be for a term of six years, except such as are made to fill unexpired terms. Five members of the Board shall constitute a quorum.

Members of the Board shall serve for terms as prescribed in this section, and until their successors are appointed and qualified. The Governor shall have the power to remove any member of the Board whenever, in his opinion, such removal is in the best public interest, and the Governor shall not be required to assign any reason for any such removal. (1947, c. 226; 1963, c. 914, s. 4.)

Editor’s Note.—

The 1963 amendment, effective July 1, 1963, substituted “State Board of Juvenile Correction” for “State Board of Correc-

tion and Training.” The amendatory act also changed the name of this article from “State Board of Correction and Training.”

§ 134-91. **Powers and duties of the State Board of Juvenile Correction.**—The following institutions, schools and agencies of this State, namely, the Stonewall Jackson Manual Training and Industrial School, the State Home and

Industrial School for Girls, Dobb's Farms, the Eastern Carolina Industrial Training School for Boys, the Morrison Training School, and the State Training School for Negro Girls, together with all such other correctional State institutions, schools or agencies of a similar nature, established and maintained for the correction, discipline or training of delinquent minors, now existing or hereafter created, shall be under the management and administrative control of the State Board of Juvenile Correction.

Wherever in §§ 134-1 to 134-48, inclusive, or in §§ 134-67 to 134-89, inclusive, or in any other laws of this State, the words "board of directors," "board of trustees," "board of managers," "directors," "trustees," "managers," or "board" are used with reference to the governing body or bodies of the institutions, schools or agencies enumerated in § 134-90, the same shall mean the State Board of Juvenile Correction provided for in § 134-90, and it shall be construed that the State Board of Juvenile Correction shall succeed to, exercise and perform all the powers conferred and duties imposed heretofore upon the separate boards of directors, trustees or managers of the several institutions, schools or agencies herein mentioned, and said powers and duties shall be exercised and performed as to each of the institutions by the State Board of Juvenile Correction herein provided for. The said Board shall be responsible for the management of the said institutions, schools or agencies and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, schools or agencies subject to the provisions of the Executive Budget Act, and said Board shall make report to the Governor annually, and oftener if called for by him, of the condition of each of the schools, institutions or agencies under its management and control, and shall make biennial reports to the Governor, to be transmitted by him to the General Assembly, of all moneys received and disbursed by each of said schools, institutions or agencies.

The State Board of Juvenile Correction shall have full management and control of the institutions, schools and agencies named in this article, and shall have power to administer these institutions, schools and agencies in the manner deemed best for the interest of delinquent boys and girls of all races. Similar provisions shall be made for white and negro children in separate schools. Indian children shall be provided for in a manner comparable to that afforded children of the white and negro races. Individual students may be transferred from one institution, school or agency to another, but this authority to transfer individual students does not authorize the consolidation or abandonment of any institution, school or agency. The Board of Juvenile Correction, subject to the approval of the Governor and the Advisory Budget Commission, is authorized to transfer the entire population at Dobb's Farms to the State Home and Industrial School for Girls and to utilize the present facilities at Dobb's Farms as a training school for negro girls.

The State Board of Juvenile Correction is hereby vested with administrative powers over the schools, institutions and agencies set forth in this article, together with all lands, buildings, improvements, and other properties appertaining thereto, and the Board is authorized and empowered to do all things necessary in connection therewith for the care, supervision and training of boys and girls of all races who may be received at any of such schools, institutions or agencies. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, "Correction and Training" throughout this effective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of section.

§ 134-92. Organization of the Board.—The State Board of Juvenile Correction is hereby authorized and given full power to meet and organize, and from their number select a chairman and vice-chairman. The Commissioner of Juvenile Correction hereinafter provided for in this article shall be executive secretary to the Board. All officers of the Board shall serve for a two-year period,

which period shall be the same as the State's fiscal biennium. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, Board of Correction and Training" and effective July 1, 1963, substituted "State "Commissioner of Juvenile Correction" Board of Juvenile Correction" for "State for "Commissioner of Correction."

§ 134-93. Meetings of the Board.—The State Board of Juvenile Correction shall convene at least four times a year and at places designated by the Board. Insofar as practicable, the place of meetings shall rotate among the several schools and institutions. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, Board of Juvenile Correction" for "State effective July 1, 1963, substituted "State Board of Correction and Training."

§ 134-94. Executive committees.—The State Board of Juvenile Correction shall select from its number an executive committee of three members. The powers and duties of the executive committee shall be prescribed by the Board and all actions of this committee shall be reported to the full Board at the next succeeding meeting.

In addition to the executive committee the Board may set up such other committees as may be deemed necessary for the carrying out of the activities of the Board. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, Board of Correction and Training" in the effective July 1, 1963, substituted "State first sentence. Board of Juvenile Correction" for "State

§ 134-95. Bylaws, rules and regulations.—The State Board of Juvenile Correction shall make all necessary bylaws, rules and regulations for its own use and for the governing and administering of the schools, institutions and agencies under its control. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, Board of Juvenile Correction" for "State effective July 1, 1963, substituted "State Board of Correction and Training."

§ 134-96. Commissioner of Juvenile Correction.—The State Board of Juvenile Correction is hereby authorized and empowered to employ a Commissioner of Juvenile Correction who shall serve all schools, institutions and agencies covered by this article. The Board shall prescribe the duties and salary of the Commissioner of Juvenile Correction, subject to the approval of the Director of the Budget. The Board may employ secretarial help and such other assistants as in its judgment are necessary to give effect to this article, subject, however, to the approval of the Director of the Budget. The administrative and executive powers and duties vested in the State Board of Juvenile Correction, including the authority to appoint, promote, demote, and discharge other personnel employed by the Board, shall be delegated to the Commissioner of Juvenile Correction, to be administered by him in accordance with controlling law under rules and regulations proposed by him and approved by the State Board of Juvenile Correction.

The Commissioner of Juvenile Correction shall be a person of demonstrated executive ability and shall have such special education, training, experience and natural ability in welfare, educational and correctional work as are calculated to qualify him for the discharge of his duties, such training shall include special study in the social sciences and adequate institutional and practical experiences; and he must be a person of good character. He shall devote his full time to the duties of his employment and shall hold no other office, except that he shall serve as secretary to the State Board of Juvenile Correction.

The salary of the Commissioner of Juvenile Correction and his assistants and the expenses incident to maintaining his office, his travel expenses, and the expenses of the Board members shall be paid out of special appropriations set up for the State Board of Juvenile Correction. The State Board of Public Buildings

and Grounds shall provide suitable office space in the city of Raleigh for the Commissioner and his staff. (1947, c. 226; 1963, c. 914, ss. 4, 5.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, added the last sentence of the first paragraph and substituted "State Board of Juvenile Correction" for the "State Board of Correction and Training" and "Commissioner of Juvenile Correction" for "Commissioner of Correction" throughout the section.

§ 134-97. Compensation for members of the Board.—The members of the State Board of Juvenile Correction shall be paid the sum of seven dollars (\$7.00) per day and actual expenses while engaged in the discharge of their official duties. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-98. Election of superintendents. — The State Board of Juvenile Correction shall elect a superintendent for each of the schools, institutions and agencies, covered by this chapter. Each superintendent shall be equipped by professional social work training and experience to understand the needs and problems of adolescent boys and girls, to administer an institutional program and to direct professional staff members and other employees. The superintendents of the several institutions, schools and agencies shall be responsible, with the assistance of the Commissioner of Juvenile Correction, for the employment of all personnel. The superintendents of the several schools and institutions shall likewise have the power to dismiss any employee for incompetence or failure to carry out the work assigned to him.

The superintendents shall make monthly reports to the Commissioner of Juvenile Correction on the conduct and activities of the schools, institutions or agencies, and on the boys and girls under their care, and such reports on the financial and business management of the schools, institutions or agencies as may be required by the Board of Juvenile Correction. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of Correction and Training" and "Commissioner of Juvenile Correction" for "Commissioner of Correction and Training" throughout this section.

§ 134-101. Removal request by Board.—If any boy or girl under the care of a State school, institution or agency shall offer violence to a member of the staff or another boy or girl or do or attempt to do injury to the buildings, equipment, or property of the school, or shall by gross or habitual misconduct exert a dangerous or pernicious influence over other boys and girls, the Board of Juvenile Correction may request the court committing said boy or girl or any court of proper jurisdiction to relieve the school of the custody of the boy or girl. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of Correction and Training."

§ 134-103. Institution to be in position to care for offender before commitment. — Before committing any person to the school, institution or agency, the court shall ascertain whether the school, institution or agency is in a position to care for such person and no person shall be sent to the school, institution or agency until the committing agency has received notice from the superintendent that such person can be received. It shall be at all times within the discretion of the State Board of Juvenile Correction as to whether the Board will receive any qualified person into the school, institution or agency. No commitment shall be made for any definite term but any person so committed may be released or discharged at any time after commitment, as hereinafter provided in this article (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-104. **Delivery to institution.**—It shall be the duty of the county or city authorities from which the person is sent to the school, institution or agency by any court to see that such person is safely and duly delivered to the school, institution or agency to which committed and to pay all expenses incident to his or her conveyance and delivery to the said school, institution or agency. If the offender be a girl, she must be accompanied by a woman approved by the county director of public welfare. (1947, c. 226; 1961, c. 186.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in line seven.

§ 134-105. **Return of boys and girls improperly committed.**—Whenever it shall appear to the satisfaction of the superintendent of a State school, institution or agency and the State Board of Juvenile Correction that any boy or girl committed to such school, institution or agency is not of a proper age to be so committed, or is not properly committed, or is mentally or physically incapable of being materially benefited by the service of such school, institution or agency, the superintendent, with the approval of the State Board of Juvenile Correction, may return such boy or girl to the committing court to be dealt with in all respects as though he or she had not been so committed. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training" in two places in this section.

§ 134-107. **Conditional release; superintendent may grant conditional release; revocation of release.** — The Board of Juvenile Correction shall have power to grant conditional release to any person in any school, institution or agency under its jurisdiction and may delegate this power to the superintendents of the various schools, institutions and agencies, under rules and regulations adopted by the Board of Juvenile Correction; such conditional release may be terminated at any time by written revocation by the superintendent, under rules and regulations adopted by the Board of Juvenile Correction; which written revocation shall be sufficient authority for any officer of the school, institution or agency, or any peace officer to apprehend any person named in such written revocation in any county of the State and to return such person to the institution. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of Correction and Training" in three places in this section.

§ 134-108. **Final discharge.**—Final discharge may be granted by the superintendent under rules adopted by the State Board of Juvenile Correction at any time after admission to the school; provided, however, that final discharge must be granted any person upon reaching his twenty-first birthday. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-111. **State Board of Health to supervise sanitary and health conditions.**—The State Board of Health shall have general supervision over the sanitary and health conditions of the several schools, institutions and agencies and shall make periodic examinations of the same and report to the State Board of Juvenile Correction the conditions found with respect to the sanitary and hygienic care of the students. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-112. **Care of persons under federal jurisdiction.** — The State Board of Juvenile Correction is hereby empowered to make and enter into contractual relations with the proper official of the United States for admission to the State schools, institutions and agencies of such federal juvenile delinquents committed to the custody of such Attorney General as provided in the Federal Juvenile Delinquency Act as would profit from the program and services of the schools, institutions or agencies. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note. — The 1963 amendment, Board of Juvenile Correction" for "State effective July 1, 1963, substituted "State Board of Correction and Training."

Chapter 135.

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

Article 1.

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

Sec.

- 135-1.1. Licensing and examining boards.
- 135-3.1, 135-3.2. [Repealed.]
- 135-7.2. Authority to invest in certain common and preferred stocks.
- 135-18.2. [Repealed.]

Article 2.

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

Sec.

- 135-30. State employees members of Law Enforcement Officers' Benefit and Retirement Fund.
- 135-31. Split referendums.

ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

- (4) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided, that the term "employee" shall not include any justice of the Supreme Court or any judge of the superior court. "Employee" shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G. S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard.
- (15) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in § 135-8.

- (17) "Average final compensation" shall mean the average annual compensation of a member during the five consecutive calendar years, within the last ten calendar years of his creditable service, producing the highest such average.
- (26) "Social Security break-point" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 8½; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1.)

Editor's Note.—

The first 1959 amendment inserted "actual" in lieu of "earnable" in lines one and four of subdivision (17).

The second 1959 amendment added the part of subdivision (4) making employees of the national guard eligible for membership in the Teachers' and State Employees' Retirement System. The amendatory act provides that it shall not become effective until such time as federal contributions are made available to the Adjutant

General of the State acting for the Governor in behalf of the State for the employers' contribution as required under the applicable provisions of G. S. 135-8, or until State funds for such purposes are made available.

The 1963 amendment, effective July 1, 1963, rewrote subdivisions (15) and (17) and added subdivision (26).

As only subdivisions (4), (15), (17) and (26) were affected by the amendments the rest of the section is not set out.

§ 135-1.1. **Licensing and examining boards.**—Any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade or occupation, in its discretion, may elect, by an appropriate resolution of said board, to cause its employees to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such board's paying all of the employer's contributions or matching funds from funds of the board and on such board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the regulations of the board of trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such board may also be effected to the extent that such board requests provided the board pays all of the employer's contributions or matching funds necessary for such purpose and provided said board collects from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the board of trustees of the Retirement System determines, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. (1959, c. 1012.)

§ 135-3. **Membership.**

- (1) All persons who shall become teachers or state employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin ninety days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this chapter. Provided, that every person who is employed by the State as a State highway patrolman or other law enforcement officer as defined in G. S. 143-166 (m) shall automatically become a member of the Teachers' and State Employees' Retirement System unless such person shall, within fifteen days after his employment, become a member of the Law Enforcement Officers' Benefit and Retirement Fund, in which event such person shall not be entitled to membership in the Teachers' and

State Employees' Retirement System; provided, that any such State employee who joins said fund and is later transferred to a position other than one described in G. S. 143-166 (m) shall be enrolled in the Teachers' and State Employees' Retirement System and in addition thereto be entitled to transfer to this Retirement System his contributions in lump sum and credits for membership and prior service standing to his credit in the Law Enforcement Officers' Benefit and Retirement Fund. Upon request for transfer of such credits, the State's employer contributions shall also be paid to the Teachers' and State Employees' Retirement System by the executive secretary of the Law Enforcement Officers' Benefit and Retirement Fund. This right shall apply retroactively in the case of any member who heretofore has transferred to nonlaw enforcement duties. Under such rules and regulations as the board of trustees may establish and promulgate, Co-operative Agricultural Extension Service employees may, in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county.

(7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963 and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of § 135-5 (b) as in effect at the date of such retirement.

a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5, subsection (b), subdivisions (1), (2) and (3).

b. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separates from service on or after July 1, 1951 and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July

1, 1951 and prior to the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, subsequent to July 1, 1951 and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

- d. Should a teacher or employee who retired on an early retirement allowance be restored to service prior to the attainment of the age of 60 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 135, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in § 135-15; provided that, should such restoration occur on or after the attainment of the age of 55 years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.
- (8) The provisions of this subdivision (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of § 135-5 (b1).
- a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of sixty years for any reason other than death or retirement for disability as provided in § 135-5, subsection (c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of sixty years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5, subsection (b1).
 - b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service on or after July 1, 1963 and prior to the attainment of the age of sixty years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (c), after completing 20 or more years of creditable service and after attaining the age of fifty years, and who leaves his total accumulated contributions

in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within sixty (60) days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of sixty years upon proper application therefor.

- c. The provisions of paragraph d of the preceding subdivision (7) shall apply equally to this subdivision (8). (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 9½; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2.)

Editor's Note.—

The 1961 amendment added all of subdivision (1) beginning with "Provided" in line eight. It also deleted the former last proviso to the first sentence of paragraph a of subdivision (7) and the last sentence thereof.

The 1963 amendment, effective July 1, 1963, added the first paragraph of subdivision (7) and all of subdivision (8).

Only subdivisions (1), (7) and (8) are set out.

§§ 135-3.1, 135-3.2: Repealed by Session Laws 1961, c. 516, s. 9.

§ 135-4. **Creditable service.**—(a) Under such rules and regulations as the board of trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946 shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that any person who is a member of the Teachers' and State Employees' Retirement System on July 1, 1963 and who was previously employed by a participating unit of the North Carolina Local Governmental Employees' Retirement System and who terminated his service with such unit prior to its participation in the North Carolina Local Governmental Employees' Retirement System shall file a detailed statement of all service to such political entity. Certification of such service shall be furnished to the Teachers' and State Employees' Retirement System.

(f) Teachers and other State employees who entered the armed services of the United States on or after September sixteenth, one thousand nine hundred and forty, and prior to February seventeenth, one thousand nine hundred and forty-one and who returned to the service of the State within a period of two years after they have been honorably discharged from the armed services of the United States, shall be entitled to full credit for all prior service. Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952 after they have been honorably discharged from such armed services shall be entitled to full credit for all prior service, and, in addition, they shall receive membership service credit for the period of service in such armed services occurring after the date of establishment. Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after being separated or released, or becoming entitled to be separated or released, from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed

services. Under such rules as the board of trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the board of trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of § 135-8, the board of trustees shall refund to or reimburse such member for such payments. The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.

(1959, c. 513, s. 1½; 1961, c. 516, s. 3; c. 779, s. 2; 1963, c. 1262.)

Editor's Note.—

The 1959 amendment rewrote the third sentence of subsection (f) and added the last sentence thereof.

The first 1961 amendment substituted "September 16, 1940" for "February 17, 1941" in line eight of subsection (f) and rewrote the fourth sentence thereof. The

second 1961 amendment substituted "October 1, 1952" for "July 1, 1950" in line nine of said subsection.

The 1963 amendment added the proviso and the last sentence in subsection (a).

As only subsections (a) and (f) were changed by the amendments, the rest of the section is not set out.

§ 135-5. Benefits.—(a) Service Retirement Benefits.—

(1) Any member in service may retire upon written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than thirty days nor more than ninety days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, and notwithstanding that, during such period of notification, he may have separated from service.

(2) Effective July 1, 1960, any member in service shall automatically be retired as of July 1, 1960, if he has then attained the age of sixty-five years, otherwise as of the subsequent July first coincident with or next following his sixty-fifth birthday: Provided that upon the recommendation of his employer, made on such form and under such conditions as the board of trustees may require, and with the approval of the board of trustees any such member may continue in service for one additional year following each such annual recommendation and approval.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959 but prior to July 1, 1963.—Upon retirement from service on or after July 1, 1959 but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of sixty-five years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:
- a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and
 - b. The pension which would have been provided on account of such contributions at age sixty-five, or at his retirement age, whichever is the earlier age.

If the member has not less than twenty (20) years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963.—Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 65th birthday, such allowance shall be equal to one per cent (1%) of the portion of his average final compensation not in excess of the Social Security break-point, plus one and one-half per cent (1½%) of the portion of such compensation in excess of such break-point, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his 65th birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five-twelfths of one per cent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963 shall receive not less than the benefit provided by G. S. 135-5 (b).

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959 but prior to July 1, 1963.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959 but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;
- (2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of sixty-five years had the member continued in service to the age of sixty-five years without further change in compensation.

If the member has not less than twenty (20) years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of sixty years, minus the actuarial equivalent to the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963 shall receive not less than the benefit provided by G. S. 135-5 (d).

(f) Return of Accumulated Contributions.—Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this chapter, he shall be paid upon his request the sum of his contributions and one half of the accumulated regular interest thereon. Provided that, if the member at the time of separation from service shall have attained the age of sixty years or is otherwise entitled to a retirement allowance under this chapter, he shall be paid the amount of his accumulated contributions plus the full amount of his accumulated regular interest thereon. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the board of trustees of the death, prior to retirement, of a member or former member there shall be paid to his legal representatives or to such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, the amount of his accumulated contributions at the time of his death. Notwithstanding any other provision of chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this chapter, even if the member fails to demand the return of his accumulated contributions within ninety days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; provided, further, that such agency or subdivision shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions.

(g) Election of Optional Allowance. — With the provision that no optional election shall be effective in case the beneficiary dies within thirty days after retirement or within thirty days after the date such election is made if such date is after his attainment of age sixty, until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions set forth in Option one, two or three below. Neither the election of Option two or three nor the nomination of the person thereunder may be revoked or changed by the member after such optional election has become effective, but if such person nominated dies prior to the date the first payment of such benefit becomes normally due the election shall thereby be revoked. Any member dying in service after his optional election has become effective shall be presumed to have retired on the date of his death.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963.— If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his le-

gal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963.—If he dies within ten (10) years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits.—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a Social Security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option 1 above.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947.—Prior to July 1, 1947, all benefits payable as of the effective date of this act shall be computed on the basis of the provisions of chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the board of trustees may adopt, the provisions of this act as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserve between the funds of the retirement system as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members.—If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

- (1) If such retired member has not made an election of an optional allowance in accordance with § 135-5 (g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen per cent (15%)

thereof, or by fifteen dollars (\$15.00), whichever is the lesser; provided that, if such member had rendered not less than twenty years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars (\$70.00) per month.

- (2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) The provisions of this section as to the time of giving of notice of retirement shall be construed to be mandatory and not directory.

(l) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3.)

Editor's Note.—

The first 1959 amendment inserted, beginning in the second line of subdivision (1) of subsection (a), the words "as of the first day of a calendar month." It also inserted, beginning in the fifth line of subsection (g), the words "or his first retirement check has been cashed," and added subsection (k).

The second 1959 amendment rewrote the first sentence of subsection (f) and added the second (now third) sentence thereof, added Option 4 to subsection (g), deleted former subsection (h) which pertained to the same subject as present Option 4 of subsection (g) and renumbered subsections (i) and (j) as (h) and (i), respectively.

The third 1959 amendment rewrote subdivision (2) and deleted subdivision (3) of subsection (a), rewrote subsection (b) and added subsection (j).

The fourth 1959 amendment changed subsection (d) by substituting "sixty-five" for "sixty" in subdivision (2) and by inserting a period in place of the semicolon and the word "and" at the end of the subdivision. It also struck out subdivision (3) and added a new paragraph at the end of the subsection.

The first 1961 amendment inserted the present second sentence of subsection (f) and rewrote the last sentence thereof. It also added subsection (l) at the end of the section.

The second 1961 amendment deleted the words "and prior to his attainment of age sixty-five" formerly appearing after "retirement" in lines two and three of subsection (g). It also substituted "sixty" for "sixty-five" in line four thereof.

The 1963 amendment, effective July 1, 1963, inserted "but prior to July 1, 1963" in the opening paragraph of subsection (b), added subsection (b1), inserted "in accordance with subsection (c) above, on or after July 1, 1959 but prior to July 1, 1963" in the opening paragraph of subsection (d) and added subsection (d1). The amendment also rewrote Option 1 in subsection (g) and substituted, at the end of the first sentence of Option 4 in subsection (g), the words "the earliest age at which he becomes eligible, upon application therefor, to receive a Social Security benefit" for "age sixty-five (65) in the case of a man or age sixty-two (62) in the case of a woman."

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

§ 135-7. Management of funds.—(a) Management and Investment of Funds.—The board of trustees shall be the trustee of the several funds created by this chapter as provided in G. S. 135-8, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Co-operatives, and Federal Land Banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services; and
- (7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States Government, or by some other agency of the United States Government.
- (8) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds. (1959, c. 1181, s. 2; 1961, c. 397.)

Editor's Note.—

The 1959 amendment added subdivision (8) of subsection (a).

The 1961 amendment changed subsection (a) by substituting "three" for

"two" in line two of subdivision (6) and rewriting subdivision (7). As only this subsection was changed the rest of the section is not set out.

§ 135-7.2. Authority to invest in certain common and preferred stocks.—In addition to all other powers of investment, the board of trustees, within the limitations set forth in this section, is also authorized to invest Retirement System funds in stocks, preferred or common, issued or guaranteed by a corporation created or existing under the laws of the United States or any state, district, or territory thereof, provided:

- (1) That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation as disclosed by its published fiscal annual statements shall have had an average annual net income plus its average annual fixed charges (as herein used, fixed charges shall mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations shall include all fixed charges and preferred dividend requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend requirement for preferred stock and its average annual fixed charges for the same period; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend requirements for preferred stock and its fixed charges for the same period;

- (2) That such corporation shall have no arrears of dividends on its preferred stock;
- (3) That such common stock is registered on a national securities exchange as provided in the Federal Securities Exchange Act, but such registration shall not be required of the following stocks:
 - a. The common stock of a bank which is a member of Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus and undivided profits, of at least twenty million dollars (\$20,000,000.00);
 - b. The common stock of a life insurance company which has capital funds represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars (\$50,000,000.00);
 - c. The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus and voluntary reserves, of at least fifty million dollars (\$50,000,000.00);
- (4) That the preferred stock of such corporation, if any be outstanding, shall qualify for investment under this section;
- (5) That such corporation, having no preferred stock outstanding, shall have had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence;
- (6) That such corporation shall have paid a cash dividend on its common stock in each year of the ten-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;
- (7) That in applying the earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges and preferred dividends of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;
- (8) That the total value of common and preferred stocks shall not exceed ten per centum of the total value of all invested funds of the Retirement System; provided, further:
 - a. Not more than one and one-half per centum of the total value of such funds shall be invested in the stock of a single corporation, and provided further;
 - b. The total number of shares in a single corporation shall not exceed eight per centum of the issued and outstanding stock of such corporation, and provided further;
 - c. Not more than one and one-half per centum of the total value of such funds shall be invested in stocks during any year;
 - d. As used in this subdivision (8), value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments.

In order to carry out the duties and exercise the powers imposed and granted by this section, the chairman of the board of trustees is authorized to appoint an investment committee consisting of five members, three of whom shall be members

of the board of trustees designated ex officio by the chairman and two of whom shall not be members of the board. Such investment committee shall have such powers and duties as the board of trustees may prescribe. The members of the investment committee shall receive for their services the same per diem and other allowances as are granted the members of State boards and commissions generally. (1961, c. 626.)

Editor's Note. — The act inserting this section is effective as of July 1, 1961.

§ 135-8. Method of financing.

(b) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

- (1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955 and December 1, 1955, to be transferred into the contribution fund established under G. S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2, chapter 135 of Volume 3B of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, the rates of such deductions shall be four per centum (4%) of the portion of compensation not in excess of the Social Security break-point, and six per centum (6%) of the portion in excess of such break-point. Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and

agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this chapter. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

- (3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the salaries that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the county boards of education and the board of trustees of city administrative units to make such payment, the tax levying authorities in each such city or county administrative unit are hereby authorized, empowered and directed to provide the necessary funds therefor: Provided, that it shall be within the discretion of the county board of education in a county administrative unit and the board of trustees in a city administrative unit, with the approval of the tax levying authorities of such unit, to provide for the payment from local tax funds of any amount specified in subsection (b) (3) of this section in excess of the amount to be paid to the Retirement System on the basis of the State salary schedule and term. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.
- (4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959.
- (5) Subject to the approval of the board of trustees, any member who is granted by his employer a leave of absence for the sole purpose of

acquiring knowledge, talents, or abilities which are, in the opinion of the employer, expected to increase the efficiency of the services of the member to his or her employer, may make monthly contributions to the Retirement System on the basis of the salary or wage such member was receiving at the time such leave of absence was granted.

- (6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(d) Pension Accumulation Fund. — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) On account of each member there shall be paid annually in the pension accumulation fund by employers for the preceding fiscal year an amount equal to a certain percentage of the actual compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one-hundredths per centum (2.57%) for teachers, and one and fifty-seven one-hundredths per centum (1.57%) for State employees, and the accrued liability contribution shall be two and ninety-four one-hundredths per centum (2.94%) for teachers and one and fifty-nine one hundredths per centum (1.59%) of the salary of other State employees.
- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
- (3) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum (4%) of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members dur-

ing the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the board of trustees that the accrued liability contribution rate may be reduced without impairing the Retirement System, the board of trustees may cause the accrued liability contribution rate to be reduced.

- (4) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total actual compensation of all members during the preceding year: Provided, however, that, subject to the provisions of subdivision (3) of this subsection the amount of each annual accrued liability contribution shall be at least three per centum (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.
- (5) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.
- (6) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.
- (7) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(g) Merger of Annuity Reserve Fund and Pension Reserve Fund into Pension Accumulation Fund.—Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the board of trustees may determine, the Annuity Reserve Fund and the Pension Reserve Fund shall be merged into and become a part of the Pension Accumulation Fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the board of trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System.

(h) Further Contributions by Employees.—Effective July 1, 1963, in addition to the contributions hereinbefore provided, subject to such conditions as may be established by the board of trustees, any member may, in accordance with a contract with his employer, have further contributions at a fixed percentage of his compensation made on his account by a deduction from his compensation. Interest at such rates as may be set from time to time by the board of trustees shall be allowed on such contributions and shall be used in determining the benefits payable from such contributions. Upon retirement such additional amounts, including interest, shall be treated as excess contributions returnable to the member in cash or as an additional annuity of equivalent actuarial value, on the basis of such mortality tables as the board of trustees may from time to time adopt for this

purpose. In all other respects, such additional amounts so deposited shall be treated in the same manner as the member's accumulated contributions. The contributions and interest credits of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund. (1941, c. 25, s. 8; c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8; 1955, c. 1155, ss. 3-5; 1959, c. 513, s. 4; 1963, c. 687, ss. 4, 5.)

Editor's Note.—

The 1959 amendment inserted the word "actual" in lieu of the word "earnable" at three places in subdivision (1) of subsection (b) and deleted the former last sentence thereof. The amendment rewrote subdivisions (4) and (5) of subsection (b), inserted "actual" in lieu of "earnable" at two places in subdivision (1) of subsection (d) and inserted "total actual compensation of" in lieu of "total compensation

earned by" in line four of subdivision (4) of subsection (d). The amendment also added subsection (g).

The 1963 amendment, effective July 1, 1963, added the last paragraph of subdivision (1) of subsection (b). It also added subsection (h).

As only subsections (b), (d), (g) and (h) were affected by the amendments, the rest of the section is not set out.

§ 135-14. Pensions of certain teachers and State employees.—Any person who was a teacher or employee of North Carolina, as defined in G. S. 135-1, for a total of twenty (20) or more years, whose separation from service as a teacher or employee prior to April 1, 1956, was not due to any dishonorable cause, and who was sixty-five (65) years of age on August 1, 1959, or by reason of physical disability unable to work on that date, shall from and after July 1, 1959, be paid a benefit of seventy dollars (\$70.00) per month. To the extent that such payment is authorized on account of separation from service prior to July 1, 1941, the effective date of the act establishing the Teachers' and State Employees' Retirement System, such payment shall be payable from funds appropriated from the general fund of the State as provided by paragraph two (2) of this section. To the extent that such payment is authorized on account of separation from service subsequent to July 1, 1941, such payment shall be payable from the Annuity Savings Fund and the Pension Accumulation Fund. This section shall apply only to a former teacher or employee who was a resident of North Carolina on August 1, 1959, or on the date of application for benefits pursuant to this section.

(1959, c. 538, s. 1.)

Editor's Note.—

The 1959 amendment rewrote the first paragraph of this section. As the second and third paragraphs were not changed they are not set out.

Section 2 of the amendatory act pro-

vides that the enactment of section 1 shall not be construed to cause any reduction in benefits payable to any person pursuant to the provisions of G. S. 135-14 as provided prior to July 1, 1959.

§ 135-18.1. Transfer of credits from the North Carolina Local Governmental Employees' Retirement System.

(c) Upon the deposit in this Retirement System of the accumulated contributions previously withdrawn from the Local System the board of trustees of this Retirement System shall request the board of trustees of the Local System to certify to the period of membership service credit and the regular accumulated contributions attributable thereto and to the period of prior service credit, if any, and the contributions with interest allowable as a basis for prior service benefits in the Local System, as of the date of termination of membership in the Local System. Credit shall be allowed in this System for the service so certified in determining the member's credited service and, upon his retirement he shall be entitled, in addition to the regular benefits allowable on account of his participation in this Retirement System, to the pension which shall be the actuarial equivalent

at age sixty-five or at retirement, if prior thereto, of the amount of the credit with interest thereon representing contributions attributable to his service credits in the Local System.

(1961, c. 516, s. 7.)

Editor's Note.—

The 1961 amendment substituted "sixty-five" for "sixty" in the third line from the

end of subsection (c). As only this subsection was affected by the amendment the rest of the section is not set out.

§ 135-18.2: Repealed by Session Laws 1959, c. 538, s. 3.

ARTICLE 2.

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

§ 135-20. Definitions.

(3) The term "employee" includes an officer of the State, or one of its political subdivisions or instrumentalities, but does not include a justice of the peace or a township constable or any other judicial or law enforcement officer elected or appointed on a township basis.

(1959, c. 1020.)

Editor's Note.—

The 1959 amendment added the part of subdivision (3) beginning with "but" in

line two. As only this subdivision was changed the rest of the section is not set out.

§ 135-24. Contribution fund.

(f) The State agency shall have the authority to promulgate rules and regulations under which the State agency may make a reasonable charge or assessment against any political subdivision whose employees shall be included in any coverage agreement under any plan of coverage of employees as provided by the provisions of this article. Such charge or assessment shall be determined by the State agency and shall be apportioned among the various political subdivisions of government in a ratable or fair manner, and the funds derived from such charge or assessment shall be used exclusively by the State agency to defray the cost and expense of administering the provisions of this article. In case of refusal to pay such charge or assessment on the part of any political subdivision as defined in this article, or in case such charge or assessment remains unpaid for a period of thirty (30) days, the State agency may maintain a suit in the Superior Court of Wake County for the recovery of such charge or assessment. The Superior Court of Wake County is hereby vested with jurisdiction over all such suits or actions. Only such amount shall be assessed against such political subdivision as is necessary to pay its share of the expense of providing supplies, necessary employees and clerks, records and other proper expenses necessary for the administration of this article by the State agency, including compensation of the State agency for the agency's services. The funds accumulated and derived from such assessments and charges shall be deposited by the State agency in some safe and reliable depository chosen by the State agency, and the State agency shall issue such checks or vouchers as may be necessary to defray the above-mentioned expenses of administration with the right of the representative of any political subdivision to inspect the books and records and inquire into the amounts necessary for such administration. (1951, c. 562, s. 3; 1963, c. 687, s. 6.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, added at the end of the next-to-last sentence of subsection (f) the words "including compensation of

the State agency for the agency's services." As the rest of the section was not changed, only subsection (f) is set out.

§ 135-27. Transfers from State to certain association service. —

(a) Any member whose service as a teacher or State employee is terminated because of acceptance of a position with the North Carolina Education Association, the North Carolina State Employees' Association, the North Carolina State Highway Employees Association, North Carolina Teachers' Association and the State Employees' Credit Union may elect to leave his total accumulated contributions in this retirement system during the period he is in such association employment, by filing with the board of trustees at the time of such termination the form provided by it for that purpose.

(b) Any member who files such an election shall remain a member of the retirement system during the time he is in such association employment and does not withdraw his contributions. Such a member shall be entitled to all the rights and benefits of the retirement system as though remaining in State service, on the basis of the funds accumulated for his credit at the time of such transfer plus any additional accruals on account of future contributions made as hereinafter provided. Such former State employee may restore any such account and pay into the Annuity Savings Fund before July 1, 1960, such amounts as would have been paid after transfer to such service, provided that the association makes contributions to the retirement system on behalf of such former members in accordance with subsection (c) of this section.

(c) Under such rules as the board of trustees shall adopt, the association to which the member has been transferred may agree to contribute to the retirement system on behalf of such member such current service contributions as would have been made by his employer had he remained in State service with actual compensation equal to the remuneration received from such association; provided the member continues to contribute to the retirement system. Any period of such association employment on account of which contributions are made by both the association and the member as herein provided shall be credited as membership service under the retirement system.

(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect, by an appropriate resolution of said board, to cause the employees of such association or organization to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the board of trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the board of trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. (1953, c. 1050, s. 1; 1959, c. 513, s. 5; 1961, c. 516, s. 5.)

Editor's Note. — The 1959 amendment added the reference to State Employees' Credit Union in subsection (a), added the last sentence of subsection (b), and inserted "actual" in lieu of "earnable" in the fourth line of subsection (c). The 1961 amendment added subsection (d).

§ 135-28. Transfer of members to employment covered by the North Carolina Local Governmental Employees' Retirement System.—

(a) Any member whose services as a teacher or State employee are terminated for any reason other than retirement or death, who becomes employed by an em-

ployer participating in the North Carolina Local Governmental Employees' Retirement System or an employer which brings its employees into participation in said System within five years after such teacher or State employee has ceased to be a teacher or State employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer provided he files notice thereof in writing with the board of trustees of the Teachers' and State Employees' Retirement System within five years of separation from service as a teacher or State employee. This subsection shall be effective retroactively as well as prospectively.

(b) Any member who files such an election shall retain all the rights, credits and benefits obtaining to him under this Retirement System at the time of such transfer while he is a member of the Local System and does not withdraw his contributions hereunder and, in addition, he shall be granted membership service credits under this Retirement System on account of the period of his membership in the Local System for the purpose of increasing his years of creditable service hereunder in order to meet any service requirements of any retirement benefit under this Retirement System and if he is a member in service under the Local System, he shall be deemed to be a member in service under this Retirement System if so required by such benefit: Provided, however, that in lieu of transfer of funds from one retirement system to another, such member who is eligible for retirement benefits shall file application therefor with each retirement system to the end that such retirement system shall pay appropriate benefits without transfer of funds between the systems. (1953, c. 1050, s. 2; 1961, c. 516, s. 6.)

Editor's Note.—The 1961 amendment rewrote subsection (a) and added the proviso at the end of subsection (b).

§ 135-29. Referenda and certification.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in § 218(d) (3) of the Social Security Act have been met, the Governor or such State official as may be designated by him, shall so certify to the Secretary of Health, Education and Welfare. (1955, c. 1154, s. 11; 1961, c. 516, s. 8.)

Editor's Note.—

The 1961 amendment inserted in subsection (b) the words "or such State official

as may be designated by him." Only this subsection is set out.

§ 135-30. State employees members of Law Enforcement Officers' Benefit and Retirement Fund. — The federal-State agreement provided in G. S. 135-21 shall be revised and extended to provide that, effective on, or retroactively as of, such date as may be fixed by the Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund, all or some of the members of said fund who are employees of the State of North Carolina or any of its agencies, shall be covered by the Social Security Act, dependent upon a referendum or referendums held pursuant to federal laws and regulations, at the request of said Board, with the approval of the Governor: Provided, that such action shall be subject to the conditions and terms set forth in such agreement and subject to all applicable provisions of article 2 of chapter 135 of the General Statutes not inconsistent herewith: Provided, however, that the effecting of social security coverage shall not cause to be reduced or lowered the amount of the contributions to be made to the Law Enforcement Officers' Benefit and Retirement Fund by any State employee who is a member thereof nor the amount to be contributed by the State to said fund with respect to each State employee member; provided, further, from and after the date the above-described employees become subject to the Social Security Act, there shall be deducted from each such employee's salary for each and every payroll period such sum as may be necessary to pay the amount of contributions or taxes required on his

account with respect to social security coverage, and the State, or the appropriate State agency, as an employer, shall pay the amount of contributions or taxes with respect to such person, as may be necessary on his account to effect the above-described social security coverage. (1959, c. 618, s. 1.)

Editor's Note. — Section 2 of the act inserting this section provides that it is not to be construed as an appropriation act and no referendum shall be held pursuant to G. S. 135-30 unless and until the Director of the Budget determines an adequate appropriation has been made, otherwise than by the act, to carry out its purpose.

§ 135-31. Split referendums. — The provisions of this article shall be construed as authorization for the State or political subdivisions or instrumentalities of government which have not heretofore secured social security coverage, and which are otherwise authorized to secure such coverage, to hold any type of referendum with respect thereto which federal law now or hereafter may authorize, and not be restricted to the types of referendums authorized by federal law at the time of the original enactment of this article. (1959, c. 618, s. 1.)

Chapter 136.

Roads and Highways.

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ARTICLE 1.

Organization of State Highway Commission.

§ 136-1. **State Highway Commission created; chairman and members; compensation; entire State represented; formulation of general policies; rules and regulations.**—There is hereby created a State Highway Commission, to be composed of a chairman and eighteen members appointed by the Governor from different geographic areas of the State. On July 1, 1961, and every four years thereafter, the Governor shall appoint a chairman and eighteen members to serve for four-year terms. The chairman or any member appointed pursuant to this section may be removed from office by the Governor for cause. In case of death, resignation, or removal from office of the chairman or a member prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term.

The chairman shall devote his entire time and attention to the work of the Commission, and shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission. The chairman shall be the executive officer of the Commission and shall execute all orders, rules, and regulations established by the Commission.

The commissioners shall each receive while engaged in the discharge of the duties of their office such per diem, subsistence, and necessary travel expenses as is provided by law for members of State boards and commissions generally.

It is the intent and purpose of this section that the chairman and the commissioners shall represent the entire State and not represent any particular area; provided, however, that the Governor and the chairman shall, without regard to the boundaries of engineering divisions, divide the State into geographic areas, and assign one or more commissioners to each area to be responsible for relations with the public generally and with individual citizens regarding highway matters. In addition the State Highway Commission shall from time to time provide that one

or more of its members or representatives shall publicly hear any person or persons desiring to bring to their attention such highway matters as such person or persons may deem wise, in each of said geographic areas of the State.

The Commission shall formulate general policies and make such rules and regulations as it may deem necessary, governing the construction, improvement and maintenance of the roads and highways of the State, with due regard to farm-to-market roads and school bus routes. It is the intent and purpose of this section that there shall be maintained and developed a state-wide system of roads and highways commensurate with the needs of the State as a whole and not to sacrifice the general state-wide interest to the purely local desires of any particular area. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1941, c. 57, s. 1; 1945, c. 895; 1953, c. 115; 1957, c. 5, s. 1; 1961, c. 232, s. 1.)

Editor's Note.—

The 1961 amendment rewrote this section.

The State Highway Commission is a State agency or instrumentality, and as such exercises various governmental functions, including that of supervising the construction and maintenance of State and county public roads. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

The State Highway Commission is the State agency created for the purpose of constructing and maintaining the public

highways. *Smith v. State Highway Comm.*, 257 N. C. 410, 126 S. E. (2d) 87 (1962).

Liability for Negligence of Employees.

—Prior to the enactment of the Tort Claims Act the Highway Commission, as an agency or instrumentality of the State, enjoyed immunity to liability for injury or loss caused by the negligence of its employees. Even so, then as now, an employee of such agency was personally liable for his own actionable negligence. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

§ 136-2. **Headquarters; meetings; minutes.** — The headquarters and main office of the said Commission shall be located in Raleigh, and the Commission shall meet once in each sixty days at such regular meeting time as the Commission by rule may provide and at any place within the State as the Commission may provide and as is provided in G. S. 136-1, and may hold special meetings at any time or place within the State at the call of the chairman, or the Governor, or any three members of the Commission.

The Governor and the State Treasurer shall be privileged to attend any and all meetings of said Commission in an advisory capacity, but they shall not have the authority to vote upon any question before said Commission. The Commission shall keep minutes of all its meetings, which shall at all times be open to public inspection. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1959, c. 1191.)

Editor's Note. — The 1959 amendment rewrote the first paragraph.

§ 136-4. **Director of Highways.**—There shall be a Director of Highways, who shall be a career official and the administrative officer of the State Highway Commission. On July 1, 1961, and every four years thereafter, the State Highway Commission shall appoint, subject to the approval of the Governor, the Director of Highways to serve for a four-year term. In case of death, resignation, or removal from office of the Director, his successor shall be appointed by the State Highway Commission, subject to the approval of the Governor, to serve the unexpired term. Subject to the approval of the Governor, the Director may be removed from office by the State Highway Commission for cause. The Director shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

Except as hereinafter provided, the Director shall, in accordance with the State Personnel Act, and with the approval of the State Highway Commission, appoint all subordinate officers and employees of the Highway Department, and they shall perform duties and have responsibilities as the Director may assign them.

The Director shall have such powers and perform such duties as the State Highway Commission shall prescribe. (1921, c. 2, ss. 5, 6; C. S., s. 3846(g); 1933, c. 172, s. 17; 1957, c. 65, s. 2; 1961, c. 232, s. 2.)

Editor's Note.—

The 1961 amendment substituted "administrative" for "chief executive" in line two and rewrote the second sentence of the first paragraph. It also inserted after

"Personnel Act" in line two of the second paragraph the words "and with the approval of the State Highway Commission."

§ 136-4.1. **Controller.**—There shall be a Controller, who shall be the financial officer of the Highway Department. On July 1, 1961, and every four years thereafter, the State Highway Commission shall appoint, subject to the approval of the Governor, the Controller to serve for a four-year term. In case of death, resignation, or removal from office of the Controller, his successor shall be appointed by the State Highway Commission, subject to the approval of the Governor, to serve the unexpired term. Subject to the approval of the Governor, the Controller may be removed from office by the State Highway Commission for cause. The Controller shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

The Controller shall, under the direction of the Director of Highways, and in accordance with the requirements of the Executive Budget Act, develop formalized procedures, budgets, internal audits, systems, and reports covering all financial phases of highway activity.

The Controller shall give a bond, to be fixed and approved by the Governor, conditioned upon the faithful discharge of the duties of his office and upon the proper accounting of all public funds coming into his possession or under his control. The premium on the bond shall be paid from the Highway Fund. (1957, c. 65, s. 3; 1961, c. 232, s. 3.)

Editor's Note. — The 1961 amendment rewrote the first paragraph. Formerly the Controller was appointed by the Director of Highways, subject to the approval of the State Highway Commission and the

Governor, and his salary was fixed by the Director subject to the approval of the Governor and the Advisory Budget Commission.

§ 136-4.3. **Director of Secondary Roads.**—There shall be a Director of Secondary Roads who shall be appointed by the State Highway Commission, subject to the approval of the Governor, and he may be removed at any time by the State Highway Commission with the approval of the Governor. The Director of Secondary Roads shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

The Director of Secondary Roads shall, in consultation with the commissioner assigned to the geographic area, prepare annual plans for each county providing for maintenance and construction of the secondary roads. In developing the plan, he shall follow the procedures set forth in § 136-61. (1961, c. 232, s. 4.)

ARTICLE 2.

Powers and Duties of Commission.

§ 136-17. **Seal; rules and regulations.**

The separation of the lanes of a relocated highway for northbound traffic from the lanes thereof for southbound traffic was and is a valid traffic regulation adopted by the Highway Commission in the exer-

cise of the police power vested in it by this article. *Barnes v North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

§ 136-18. **Powers of Commission.**

(3) To provide for such road materials as may be necessary to carry on the work of the State Highway Commission, either by gift, purchase,

or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Commission any of such material, at a price to be fixed by said Commission, thereafter the Commission shall have the right to condemn the necessary right of way under the provisions of article 9 of chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the State Highway Commission.

- (20) "The State Highway Commission is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the State maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.
- (21) The State Highway Commission is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C. S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, s. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155.)

Editor's Note.—

The 1959 amendment added subdivision (20).

The first 1963 amendment added subdivision (21).

The second 1963 amendment substituted "article 9 of chapter 136" for "chapter forty" in the first proviso in subdivision (3) and added the second proviso to that subdivision.

As only subdivisions (3), (20) and (21) were affected by the amendments, the rest of the section is not set out.

Powers of Commission Are Incidental, etc.—

In accord with original. See *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Powers Implied from General Authority Given and Duty Imposed.—Where a course of action is reasonably necessary for the effective prosecution of the Commission's obligation to supervise the construction, repair and maintenance of public highways, the power to take such action must be implied from the general authority

given and the duty imposed. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Liability of Contractor Constructing Road under Contract with State Highway Commission.—One who contracts with a public body for the performance of public work is entitled to share the immunity of the public body from liability for incidental injuries necessarily involved in the performance of the contract, where he is not guilty of negligence. *Gilliam v. Propst Constr. Co.*, 256 N. C. 197, 123 S. E. (2d) 504 (1962).

Defendant contractor owed plaintiff no duty to warn the public that a road constructed in accordance with the Commission's plans could not be used at a speed in excess of 25 m.p.h., when the Highway Commission had accepted the work by directing that the road be opened for traffic posting such signs thereon as it deemed proper. *Gilliam v. Propst Constr. Co.*, 256 N. C. 197, 123 S. E. (2d) 504 (1962).

Tort liability cannot be imposed on a contractor who constructs a road conform-

ing to plans and specifications prepared by the Highway Commission merely because such road cannot be safely used at a speed in excess of 25 m.p.h. *Gilliam v. Propst*

Constr. Co., 256 N. C. 197, 123 S. E. (2d) 504 (1962).

Cited in *Smith v. State Highway Comm.*, 257 N. C. 410, 126 S. E. (2d) 87 (1962).

§ 136-19. **Acquirement of land and deposits of materials; condemnation proceedings; federal parkways.** — The State Highway Commission is vested with the power to acquire either in the nature of an appropriate easement or in fee simple such rights of way and title to such land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, either by purchase, donation, or condemnation, in the manner hereinafter set out. If any parcel is acquired in fee simple as authorized by this section and the Commission later determines that the parcel is not needed for highway purposes, first consideration shall be given to any offer to repurchase made by the owner from whom said parcel was acquired or the heirs or assigns of such owner. The Commission is also vested with the power to acquire such additional land alongside of the rights of way or roads as in its opinion may be necessary and proper for the protection of the roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes. The Commission may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block or tract is not immediately needed for right of way purposes.

Whenever the Commission and the owner or owners of the lands, materials, and timber required by the Commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the Commission is hereby vested with the power to condemn the lands, materials, and timber and in so doing the ways, means, methods, and procedure of article 9 of this chapter shall be used by it exclusively.

The State Highway Commission shall have the same authority, under the same provisions of law hereinbefore provided for construction of State highways, for the acquirement of all rights of way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways and entrance roads to federal parks in the State of North Carolina. The acquirement of a total of one hundred and twenty-five acres per mile of said parkways, including roadway and recreational and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right of way acquired or appropriated may, at the option of the Commission, be a fee simple title, and the nature and extent of the right of way and easements so acquired or appropriated shall be designated upon a map showing the location across each county, and, when adopted by the Commission, shall be filed with the register of deeds in each county, and, upon the filing of said map, such title shall vest in the State Highway Commission. The said Commission is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the State Highway Commission, payable out of the construction fund of said Commission.

The action of the State Highway Commission heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and de-

clared to be a reasonable exercise of the discretion vested in the said Commission in furtherance of the public interest.

When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the State Highway Commission that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the State Highway Commission for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquisition of rights of way on other property by the State Highway Commission. (1921, c. 2, s. 22; 1923, c. 160, s. 6; C. S., s. 3846(bb); 1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; 1949, c. 1115; 1953, c. 217; 1957, c. 65, s. 11; 1959, c. 1025, s. 1; cc. 1127, 1128; 1963, c. 638.)

Editor's Note.—

The first 1959 amendment deleted the former second, third and fourth paragraphs and inserted in lieu thereof the present second paragraph.

The second 1959 amendment inserted, beginning in line two, the phrase "either in the nature of an appropriate easement or in fee simple." It also added the second sentence.

The third 1959 amendment added the last sentence of the first paragraph.

The 1963 amendment inserted "and entrance roads to federal parks" near the end of the first sentence of the third paragraph.

For case law survey on eminent domain, see 41 N. C. Law Rev. 471.

A number of the cases cited below were decided under this section as it stood prior to the first 1959 amendment, when the power to condemn was exercised pursuant to the provisions of chapter 40 rather than the provisions of article 9 of this chapter.

Special Proceeding by Commission Not Required. — The Highway Commission is not required to bring a special proceeding against the owner for the condemnation of private property prior to taking it, but may actually take the property and appropriate it to public use. When this is done the property owner is entitled to just compensation, but he must pursue the prescribed remedy. *Williams v. North Carolina State Highway Comm.*, 252 N. C. 772, 114 S. E. (2d) 782 (1960).

Registering Maps, etc.—

Title passes from the private owner to North Carolina when the map is filed, but the acquisition or appropriation must be by other acts under the general laws for the procurement of lands for State highways, and under the laws of North Carolina, acts

or conduct cannot be a taking of property unless reasonably calculated to give notice to the owner of the appropriation of his property. *Martin v. United States*, 270 F. (2d) 65 (1959).

Commission Not Subject to Suit Except as Provided by Law.—

In accord with original. See *Williams v. North Carolina State Highway Comm.*, 252 N. C. 772, 114 S. E. (2d) 782 (1960).

Special Proceeding, etc.—

In accord with original. See *Jacobs v. State Highway Comm.*, 254 N. C. 200, 118 S. E. (2d) 416 (1961). But see now article 9 of this chapter.

Liability of Contractor.—

In accord with original. See *Guilford Realty & Ins. Co. v. Blythe Bros. Co.*, 260 N. C. 69, 131 S. E. (2d) 900 (1963).

Rule of Damages for Property Taken.—

Where only a part of a tract of land is appropriated for highway purposes, the measure of damages in such proceeding is the difference between the fair market value of the entire tract immediately before the taking and the fair market value of what is left immediately after the taking. The items going to make up this difference embrace compensation for the part taken and compensation for injury to the remaining portion, which is to be offset under the terms of the controlling statute by any general and special benefits resulting to the landowner from the utilization of the property taken for a highway. *Robinson v. State Highway Comm.*, 249 N. C. 120, 105 S. E. (2d) 287 (1958); *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959); *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

Measure of Damages, etc.—

Price paid at voluntary sales of land similar to condemnee's land at or about the time of taking is admissible as independent evidence of value of land taken. *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

In estimating its value, all of the capabilities of the property, and all of the uses to which it may be applied or for which it is adapted, which affect its value in the market, are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. *Williams v. State Highway Comm.*, 252 N. C. 514, 114 S. E. (2d) 340 (1960).

Rental Value.—When rental property is condemned the owner may not recover for lost rents, but rental value of property is competent upon the question of the fair market value of the property at the time of the taking. *Kirkman v. State Highway Comm.*, 257 N. C. 428, 126 S. E. (2d) 107 (1962).

Evidence of Market Value of Remaining Land.—

In accord with original. See *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

Elements of Damage.—

In accord with 1st paragraph in original. See *Williams v. State Highway Comm.*, 252 N. C. 514, 114 S. E. (2d) 340 (1960).

When the taking renders the remaining land unfit or less valuable for any use to which it is adapted, that fact is a proper item to be considered in determining whether the taking has diminished the value of the land itself. *Kirkman v. State Highway Comm.*, 257 N. C. 428, 126 S. E. (2d) 107 (1962).

Loss of profits or injury to a growing business conducted on property or connected therewith are not elements of recoverable damages in an award for the taking under the power of eminent domain. *Kirkman v. State Highway Comm.*, 257 N. C. 428, 126 S. E. (2d) 107 (1962).

Offsets Allowed.—

In accord with 1st paragraph in original. See *Taylor Co. v. North Carolina State Highway & Public Works Comm.*, 250 N. C. 533, 109 S. E. (2d) 243 (1959).

Benefits to Independent Tract May Not Be Offset.—When the State takes a part or all of a tract of land for highway purposes, it is not entitled to offset against damages the benefits to other separate and independent parcel or parcels belonging to the landowner whose land was taken.

Barnes v. North Carolina State Highway Comm., 250 N. C. 378, 109 S. E. (2d) 219 (1959)

When Tract Independent.—Although adjacent tract was separated from the taken property by an easement and zoned differently, evidence of benefit to that tract was competent to offset damage to property taken. *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

Date of Taking.—Petitioner, electing to try his case on the theory that the date of taking was a particular date, will not be allowed to appeal the judgment awarded on the grounds that the "taking" has actually occurred on a later date when the value of the property has increased. *Taylor Co. v. North Carolina State Highway & Public Works Comm.*, 250 N. C. 533, 109 S. E. (2d) 243 (1959).

Undeveloped Property May Not Be Valued on a Per Lot Basis.—It is proper to show that a particular tract of land is suitable and available for division into lots and is valuable for that purpose, but it is not proper to show the number and value of lots as separated parcels in an imaginary subdivision thereof. In other words, it is not proper for the jury in these cases to consider an undeveloped tract of land as though a subdivision thereon is an accomplished fact. Such undeveloped property may not be valued on per lot basis. The cost factor is too speculative. *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

Commission May Condemn Right of Access to Public Highway.—The State Highway Commission has statutory authority to exercise the power of eminent domain to condemn or severely curtail an abutting landowner's right of access to a public highway adjacent to his property, for the construction or reconstruction, maintenance and repair, of a limited-access highway, upon the payment of just compensation. *Williams v. North Carolina State Highway Comm.*, 252 N. C. 772, 114 S. E. (2d) 782 (1960), quoting *Hedrick v. Graham*, 245 N. C. 249, 96 S. E. (2d) 129 (1957).

Notwithstanding Contract.—Where a right-of-way agreement gave plaintiffs a right of access at a particular spot to the highway to be constructed on the right of way, the Highway Commission's refusal to allow plaintiffs to enter upon the highway at the point of the easement constituted a taking or appropriation of private property for which an adequate statutory remedy in the nature of a special proceed-

ing is provided, so that plaintiffs' complaint stating a civil action for breach of the agreement was demurrable. *Williams v. North Carolina State Highway Comm.*, 252 N. C. 772, 114 S. E. (2d) 782 (1960).

Remaining Land Left with Direct Access to Only One Lane of Divided Highway.—In determining the injury, if any, to the remaining portion of the owner's land, he is not entitled to compensation for diminution in the value thereof caused by the fact after a divided highway is built he has direct access therefrom only to the lanes of the relocated highway reserved exclusively for southbound traffic and only southbound traffic has direct access there-to. *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

Interest. — In a proceeding under this section to recover just compensation for the taking of private property for highway purposes, petitioners are entitled, as a matter of strict legal right, to have the jury award them, in addition to the sum the jury finds to be the fair market value of the property on the taking date, interest on such sum at the rate of 6 per cent from the date petitioners were physically dispossessed to the date of verdict, as an element of just compensation guaranteed by N. C. Const., art. 1, § 17 and the Fourteenth Amendment to the United States

Constitution. *DeBruhl v. State Highway & Public Works Comm.*, 247 N. C. 671, 102 S. E. (2d) 229 (1958).

Instruction Held Not Prejudicial. — An instruction to the effect that the market value of property taken by eminent domain should be measured by what the property would bring in voluntary sale by one who desires, but is not obliged, to sell and is bought by one who is under no necessity of buying, will not be held prejudicial for failure to charge that the buyer must be one desiring to buy, when it appears from the entire charge, construed contextually, that the jury could not have been misled but must have understood that the market value was to be determined by what the property would bring by a willing seller, not required to sell, to a wanting buyer, not required to buy. *Taylor Co. v. North Carolina State Highway & Public Works Comm.*, 250 N. C. 533, 109 S. E. (2d) 243 (1959).

Instructions as to Damages Held Error. —See *Robinson v. State Highway Comm.*, 249 N. C. 120, 105 S. E. (2d) 287 (1958).

Cited in *Zourzoukis v. State Highway Comm.*, 252 N. C. 149, 113 S. E. (2d) 269 (1960); *Ferrell v. North Carolina State Highway Comm.*, 252 N. C. 830, 115 S. E. (2d) 34 (1960); *State Highway Comm. v. Kenan Oil Co.*, 260 N. C. 131, 131 S. E. (2d) 665 (1963).

§ 136-20. **Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.**—(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the chairman of the State Highway Commission such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Commission shall issue notice requiring the person or company operating such railroad to appear before the Commission, at its office in Raleigh, upon a day named, which shall not be less than ten days or more than twenty days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Commission shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If it shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Commission shall thereupon order the construction of an adequate underpass or overpass at said crossing or it may in its discretion order said railroad company to install and maintain gates, alarm signals or other

approved safety devices if and when in the opinion of said Commission upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that the cost of construction of such underpass or overpass or the installation of such safety device shall be allocated between the railroad company and the Commission in the same ratio as the net benefits received by such railroad company from the project bear to the net benefits accruing to the public using the highway, and in no case shall the net benefit to any railroad company or companies be deemed to be more than ten per cent (10%) of the total benefits resulting from the project. The Highway Commission shall be responsible for determining the proportion of the benefits derived by the railroad company from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid-Highway Act of 1944.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Commission, as may be agreed upon, and the cost thereof shall be allocated and borne as set out in subsection (b) hereof. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Commission, and the Commission shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Commission, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Commission such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Commission may provide.

(d) Within sixty days after the issuance of the order for construction of an underpass or overpass or the installation of other safety device as herein provided for, the railroad company against which such order is issued shall submit to the Commission plans for such construction or installation, and within ten days thereafter said Commission, through its chairman, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Commission by said railroad company within sixty days as aforesaid, the chairman of the Commission shall have plans prepared and submit them to the railroad company. The railroad company shall within ten days notify the chairman of its approval of the said plans or shall have the right within such ten days to suggest such changes and amendments in the plans so submitted by the chairman of the Commission as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Commission shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith, as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Commission, said Commission is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad

company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Commission shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Commission and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Commission shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Commission shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Commission may provide. If the Commission shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Commission, the proportionate share of the cost thereof as set out in subsection (b) hereof shall upon the completion of said work be paid to the railroad company by the Commission. The Commission may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Commission by the railroad company. If the Commission shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Commission in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Commission to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Commission requiring such construction or installation, said railroad company shall be guilty of a misdemeanor and shall be fined not less than fifty nor more than one hundred dollars in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Commission shall be exclusive.

(g) From any order or decision so made by the Commission the railroad company may appeal to the superior court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Commission, but the railroad company shall proceed to comply with such order in accordance with its terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the right or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Commission for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Commission shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In the event the decision on appeal should be that the construction or installation was necessary but the cost or apportionment thereof unreasonable, then the railroad company shall bear its proportion as provided in this section of such cost as may be determined on appeal to have been reasonable to meet the necessity of the case. Upon said appeal from an order of the Commission, the

burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section.

(h) The Highway Commission shall pay the cost of maintenance of all overpasses and the railroad company shall pay the cost of maintenance of all underpasses constructed in accordance with this section. The cost of maintenance of safety devices at all intersections of any railroad company and any street or road forming a link in or a part of the State Highway System which have been constructed prior to July 1, 1959 or which shall be constructed thereafter shall be borne fifty per cent (50%) by the railroad company and fifty per cent (50%) by the Highway Commission. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Highway Commission as may be agreed upon and reimbursement for the cost thereof, in accordance with this section, shall be made annually. The maintenance of such safety devices shall be performed by the railroad company and reimbursement for the cost thereof, in accordance with this section, shall be made annually by the Highway Commission. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C. S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1959, c. 1216.)

Editor's Note.—

The 1959 amendment rewrote the third sentence and added the fourth sentence of subsection (b). It rewrote the second sentence of subsection (c) and omitted the former third sentence thereof. It rewrote the third sentence from the end of subsection (d) and the fifth sentence of subsection (g). The amendment also added subsection (h).

For note on railroads' liability at dan-

gerous highway crossings, see 41 N. C. Law Rev. 296.

Erection of Signaling Devices.—

For comment on Southern Ry. Co. v. Akers Motor Lines, 242 N. C. 676, 89 S. E. (2d) 392 (1955), noted under this catchline in the original, see 41 N. C. Law Rev. 296.

Cited in Winston-Salem v. Southern Ry. Co., 248 N. C. 637, 105 S. E. (2d) 37 (1958).

§ 136-25. Repair of road detour.

Section Lays Duty on Both State Highway Commission and Contractor.—This section made it the duty of both the State Highway Commission and the contractors, when the public highways of the State are being improved and constructed, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route. It is the further duty of both to place or cause to be placed explicit directions to the traveling public. Reynolds v. J. C. Critcher, Inc., 256 N. C. 309, 123 S. E. (2d) 738 (1962).

Contractor Not Responsible for Defect in Road Not under His Supervision.—A highway contractor may not be held re-

sponsible for damages resulting from a defect or obstruction in a road not under his supervision. Reynolds v. J. C. Critcher, Inc., 256 N. C. 309, 123 S. E. (2d) 738 (1962).

Defect in State Highway onto Which Traffic Diverted by Contractor.—A contractor working upon a highway, who has a right to and does divert traffic onto another State highway being maintained by the State Highway Commission, is not liable for injuries received in accidents due to defects in said State highway. Reynolds v. J. C. Critcher, Inc., 256 N. C. 309, 123 S. E. (2d) 738 (1962).

§ 136-26. Closing of State highways during construction; injury to barriers, warning signs, etc.

Powers of Commission.—This section, together with the general powers of the Commission, authorized the Commission directly or by implication, in the prosecution of the grading work, to direct and permit soil to be conveyed across a highway, the dirt ramp to be placed on the highway for its protection from injury by

heavy equipment, the placing of warning signs along the highway, the stationing of flagmen at the ramp to stop traffic along the highway and close that portion of the road when in use by earth movers, and its grade inspector to give supervision and instruction to the contractor and its employees in carrying out the grading work. C. C.

T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Public Travel May Be Temporarily Suspended.—Public travel on a street or other highway may be temporarily suspended for a necessary or proper purpose, as for example to permit repairs or reconstruction. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Contractor Has Duty to Exercise Ordinary Care.—When a contractor undertakes to perform work under contract with the State Highway Commission, the positive legal duty devolves on him to exercise ordinary care for the safety of the general public traveling over the road on which he is working. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

The contractor doing the work is there for a lawful purpose and is not obliged to stop the work every time a traveler drives along. But while the traveler assumes certain risks, he is still a traveler on a public way, and the contractor still owes him due care, and is liable for injuries suffered by him as a result of negligence in the performance of the work. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

In Providing and Maintaining Warnings and Safeguards.—Contractors must exercise ordinary care in providing and maintaining reasonable warnings and safeguards against conditions existent at the time and place. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Commission Cannot Impose Different Standard of Care.—The Commission cannot by contract or by supervisory instructions prescribe for contractors a different standard of care from that imposed by the common law in a given situation, as it affects third parties. But in its use of and authority over a highway, for purposes of construction, repair or maintenance, it may create circumstances which bring into play rules of conduct which would not apply if

such purposes were not involved. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Sufficiency of Warning.—Actual notice of every special obstruction or defect in a highway is not required to be given to a traveler nor need the way be so barricaded as to preclude all possibility of injury, but it is sufficient if a plain warning of danger is given, and the traveler has notice or knowledge of facts sufficient to put him on inquiry. The test of the sufficiency of the warning is whether the means employed, whatever they may be, are reasonably sufficient for the purpose. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Red Light or Red Flag.—A red light is recognized by common usage as a method of giving warning of danger during hours of darkness, and a driver seeing a red light ahead in the highway is required in the exercise of due care to heed its warning. The same is equally true of a red flag in daylight hours when properly displayed. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Care Required of Traveler.—When extraordinary conditions exist on a highway by reason of construction or repair operations, the motorist is required by law to take notice of them. The traveler's care must be commensurate with the obvious danger. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

One who operates an automobile on a public highway which is under construction or repair, or in use for such purposes, cannot assume that there are no obstructions, defects or dangers ahead. In such instances it is the duty of the motorist, in the exercise of due care, to keep his vehicle under such control that it can be stopped within the distance within which a proper barrier or obstruction, or an obvious danger can be seen. C. C. T. Equipment Co. v. Hertz Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

§ 136-28. Letting of contracts to bidders after advertisement; enforcing claims against contractor by action on bond.—All contracts over five thousand dollars (\$5,000.00) that the Commission may let for construction, or any other kinds of work necessary to carry out the provisions of this chapter, shall be let, after public advertising, under rules and regulations to be made and published by the State Highway Commission, to a responsible bidder, the right to reject any and all bids being reserved to the Commission; except that contracts for engineering or other kinds of professional or specialized services may be let after the taking and consideration of bids or proposals from not less than three responsible bidders without public advertisement.

No action shall be brought upon any bond given by any contractor of the Com-

mission, by any laborer, materialman or other person until and after the completion of the work contracted to be done by the said contractor. Any laborer, materialman or other person having a claim against the said contractor and the bond given by such contractor, shall file a statement of the said claim with the contractor and with the surety upon his bond, and, in the event the surety is a corporation, with the general agent of such corporation, within the State of North Carolina, within six (6) months from the completion of the contract, and a failure to file such claim within said time shall be a complete bar against any recovery on the bond of the contractor and the surety thereon. Only one suit or action may be brought upon the said bond and against the said surety, which suit or action shall be brought in one of the counties in which the work and labor was done and performed and not elsewhere. The procedure pointed out in § 44-14 shall be followed. No surety shall be liable for more than the penalty of the bond. Any person entitled to bring an action shall have the right to require the Commission to furnish information as to when the contract is completed, and it shall be the duty of the Commission to give to any such person proper notice. If the full amount of the liability of the surety on said bond is insufficient to pay the said amount of all claims and demands, then, after paying the full amount due the Commission, the remainder shall be distributed pro rata among the claimants. Any claim of the Commission against the said bond and the surety thereon shall be preferred as against any cause of action in favor of any laborer, materialman or other persons and shall constitute a first lien or claim against the said bond and the surety thereon. (1921, c. 2, s. 15; 1923, c. 160, s. 3; C. S., s. 3846(v); 1925, cc. 260, 269; 1933, c. 172, s. 17; 1957, c. 65, s. 11; c. 1194, s. 1; 1963, c. 525.)

Editor's Note.—

The 1963 amendment substituted "five thousand dollars (\$5,000.00)" for "one thousand dollars" near the beginning of the first paragraph.

Surety Is Substitute for Lien.—The General Assembly has, by the enactment of § 44-14 and this section, given to laborers and materialmen engaged in public construction a substantial equivalent to the lien given laborers and materialmen engaged in private construction. The surety on the bond is, for practical purposes, the substitute for the lien. *American Bridge Division United States Steel Corp. v. Brinkley*, 255 N. C. 162, 120 S. E. (2d) 529 (1961).

Commission Has Priority in Payments by Surety.—By the terms of this section

the Highway Commission is entitled to priority in the monies to be paid by the surety company. After it has been paid, the balance should be paid to claimants who establish their claims. *American Bridge Division United States Steel Corp. v. Brinkley*, 255 N. C. 162, 120 S. E. (2d) 529 (1961).

Loss Held Covered by Bond. —In an action by a prime contractor on a road construction contract to recover on the bond of a subcontractor given pursuant to this section for sums that the former was required to pay for supplies furnished to the latter, who had become bankrupt, the prime contractor's loss was held covered by the bond. *Saint Paul Mercury Indemnity Co. v. Wright Contr. Co.*, 250 F. (2d) 758 (1958).

§ 136-29. Adjustment of claims.—(a) Upon the completion of any contract for the construction of any State highway awarded by the State Highway Commission to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within sixty (60) days from the time of receiving his final estimate, submit to the Director of the State Highway Commission a written and verified claim for such amount as he deems himself entitled to under the said contract setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the Director of the State Highway Commission and present any additional facts and argument in support of his claim. Within ninety (90) days from the receipt of the said written claim the Director of the Highway Commission shall make an investigation of said claim and with the approval of the Highway Commission may allow all or any part or may deny said claim

and shall have the authority to reach a compromise agreement with the contractor and shall notify the contractor in writing of his decision.

(b) As to such portion of the claim as is denied by the Director of the State Highway Commission, the contractor may, within six (6) months from receipt of said decision, institute a civil action for such sum as he claims to be entitled to under said contract by the filing of a verified complaint and issuance of summons in the Superior Court of Wake County or in the superior court of any county wherein the work under said contract was performed. The procedure shall be the same as in all civil actions except as herein and as hereinafter set out.

(c) All issues of law and fact and every other issue shall be tried by the judge, without a jury; provided that the matter may be referred in the instances and in the manner provided for in article 20 of chapter 1 of the General Statutes.

(d) The submission of the claim to the Director of the State Highway Commission within the time and as set out in subsection (a) of this section and the filing of an action in the superior court within the time as set out in subsection (b) of this section shall be a condition precedent to bringing such an action under this section and shall not be a statute of limitations.

(e) The provisions of this section shall be deemed to enter into and form a part of every contract entered into between the State Highway Commission and any contractor, and no provision in said contracts shall be valid that is in conflict herewith. (1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667.)

Editor's Note.—

The 1963 amendment rewrote this section.

Superior Court Has Only Appellate Jurisdiction.—When an award of a board of review constituted under this section is appealed to the superior court, it has only appellate jurisdiction to review the award

for errors of law. *Ballenger Paving Co. v. North Carolina State Highway Comm.*, 258 N. C. 691, 129 S. E. (2d) 245 (1963).

The judge may not find additional facts or make an award himself. *Ballenger Paving Co. v. North Carolina State Highway Comm.*, 258 N. C. 691, 129 S. E. (2d) 245 (1963).

§ 136-30. Uniform guide and warning signs on highways.

Cross Reference.—See note to § 136-32.

§ 136-32. Other than official signs prohibited.

Commission's Determination Exclusive.

—The Highway Commission's determination of what signs should be erected for the information of the traveling public

was exclusive once it authorized the opening of a road for public use. *Gilliam v. Propst Constr. Co.*, 256 N. C. 197, 123 S. E. (2d) 504 (1962).

§ 136-32.2. Placing blinding, deceptive or distracting lights unlawful.—(a) If any person, firm or corporation shall place or cause to be placed any lights, which are flashing, moving, rotating, intermittent or steady spotlights, in such a manner and place and of such intensity:

- (1) Which, by the use of flashing or blinding lights, blinds, tends to blind and effectively hampers the vision of the operator of any motor vehicle passing on a public highway; or
- (2) Which involves red, green or amber lights or reflectorized material and which resembles traffic signal lights or traffic control signs; or
- (3) Which, by the use of lights, reasonably causes the operator of any motor vehicle passing upon a public highway to mistakenly believe that there is approaching or situated in his lane of travel some other motor vehicle or obstacle, device or barricade, which would impede his traveling in such lane;

[he or it] shall be guilty of a misdemeanor and shall upon conviction be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty (30) days or both.

(b) Each ten (10) days during which a violation of the provisions of this section is continued after conviction therefor shall be deemed a separate offense.

(c) The provisions of this section shall not apply to any lights or lighting devices erected or maintained by the State Highway Commission or other properly constituted State or local authorities and intended to effect or implement traffic control and safety. Nothing contained in this section shall be deemed to prohibit the otherwise reasonable use of lights or lighting devices for advertising or other lawful purpose when the same do not fall within the provisions of subdivisions (1) through (3) of subsection (a) of this section.

(d) The enforcement of this section shall be the specific responsibility and duty of the Department of Motor Vehicles by and through the State Highway Patrol in addition to all other law enforcement agencies and officers within this State; provided, however, no warrant shall issue charging a violation of this section unless the violation has continued for ten (10) days after notice of the same has been given to the person, firm or corporation maintaining or owning such device or devices alleged to be in violation of this section. (1959, c. 560.)

Editor's Note.—In subsection (a), following subdivision (3), the words “he or it” have been inserted in brackets, it appearing that the legislature inadvertently omitted these words. The act inserting this section is effective as of Oct. 1, 1959.

§ 136-37: Repealed by Session Laws 1959, c. 687, s. 5.

§ 136-41.1. **Appropriation to municipalities; allocation of funds.**—In addition to the amounts to be expended under the preceding section, there is hereby annually appropriated out of the State Highway and Public Works Fund a sum equal to the amount that was produced during the preceding fiscal year by $\frac{1}{2}$ of one-cent tax on each gallon of motor fuel taxed by §§ 105-434 and 105-435, to be allocated in cash on or before October first each year after March 15, 1951, to the cities and towns of the State in accordance with the following formula:

One-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities as indicated by the latest certified federal decennial census, and one-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which do not form a part of the highway system bears to the total mileage of public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the State Highway Commission such information as it may request for its guidance in determining the eligibility of each municipality to receive funds by virtue of §§ 136-41.1 and 136-41.2 and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the State Highway Commission, the State Highway Commission may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety per cent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

No allocation to cities and towns shall be made under the provisions of this section from the one cent per gallon additional tax on gasoline imposed by chap-

ter 1250 of the Session Laws of 1949, unless and until said additional one cent per gallon gasoline tax produces funds which are not needed for or committed by said chapter 1250 of the Session Laws of 1949, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the provisions of said chapter 1250 of the Session Laws of 1949. The State Highway Commission is hereby authorized to withhold each year an amount not to exceed 1% of the total amount appropriated in § 136-41.1 for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than sixteen (16) feet. In order to obtain the necessary information to distribute the funds herein allocated, the State Highway Commission may require that each municipality eligible to receive funds under §§ 136-41.1 and 136-41.2 submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The State Highway Commission may in its discretion require the certification of mileage on a biennial basis. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2.)

Local Modification.—Henderson: 1957, c. 1181.

Cross Reference.—As to estimate of population authorizing participation in State-collected funds, see § 160-4.1.

Editor's Note.—The 1953 amendment added the proviso to the fourth paragraph.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

The 1963 amendment, effective Jan. 1, 1964, redesignated this section, which was originally § 136-41.2, as 136-41.1. Former § 136-41.1 was repealed by Session Laws 1959, c. 687, s. 5. The 1963 amendment also deleted the former first sentence of the third paragraph, which read as follows: "No municipality shall be eligible to re-

ceive funds under §§ 136-41.1 and 136-41.2 unless it has within the four-year period next preceding the annual allocation of funds conducted an election for the purpose of electing municipal officials and currently imposes an ad valorem tax or provides other funds for the general operating expenses of the municipality."

Section 3½ of the 1963 amendatory act provides: "The provisions of this act shall not apply to any municipality incorporated prior to January 1, 1945."

The correct name of the Fund mentioned in this section is "State Highway Fund." See §§ 105-436, 136-16.

Cited in *Winston-Salem v. Southern Ry. Co.*, 248 N. C. 637, 105 S. E. (2d) 37 (1958).

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.—(a) No municipality shall be eligible to receive funds under G. S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal requirement that the most recent required election shall have been held may be waived only:

- (1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,
- (2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality shall be eligible to receive funds under G. S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars (\$100.00) valuation upon all taxable property within its corporate limits, and unless it has actually collected at least fifty per cent (50%) of the total ad valorem tax levied for the preceding fiscal year;

provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

- (1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and
- (2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G. S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G. S. 160-410.3, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal services: Water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right of way acquisition; or street lighting.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945. (1963, c. 854, ss. 3, 3½.)

Editor's Note. — The act inserting this section is made effective as of Jan. 1, 1964. Former § 136-41.2 was redesignated 136-41.1 by Session Laws 1963, c. 854, s. 2. (1962).

Cited in *Winston-Salem v. Southern Ry.*

§ 136-41.3. Use of funds; records and annual statement; contracts for maintenance, etc., of streets.

Cited in *Winston-Salem v. Southern Ry. Co.*, 248 N. C. 637, 105 S. E. (2d) 37 (1958); *Great American Ins. Co. v. Johnson*, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

§ 136-43.1. Procedure for correction and relocation of historical markers.—Any person, firm or corporation who has knowledge or information, supported by historical data, books, records, writings, or other evidence, that any historical marker has been erected at an erroneous or mistaken site, or that the inscription appearing on any historical marker contains erroneous or mistaken information, shall have the privilege of presenting such knowledge or information and supporting evidence to the advisory committee described in the preamble of Public Laws 1935, c. 197 for its consideration. Upon being informed that any person desires to present such information, the Director of the Department of Archives and History shall notify such person of the date, place and time of the next meeting of the advisory committee. Any person, firm or corporation desiring to present such information to the advisory committee shall be allowed to appear before the committee for that purpose.

If, after considering the information and evidence presented, the advisory committee should find that any historical marker has been erected on an erroneous or mistaken site, or that erroneous or mistaken information is contained in the inscription appearing on any historical marker, it shall so inform the Department of Archives and History and the Department of Archives and History shall cause such marker to be relocated at the correct site, or shall cause the erroneous or mistaken inscription to be corrected, or both as the case may be. (1961, c. 267.)

ARTICLE 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.

Quoted in *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Part 2. County Public Roads Incorporated into State Highway System.

§ 136-51. Maintenance of county public roads vested in State Highway Commission.

Quoted in *Reynolds v. J. C. Critcher, Inc.*, 256 N. C. 309, 123 S. E. (2d) 738 (1962).

Part 3. Power to Make Changes in Highway System.

§ 136-59. No court action but by local road authorities.

Discretion Not Reviewable.—It is within the discretion of the road-governing body of a county to object or not to the partial change in a road by the Commission and their action is not subject to re-

view in the courts. And mandamus will not lie to control such discretion. *Parker v. State Highway Comm.*, 195 N. C. 783, 143 S. E. 871 (1928).

§ 136-61. Plans for secondary roads; duties of State Highway Commission.—The State Highway Commission shall establish statewide standards and criteria for additions to the secondary system and for maintenance and construction of secondary roads. On the basis of these standards and criteria, the Commission shall allocate funds appropriated for secondary road additions, maintenance, and construction to each of the counties, in order that each county shall receive an equitable share of available funds. The State Highway Commission shall establish policies for the preparation of annual plans for maintenance and construction of the secondary roads in each county, which policies shall include provision for consultation in the preparation process with county commissioners and interested citizens, recommendations by county commissioners and interested citizens concerning the plan, reports to persons making recommendations on the disposition of the recommendations, final adoption of the plan, and filing of a copy of the plan with the board of county commissioners. (1931, c. 145, s. 13; 1933, c. 172, s. 17; 1957, c. 65, s. 6; 1961, c. 232, s. 5.)

Editor's Note.—

The 1961 amendment rewrote this section

ARTICLE 3A.

Streets and Highways in and Around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.—Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

- (1) **The State Highway System.**—The State Highway System inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The State Highway Commission shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a State-wide coordinated system of primary and secondary streets and highways, but many of these streets and highways also have varying degrees of benefit to the municipalities. Therefore, the respective responsibilities of the State Highway Commission and the municipalities for the acquisition and cost of rights of way for State Highway System street improvement

projects shall be determined by mutual agreement between the Commission and each municipality.

- (2) The Municipal Street System.—In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State Highway System. The municipality shall be responsible for the maintenance, construction, reconstruction, and right of way acquisition for this system. (1959, c. 687, s. 1.)

§ 136-66.2. **Development of a coordinated street system.**—(a) Each municipality, with the cooperation of the State Highway Commission, shall develop a comprehensive plan for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality. The plan shall be based on the best information available including, but not limited to, population growth, economic conditions and prospects, and patterns of land development in and around the municipality, and shall provide for the safe and effective use of streets and highways through such means as parking regulations, signal systems, and traffic signs, markings, and other devices. The State Highway Commission may provide financial and technical assistance in the preparation of such plans.

(b) After completion and analysis of the plan, the plan may be adopted by both the governing body of the municipality and the State Highway Commission as the basis for future street and highway improvements in and around the municipality. As a part of the plan, the governing body of the municipality and the State Highway Commission shall reach an agreement as to which of the existing and proposed streets and highways included in the plan will be a part of the State Highway System and which streets will be a part of the municipal street system. As used in this article, the State Highway System shall mean both the primary highway system of the State and the secondary road system of the State within municipalities.

(c) From and after the date that the plan is adopted, the streets and highways designated in the plan as the responsibility of the State Highway Commission shall become a part of the State Highway System and all such system streets shall be subject to the provisions of G. S. 136-93, and all streets designated in the plan as the responsibility of the municipality shall become a part of the municipal street system.

(d) Either the municipality or the Commission may propose changes in the plan at any time by giving notice to the other party, but no change shall be effective until it is adopted by both the Commission and the municipal governing board.

(e) Until the adoption of a comprehensive plan for future development of the street system in and around municipalities, the State Highway Commission and any municipality may reach an agreement as to which existing or proposed streets and highways within the municipal boundaries shall be added to or removed from the State Highway System.

(f) Streets within municipalities which are on the State Highway System as of July 1, 1959, shall continue to be on that system until changes are made as provided in this section. (1959, c. 687, s. 2.)

§ 136-66.3. **Acquisition of rights of way.**—(a) When any one or more street construction or improvement projects are proposed on the State Highway System in and around a municipality, the State Highway Commission and the municipal governing body shall reach agreement on their respective responsibilities for the acquisition and cost of rights of way necessary for such project or projects. In reaching such agreement, the State Highway Commission and the municipality shall take into consideration:

- (1) The relative importance of the project to a coordinated State-wide system of highways.
- (2) The relative benefit of the project to the municipality.

(3) The degree to which the cost of acquisition of rights of way can be reduced or minimized through action by the municipality and/or the State Highway Commission to acquire all or part of the rights of way for proposed projects well in advance of construction of such projects.

(b) Whenever a municipality agrees to acquire rights of way for a State Highway System street improvement project, the State Highway Commission may agree to reimburse the municipality in whole or in part for expenditures made by the municipality to acquire such rights of way.

(c) In the acquisition of rights of way for any State Highway System street or highway within municipal boundaries, municipalities shall be vested with the same authority to acquire such rights of way as is granted to the State Highway Commission in chapter 136 of the General Statutes of North Carolina.

(d) In the absence of an agreement, the State Highway Commission shall retain authority to pay the full cost of acquiring rights of way where the proposed project is deemed important to a coordinated State Highway System.

(e) Either the municipality or the State Highway Commission may at any time propose changes in the agreement setting forth their respective responsibilities for right of way acquisition by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Commission.

(f) Any municipality which agrees to contribute any part of the cost of acquiring rights of way for any State Highway System street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights of way. (1959, c. 687, s. 3.)

§ 136-66.4. Rules and regulations; authority of municipalities.—The State Highway Commission shall have authority to adopt such rules and regulations as are necessary to carry out the responsibilities of the Commission under this article, and municipalities shall have and may exercise such authority as is necessary to carry out their responsibilities under this article. (1959, c. 687, s. 4.)

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

Evidence Sufficient for Jury.—Evidence that prior to 1929 a road existed across certain lands from a river to another highway, that such way was used by the public at large, at its convenience, in going to fishing camps located on the river, but that the road was not taken over for maintenance by the State Highway Commission, is sufficient to be submitted to the jury as to whether such road remained a neighborhood public road. *Smith v. Moore,*

254 N. C. 186, 118 S. E. (2d) 436 (1961).

Evidence was insufficient to support a finding that a road was a public road, but was sufficient to support a finding that it was a neighborhood public road within the meaning of this section. *Wetherington v. Smith,* 259 N. C. 493, 131 S. E. (2d) 33 (1963).

Cited in *Pritchard v. Scott,* 254 N. C. 277, 118 S. E. (2d) 890 (1961).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

This Section and § 136-69 to Be Strictly Construed.—

In accord with original. See *Pritchard v. Scott,* 254 N. C. 277, 118 S. E. (2d) 890 (1961).

This section and § 136-69 are in derogation of the free and unrestricted use and enjoyment of realty by the owner of the

land over which it is sought to establish a cartway, and must be strictly construed. *Candler v. Sluder,* 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The rule of strict construction does not limit the uses to those specified in the statute if in fact there are uses which do meet statutory requirements. *Candler v.*

Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

But There Must Be Use Complying with Statute.—The use to which petitioner for a cartway is putting or preparing to put his land must comply with statutory specifications. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Material Differences between "Way of Necessity" and "Cartway." — Material differences between a way of necessity under the general law and a cartway condemned in accordance with this section and § 136-69 include the following: If entitled to a "way of necessity" under the general law, a person is entitled thereto as a matter of right. No payment of compensation therefor is required. On the other hand, the "peculiar way of necessity" is obtained by condemnation and payment of compensation for a specific cartway in those instances where petitioner has no reasonable access to a public road as a matter of legal right or by permission. *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

Order of Clerk May Be Appealed.—An order of a clerk of superior court adjudging the right to a cartway is a final judgment and an appeal lies therefrom. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

§ 136-69. Cartways, tramways, etc., laid out; procedure. — If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section, and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than fourteen feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying

When Appeal May Be Taken.—A defendant is not required to wait until a roadway is laid off before availing himself of the right to appeal, though he may, if he so elects, except to the order and defer his appeal until after the cartway has been located. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Upon appeal from the clerk, the trial in superior court is de novo. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The issue to be tried in superior court is the same as before the clerk—whether petitioners are entitled to a cartway over some lands; it involves only the elements set out in § 136-69. It does not involve the actual location of the road, or, as between defendants, whose lands shall be burdened thereby. These matters are for the jury of view, and it is error for the court to undertake to dispose of them. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Applied in *Wetherington v. Smith*, 259 N. C. 493, 131 S. E. (2d) 33 (1963).

Cited in *Andrews v. Lovejoy*, 247 N. C. 554, 101 S. E. (2d) 395 (1958); *Potter v. Potter*, 251 N. C. 760, 112 S. E. (2d) 569 (1960).

out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P. R.; 1822, c. 1139, s. 1, P. R.; R. C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; 1917, c. 282, s. 1; C. S., s. 3836; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71.)

Editor's Note.—

The 1961 amendment inserted in line five of the first paragraph the words "or public or private cemetery."

In General. — A property owner who has no reasonable access to his property and for that reason is denied the beneficial use thereof may file his petition with the clerk of the superior court and, upon a showing of necessity and payment of the damages sustained, have an easement imposed on the land of his neighbor to provide the isolated property owner reasonable access to a public road. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

Section Strictly Construed.—

In accord with original. See *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

This section and § 136-68 are in derogation of the free and unrestricted use and enjoyment of realty by the owner of the land over which it is sought to establish a cartway, and must be strictly construed. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Petitioner's Land Must Be Used, etc.—

The use to which petitioner for a cartway is putting or preparing to put his land must comply with statutory specifications. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The rule of strict construction does not limit the uses to those specified in the statute if in fact there are uses which do meet statutory requirements. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Hunting is not a use contemplated by this section. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

But the fact that hunting is one of the principal uses does not necessarily defeat petitioners' right to a cartway, where there are other uses which do conform. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

"Engaged in the Cultivation of Land."—

In its narrow sense "engaged in the cultivation of land" means breaking the soil as with a plow, but in its broad sense it means use of the land for raising crops, whether of apples or cattle. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The fact that crops are gathered and used by the owners and given to neighbors and not sold commercially is not a disqualification on motion to nonsuit. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The presence of an apple orchard of forty or more trees, which had annually produced large quantities of apples and were so producing at the time of the trial, is sufficient compliance with the statute to withstand nonsuit on the question of enterprises. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Effect of Permissive Way.—

Petitioner is not entitled to condemn a cartway if she presently has reasonable access to a public road, even if such reasonable access is permissive. *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961)

"Necessary, Reasonable and Just."—

A petitioner's evidence must show that the proposed cartway is "necessary, reasonable and just." *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The petitioner is not entitled to have a cartway simply upon the ground that no public road leads to his land, or because it will be more convenient for him to have it; it must appear, further, that it is "necessary, reasonable and just" that he shall have it. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

There is no material difference in requiring petitioners to show they have no "adequate means of transportation affording necessary and proper means of ingress and egress" and in requiring them to show that a cartway is "necessary, reasonable and just." The difference is only in the approach to the question — the former has

a negative and the latter an affirmative approach. *Candler v. Sluder*, 251 N. C. 62, 130 S. E. (2d) 1 (1963).

The word "proper" embraces "reasonable and just." *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

In law the words "proper" and "reasonable" are often used interchangeably. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Requisites for Cartways.—

Essential to the establishment of a cartway is absence of reasonable access to the public road. If reasonable access exists, plaintiffs are not entitled to have a cartway established. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

If petitioner is presently entitled to a way of necessity, her petition for a cartway should be denied. *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

Material Differences between "Way of Necessity" and "Cartway." — See note to § 136-68.

This section merely accords a right to the property owner who is without reasonable access to the public road. It imposes no duty on him to exercise that right. Compensation for the servitude imposed by establishing a cartway is a condition precedent to acquisition. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

Property Owner Cannot Be Compelled to Acquire Cartway. — This section does not accord to the owner of land adjacent to a public highway a right to reverse the statutory process and compel owners of land away from the highway to acquire a cartway across his property. Nor can such owners be compelled to accept a cartway in substitution for an easement presently owned by them. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

The laying off of a cartway, etc.—

Once the right to a cartway has been determined, the mechanics of locating and laying it off is for the jury of view—it is for them to determine the location, its termini, and the land to be burdened thereby. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

When Appeal May Be Taken.—

A defendant is not required to wait until

a roadway is laid off before availing himself of the right to appeal, though he may, if he so elects, except to the order and defer his appeal until after the cartway has been located. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

How Appeal Heard.—

Upon appeal from the clerk the trial in superior court is de novo. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The issue to be tried in superior court is the same as before the clerk—whether petitioners are entitled to a cartway over some lands; it involves only the elements set out in this section. It does not involve the actual location of the road, or, as between defendants, whose lands shall be burdened thereby. These matters are for the jury of view, and it is error for the court to undertake to dispose of them. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Appeal Lies, etc.—

An order of a clerk of superior court adjudging the right to a cartway is a final judgment and an appeal lies therefrom. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

An order of a judge of the superior court that petitioner is entitled to have a cartway laid off across the lands of some of the respondents in accordance with this section and that the proceeding be remanded to the clerk, who is directed to appoint a jury of view, is a final judgment from which an appeal lies to the Supreme Court. *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

The acts and findings of the jury of view are reviewable. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Even if Order Not Appealed.—Any defendant, even if he does not except to or appeal from the order for a cartway and appointment of a jury of view, may except to and have reviewed the report of the jury of view. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Applied in *Wetherington v. Smith*, 259 N. C. 493, 131 S. E. (2d) 32 (1963).

Cited in *Potter v. Potter*, 251 N. C. 760, 112 S. E. (2d) 569 (1960); *Smith v. Moore*, 254 N. C. 186, 118 S. E. (2d) 436 (1961).

ARTICLE 6.

Ferries and Toll Bridges.

§ 136-82.1. Authority to insure ferries operated by Commission.—The State Highway Commission is vested with authority to purchase hull insurance and protection and indemnity insurance on all vessels and boats owned,

leased, chartered or otherwise controlled and operated by said Commission as ferries: Provided that the collision, protection and indemnity clauses of said insurance shall be limited so as to indemnify said Commission only for such liability as the said Commission might have under the provisions of article 31 of chapter 143 of the General Statutes and such liability as the said Commission might have to the United States for damage to United States property, for wreck removal, or otherwise. (1961, c. 486.)

ARTICLE 6A.

Carolina-Virginia Turnpike Authority.

§§ 136-89.1 to 136-89.11h: Repealed by Session Laws 1959, c. 25, s. 1.

ARTICLE 6B.

Turnpikes.

§§ 136-89.12 to 136-89.30: Repealed by Session Laws 1959, c. 25, s. 2.

ARTICLE 6D.

Controlled-Access Facilities.§ 136-89.49. **Definitions.**

A "controlled-access facility," as defined in this section, is a limited access highway where the Highway Commission acquires the legal right to cut off entirely the abutting owner's right of direct access to and from the highway on which his property abuts. *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

§ 136-89.58. **Unlawful use of National System of Interstate and Defense Highways.**—On those sections of highways which are or become a part of the National System of Interstate and Defense Highways it shall be unlawful for any person:

- (1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.
- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.
- (4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the State Highway Commission.
- (5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right of way of said highways, except in the case of an emergency or as directed by a peace officer, or as designated parking areas.
- (6) To willfully damage, remove, climb, cross or breach any fence erected within the rights of way of said highways.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not in excess of one hundred dollars (\$100.00) or by imprisonment not in excess of sixty (60) days, or by both such fine and imprisonment, in the discretion of the court. (1959, c. 647.)

ARTICLE 6E.

North Carolina Turnpike Authority.

§ 136-89.59. **Turnpike projects.**—In order to provide for the construction of modern highways and express highways or superhighways embodying safety devices, including center division, ample shoulder widths, long-sight distances, multiple lanes in each direction and grade separation at intersections with other highways and railroads, and thereby facilitate vehicular traffic, provide better connection between the highway system of North Carolina and the highway systems of the adjoining states, remove many of the present handicaps and hazards on the congested highways in the State and promote the agricultural and industrial development of the State, the North Carolina Turnpike Authority (hereinafter created), is hereby authorized and empowered to construct, maintain, repair and operate turnpike projects (as hereinafter defined), and to issue revenue bonds of the Authority, payable solely from revenues, to finance such projects. (1963, c. 757, s. 1.)

§ 136-89.60. **Credit of State not pledged.**—Revenue bonds issued under the provisions of the article shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but all such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which money shall have been provided under the provisions of this article. (1963, c. 757, s. 2.)

§ 136-89.61. **North Carolina Turnpike Authority.**—There is hereby created a body politic and corporate to be known as the "North Carolina Turnpike Authority." The Authority is hereby constituted a public agency, and the exercise by the Authority of the powers conferred by this article in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function.

The North Carolina Turnpike Authority shall consist of four members, including the chairman of the State Highway Commission who shall be a member ex officio, and three members appointed by the Governor who shall serve for terms expiring on July 1, 1964, July 1, 1965, and July 1, 1966, respectively, the term of each to be designated by the Governor, and until their respective successors shall be duly appointed and qualified. The successor of each of the three appointed members shall be appointed for a term of four (4) years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired terms, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the Governor for misfeasance, malfeasance, or wilful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointed member of the Authority before entering upon his duties shall take an oath to administer the duties of his office faithfully and impartially, and a record of each oath shall be filed in the office of the Secretary of State.

The Authority shall elect one of the appointed members as chairman of the Authority and another as vice-chairman, and shall also elect a secretary-treasurer who need not be a member of the Authority. The chairman, vice-chairman and secretary-treasurer shall serve as such officers at the pleasure of the Authority. Three members of the Authority shall constitute a quorum and the affirmative vote of three members 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 the duties of the Authority.

Before the issuance of any turnpike revenue bonds under the provisions of this article, each member of the Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars (\$25,000.00) and the secretary-treasurer shall execute a surety bond in the penal sum of fifty thousand dollars (\$50,000.00), each such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State as surety and to be approved by the Attorney General and filed in the office of the Secretary of State.

The chairman of the Authority shall receive the sum of fifteen dollars (\$15.00) for each day or part thereof of service, but not exceeding three thousand dollars (\$3,000.00) in any one (1) year. The other appointed members of the Authority shall receive the sum of ten dollars (\$10.00) for each day or part thereof of service, but not exceeding two thousand dollars (\$2,000.00) in any one (1) year. The chairman of the State Highway Commission shall serve as a member of the Authority without extra compensation for such service. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. (1963, c. 757, s. 3.)

§ 136-89.62. **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 word "Authority" shall mean the North Carolina Turnpike Authority, created by § 136-89.61, or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this article to the Authority shall be given by law.
- (2) The word "project" or the words "turnpike project" shall mean any highway, express highway or superhighway, toll road constructed under the provisions of this article by the Authority, including all tunnels, overpasses, underpasses, interchanges, entrance places, approaches, tollhouses, service stations, and administration, storage and other buildings, and facilities which the Authority may deem necessary for the operation of such project, together with all property, rights, easements, and interests which may be acquired by the Authority for the construction or the operation of such project.
- (3) The word "cost" as applied to a turnpike project shall embrace the costs of construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Authority for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the costs of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one (1) year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates

of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation. Any obligation of expense hereafter incurred by the State Highway Commission with the approval of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the Commission out of the proceeds of turnpike revenue bonds hereinafter authorized.

- (4) The words "public highways" shall include all public highways, roads and streets in the State, whether maintained by the State or by any county, city, town or other political subdivision.
- (5) The word "bonds" or the words "turnpike revenue bonds" shall mean revenue bonds of the Authority authorized under the provisions of this article.
- (6) The word "owner" shall include all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article. (1963, c. 757, s. 4.)

§ 136-89.63. **General grant of powers.**—The Authority is hereby authorized and empowered:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places within the State as it may designate;
- (4) To sue in its own name, and to enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Authority with other public bodies, corporations, or persons.
- (5) To construct, maintain, repair and operate turnpike projects at such locations within the State as may be determined by the Authority and approved by the State Highway Commission; provided, further, that no turnpike or toll road shall be constructed or operated in this State unless and until a certificate of approval be first obtained from the State Highway Commission certifying that the operation of such toll road or turnpike will not be harmful or injurious to the secondary or primary roads embraced in the system of State highways;
- (6) To issue turnpike revenue bonds of the Authority for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this article;
- (7) To fix and revise from time to time and charge and collect tolls for transit over each turnpike project constructed by it;
- (8) To establish rules and regulations and ordinances for the use of any such turnpike project;
- (9) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;
- (10) To designate the locations, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the Authority to insure the

- proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;
- (11) To make and enter into contracts and operating agreements with similar organizations or agencies of other states and to make and enter into all other contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
 - (12) To employ consulting engineer, attorneys, accountants, construction experts, superintendent, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation, and to employ financial experts and fiscal agents with the advice and approval of the Local Government Commission; 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 any federal agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or 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 grants and contributions may be made; and
 - (14) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1963, c. 757, s. 5.)

§ 136-89.64. Acquisition of property. — The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this article, such lands, structures, property, rights, rights of way, franchises, easements and other interests in lands which are located within the State, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the Authority.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements and other property, including public lands or parts thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, municipality or political subdivision, deemed necessary or convenient for the construction or the efficient operation of any project. The amount and size of any lands, property, rights of way, easements and other property to be obtained by the Authority under its exercise of the power of eminent domain shall first be determined and approved by the State Highway Commission. In the exercise of its power of condemnation and eminent domain, the ways, means, methods, and procedure of article 9 of chapter 136 of the General Statutes shall be used by the Authority insofar as the same are applicable. The measure of damages as set forth in G. S. 136-112 shall apply to acquisition by the Authority. Title to any property acquired by the Authority shall be taken in the name of the Authority.

If the owner, lessee or occupier of any property to be condemned shall refuse to remove his personal property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right of way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located

either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under such railroad property or right of way, plans and specifications of the proposed project showing compliance with the above mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within thirty (30) days to approve the plans and specifications so submitted, the matter shall be submitted to the North Carolina Utilities Commission whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Such overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the North Carolina Utilities Commission as the case may be. A copy of the plans and specifications approved by the railroad or the North Carolina Utilities Commission shall be filed as an exhibit with the petition for condemnation.

Whenever it shall be found necessary to cross any electric power or telephone or telegraph lines, any powers of condemnation or eminent domain may be exercised only to acquire an easement thereover without any unnecessary interference with the continued use and operation of such lines. The Authority shall pay any and all costs which may be necessary to make such crossings reasonably safe and usable. If the Authority and the owner of such power, telephone or telegraph lines are unable to agree upon the terms and conditions as to the payment of damages and costs involved in such matters, and the way and manner in which such crossings shall be made, this shall be determined by the North Carolina Utilities Commission upon petition filed by the Authority and after notice and hearing as to the other utilities concerned, in accordance with such rules and procedures as may be prescribed by the said Commission. Before using such easement as may be acquired by the Authority as herein provided it shall fully comply with such agreement as shall be made by it with any such utility or fully comply with any conditions set forth in the order of condemnation. (1963, c. 757, s. 6.)

§ 136-89.65. Incidental powers.—The Authority, with the approval of the State Highway Commission shall have power to construct grade separations at intersections of any turnpike project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

If the Authority shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

Any public highway affected by the construction of any turnpike project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of such project; provided where any part of an existing public road is vacated, no charge may be made for the use of such vacated public road where the same becomes a part of a turnpike project.

In addition to the foregoing powers the Authority and its authorized agents and employees may enter upon any lands and premises in the State for the purpose of making surveys, soundings, drillings and examinations as they may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities, and the owner, or owners, if necessary, shall be entitled to proceed under the provisions of § 136-111 of the General Statutes to recover for such damage.

The Authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over or under any turnpike project. Whenever the Authority shall determine that it is necessary that any such public utility facility which now is, or hereafter may be, located in, on, along, over or under any turnpike project should be relocated in such turnpike project, or should be removed from such turnpike project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority; provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of such turnpike project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

The State hereby consents to the use of all lands owned by it which are deemed by the Authority to be necessary for the construction or operation of any turnpike project; provided no public property may be used except upon the approval of the State Highway Commission, and with the consent of the Governor and the Council of State acting together. (1963, c. 757, s. 7.)

§ 136-89.66. Turnpike revenue bonds. — The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more turnpike 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 be dated, shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, shall mature at such time or times not exceeding forty (40) years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form 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. The bonds shall be signed by the chairman of the Authority or shall bear his facsimile signature, and the official seal of the Authority shall be impressed thereon and attested by the secretary-treasurer of the Authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the Authority. 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. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reversion into coupon bonds of any bonds registered as to both principal and interest.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project or projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

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

All revenue bonds issued under the provisions of this article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by the Local Government Commission, except that the notice of the proposed sale shall be published at least once at least ten (10) days before the date fixed for the receipt of bids in a newspaper having a general circulation in the city of Raleigh and, in the discretion of the Commission, in some other newspaper of general circulation published in the State and in a journal published in New York City devoted primarily to the subject of municipal bonds. If no bid is received, upon such published notice, which is a legal bid and legally acceptable under such notice, the bonds may be sold at private sale at any time within thirty (30) days after the date set for receiving bids given in such notice.

The Local Government Commission may sell revenue bonds issued under the provisions of this article at less than par and accrued interest, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any such bonds prior to maturity. (1963, c. 757, s. 8.)

§ 136-89.67. Trust agreement.—In the discretion of the Authority any bonds issued under the provisions of this article may be secured by a trust agree-

ment by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike project or projects in connection with which such bonds shall have been authorized, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the turnpike project or projects. (1963, c. 757, s. 9.)

§ 136-89.68. **Revenues.**—The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right of way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels, and restaurants, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use; provided that a sufficient number of gasoline stations should be authorized to be established in each service area along any such turnpike project to permit reasonable competition by private business in the public interest. Such tolls shall be so fixed and adjusted in respect to the aggregate of tolls from the turnpike project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (i) the cost of maintaining, repairing and operating such turnpike project or projects and (ii) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the turnpike project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other money 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, irre-

spective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1963, c. 757, s. 10.)

§ 136-89.69. **Trust funds.**—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolutions or trust agreement may provide. (1963, c. 757, s. 11.)

§ 136-89.70. **Remedies.**—Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of tolls. (1963, c. 757, s. 12.)

§ 136-89.71. **Exemption from taxation.** — The exercise of the powers granted by this article will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of turnpike projects by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State, except inheritance and gift taxes. (1963, c. 757, s. 13.)

§ 136-89.72. **Maintenance; police and operating employees; conveyance of land by political subdivisions, agencies and commissions; annual reports and audits; conflict of interest.**—Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, tolltakers and other operating employees as the Authority may in its discretion employ.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the State, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or con-

venient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

On or before the thirtieth day of January in each year the Authority shall make an annual report of its activities for the preceding calendar year to the Governor. Each such report shall set forth a complete operating and financial statement covering its operation during the 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 or operation of the project.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or both. (1963, c. 757, s. 14.)

§ 136-89.73. **Turnpike revenue refunding bonds.**—The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the turnpike project or projects in connection with which the bonds to be refunded shall have been issued. The Authority is further authorized to provide by resolution for the issuance of its turnpike revenue bonds for the combined purpose of:

- (1) Refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of such bonds; and
- (2) Paying all or any part of the cost of any additional turnpike 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 of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1963, c. 757, s. 15.)

§ 136-89.74. **Transfer to State.**—When all bonds issued under the provisions of this article in connection with any turnpike project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project or projects, if then in good condition and repair, shall become part of the State Highway system and shall thereafter be maintained by the State Highway Commission free of tolls; provided, however, that the Authority may thereafter charge tolls for the use of any such project and pledge such tolls to the payment of bonds issued under the provisions of this article in connection with another turnpike project or projects, but any such pledge of tolls of a turnpike project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal of and the interest on the bonds issued in connection with the first mentioned project shall have been paid or provision made for their payment. (1963, c. 757, s. 16.)

§ 136-89.75. **Article provides additional powers.**—The foregoing sections of this article shall be deemed to provide an additional 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 re-

garded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this article need not comply with the requirement of any other law applicable to the issuance of bonds. (1963, c. 757, s. 17.)

§ 136-89.76. **Article liberally construed.**—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1963, c. 757, s. 18.)

§ 136-89.77. **Powers limited to one project.**—The Authority herein created shall not construct more than one turnpike project, which project shall not exceed one hundred (100) miles in length, until the General Assembly shall have reviewed the activities of the Authority and shall have by amendment to this section, specifically authorized the construction of additional projects. (1963, c. 757, s. 18.1.)

ARTICLE 7.

Miscellaneous Provisions.

§ 136-91. **Placing glass, etc., or injurious obstructions in road.**

Liability for Failure to Remove Glass, etc., Accidentally Deposited on Highway.—Assuming that a deposit of glass on the highway by defendants was purely accidental, defendants nevertheless owed other motorists the common-law duty of due care to remove the glass and debris from the highway and to give reasonable warning of the peril until it was removed. *Chandler*

v. Forsyth Royal Crown Bottling Co., 257 N. C. 245, 125 S. E. (2d) 584 (1962).

Readily removable objects carelessly left in the highway may render the person who left them there liable for negligence to the drivers of ordinary vehicles moving at a reasonable rate of speed. *Chandler v. Forsyth Royal Crown Bottling Co.*, 257 N. C. 245, 125 S. E. (2d) 584 (1962).

§ 136-93. **Openings, structures, pipes, trees, and issuance of permits.**

Quoted in *Taylor v. Hertford*, 253 N. C. 541, 117 S. E. (2d) 469 (1960).

§ 136-96. **Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.**

Section Not Applicable Where Road Is Way of Necessity.—

In accord with 1st paragraph in original. See *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

(1960); *Janicki v. Lorek*, 255 N. C. 53, 120 S. E. (2d) 413 (1961).

And it makes no difference whether the streets be in fact opened or accepted by the public. *Janicki v. Lorek*, 255 N. C. 53, 120 S. E. (2d) 413 (1961).

Effect of Withdrawal before Acceptance.—

In accord with original. See *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

Use by Public Prevents Withdrawal.—

In accord with 1st paragraph in original. See *Janicki v. Lorek*, 255 N. C. 53, 120 S. E. (2d) 413 (1961).

Owners Are Only Parties, etc.—

Where lots are sold and conveyed by reference to a map or plat which represents a division of a tract of land into subdivisions of streets and lots, such streets become dedicated to the public use, and the purchaser of a lot or lots acquires the right to have all and each of the streets kept open; and it makes no difference whether the streets be in fact opened or accepted by the governing boards of towns or cities if they lie within municipal corporations. There is a dedication, and if they are not actually opened at the time of the sale they must be at all times free to be opened as occasion may require. *Steadman v. Pine-tops*, 251 N. C. 509, 112 S. E. (2d) 102

Withdrawal of Street Dedicated and Accepted by Municipality.—Where a municipality opens, improves and maintains a street dedicated to the public by the registration of a map or plat showing such street, there is an acceptance of the dedication of the street by the municipality, and

where the dedication of a street has become complete by the acceptance thereof by a municipality, and the street is opened and maintained by the municipality and used by the public, the right to revoke the dedication is gone, except with the consent of the municipality acting in behalf of the public and the consent of those persons, firms or corporations having vested rights in the dedication. *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

Withdrawal of Streets Dedicated by Cor-

poration Which Ceases to Exist. — Where a corporation, which had dedicated streets to the public by the registration of a map showing such streets, ceases to exist, the right to revoke such dedication is vested in the owner of the land abutting the streets, and such right is not affected by the fact that a receivership of the corporation is still extant. *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

Cited in *Salisbury v. Barnhardt*, 249 N. C. 549, 107 S. E. (2d) 297 (1959).

§ 136-102.1. **Blue Star Memorial Highway.**—All of the United States Highway #70, wherever located in North Carolina, shall, from enactment and ratification of this section, be known and designated as “Blue Star Memorial Highway.”

No State highway funds may be expended for the erection of signs designating the highway as provided in this section. (1963, c. 140.)

ARTICLE 9.

Condemnation.

§ 136-103. **Institution of action and deposit.**—In case condemnation shall become necessary the State Highway Commission shall institute a civil action by filing in the superior court of any county in which the land is located a complaint and a declaration of taking declaring that such land, easement, or interest therein is thereby taken for the use of the Highway Commission. Said declaration shall contain or have attached thereto the following:

- (1) A statement of the authority under which and the public use for which said land is taken.
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.
- (3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.
- (4) The names and addresses of those persons who the Highway Commission is informed and believes may have or claim to have an interest in said lands, so far as the same can be ascertained by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.
- (5) A statement of the sum of money estimated by said Commission to be just compensation for said taking.

Said complaint shall contain or have attached thereto the following:

- (1) A statement of the authority under which and the public use for which said land is taken.
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.
- (3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.
- (4) The names and addresses of those persons who the Highway Commission is informed and believes may have or claim to have an interest in said lands, so far as the same can be ascertained by reasonable diligence be ascertained and if any such persons are infants, non compos mentis,

under any other disability, or their whereabouts or names unknown, it must be so stated.

- (5) A statement as to such liens or other encumbrances as the Commission is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.
- (6) A prayer that there be a determination of just compensation in accordance with the provisions of this article.

The filing of said complaint and said declaration of taking shall be accompanied by the deposit of the sum of money estimated by said Highway Commission to be just compensation for said taking and upon the filing of said complaint and said declaration of taking and deposit of said sum, summons shall be issued and together with a copy of said complaint and said declaration of taking and notice of the deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The Commission may amend the complaint and declaration of taking and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in § 136-105 of this chapter. (1959, c. 1025, s. 2; 1961, c. 1084, s. 1; 1963, c. 1156, s. 1.)

Editor's Note. — Section 3 of the act inserting this article provides: "All laws and clauses of laws in conflict with this act are hereby repealed except that as to those actions or proceedings pending upon the effective date of this act or to any takings or causes of actions arising prior to the effective date of this article the present provisions of the law shall remain in full force and effect until such actions or proceedings are concluded."

The 1961 amendment inserted "complaint and" before "declaration" in the last sentence.

The 1963 amendment inserted the word "may" before the word "increase" in the last sentence.

For cases decided under provisions formerly applicable to condemnation by the State Highway Commission, see notes to §§ 40-11, 40-12 and 136-19.

The effective date of this article is July 1, 1960.

Section Inapplicable to Takings or Causes of Action Arising before July 1, 1960.—This section does not apply "to any takings or causes of actions arising prior to the effective date" thereof, to wit, July 1, 1960. *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

Cited in *State Highway Comm. v. Kenan Oil Co.*, 260 N. C. 131, 131 S. E. (2d) 665 (1963).

§ 136-104. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action.—Upon the filing of the complaint and the declaration of taking and deposit in court, to the use of the person entitled thereto, of the amount of the estimated compensation stated in the declaration, title to said land or such other interest therein specified in the complaint and the declaration of taking, together with the right to immediate possession thereof shall vest in the State Highway Commission and the judge shall enter such orders in the cause as may be required to place the Highway Commission in possession, and said land shall be deemed to be condemned and taken for the use of the Highway Commission and the right to just compensation therefor shall vest in the person owning said property or any compensable interest therein at the time of the filing of the complaint and the declaration of taking and deposit of the money in court, and compensation shall be determined and awarded in said action and established by judgment therein.

On and after July 1, 1961, the Highway Commission, at the time of the filing of the complaint and declaration of taking and deposit of estimated compensation, shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located and said memorandum shall be recorded among the land records of said county. Upon the amending of any complaint and declaration of taking affecting the property taken, the State Highway

Commission shall record a supplemental memorandum of action. The memorandum of action shall contain

- (1) The names of those persons who the Highway Commission is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land taken for public use;
- (4) The date of institution of said action, the county in which said action is pending, and such other reference thereto as may be necessary for the identification of said action.

As to those actions instituted by the Highway Commission under the provisions of this article prior to July 1, 1961, the Highway Commission shall, on or before October 1, 1961, record a memorandum of action with the register of deeds in all counties in which said land is located as hereinabove set forth; however, the failure of the Highway Commission to record said memorandum shall not invalidate those actions instituted prior to July 1, 1961. (1959, c. 1025, s. 2; 1961, c. 1084, s. 2; 1963, c. 1156, s. 2.)

Editor's Note.—The 1961 amendment added all of the section beginning with the second paragraph. The 1963 amendment inserted the present second sentence of the second paragraph.

§ 136-105. Disbursement of deposit; serving copy of disbursing order on Director of Highway Commission.—Any time prior to the expiration of two years from service of summons, the person named in the complaint and declaration of taking may apply to the court for disbursement of the money deposited in the court, or any part thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause to determine just compensation. Upon such application, the judge shall, unless there is a dispute as to title, order that the money deposited be paid forthwith to the person entitled thereto in accordance with the application. The judge shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

No notice to the Highway Commission of the hearing upon the application for disbursement of deposit shall be necessary, but a copy of the order disbursing the deposit shall be served upon the Director of the Highway Commission. (1959, c. 1025, s. 2; 1961, c. 1084, s. 3.)

Editor's Note.—The 1961 amendment added the second paragraph. Oil Co., 260 N. C. 131, 131 S. E. (2d) 665 (1963).

Cited in State Highway Comm. v. Kenan

§ 136-106. Answer, reply and plat.—(a) Any person whose property has been taken by the Highway Commission by the filing of a complaint and a declaration of taking, may within the time hereinafter set forth file an answer to the complaint only praying for a determination of just compensation. No answer shall be filed to the declaration of taking and notice of deposit. Said answer shall, in addition, contain the following:

- (1) Such admissions or denials of the allegations of the complaint as are appropriate.
- (2) The names and addresses of the persons filing said answer, together with a statement as to their interest in the property taken.
- (3) Such affirmative defenses or matters as are pertinent to the action.

(b) A copy of the answer shall be served on the Director of Highways, State Highway Commission, in Raleigh, provided that failure to serve the answer shall not deprive the answer of its validity. The affirmative allegations of said answer

shall be deemed denied. The Highway Commission may, however, file a reply within thirty (30) days from receipt of a copy of the answer.

(c) The Highway Commission, within ninety (90) days from the receipt of the answer shall file in the cause a plat of the land taken and such additional area as may be necessary to properly determine the damages, and a copy thereof shall be mailed to the parties or their attorney; provided, however, the Commission shall not be required to file a map or plat in less than six (6) months from the date of the filing of the complaint. (1959, c. 1025, s. 2; 1961, c. 1084, s. 4; 1963, c. 1156, ss. 3, 4.)

Editor's Note.—The 1961 amendment substituted "receipt" for "filing" in the first line of subsection (c) and added the words "or their attorney" at the end thereof.

The 1963 amendment inserted the word "only" before the word "praying" near the

end of the first sentence of subsection (a), inserted the present second sentence in subsection (a), substituted "ninety (90)" for "sixty (60)" near the beginning of subsection (c) and added the proviso at the end thereof.

§ 136-107. Time for filing answer.—Any person named in and served with a complaint and declaration of taking shall have twelve (12) months from the date of service thereof to file answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation; in such event the judge shall enter final judgment in the amount deposited and order disbursement of the money deposited to the owner. For good cause shown and upon notice to the Highway Commission the judge may within the initial twelve months' period extend the time for filing answer for a period not to exceed an additional six (6) months. (1959, c. 1025, s. 2.)

§ 136-108. Determination of issues other than damages.—After the filing of the plat, the judge, upon motion and ten (10) days' notice by either the Highway Commission or the owner, shall, either in or out of term, hear and determine any and all issues raised by the pleadings other than the issue of damages, including, but not limited to, if controverted, questions of necessary and proper parties, title to the land, interest taken, and area taken. (1959, c. 1025, s. 2; 1963, c. 1156, s. 5.)

Editor's Note. — The 1963 amendment substituted "and all issues" for "issue" preceding the word "raised" and also inserted "but not limited to" following the

word "including."

Quoted in *Johnson v. North Carolina State Highway Comm.*, 259 N. C. 371, 130 S. E. (2d) 544 (1963).

§ 136-109. Appointment of commissioners.—(a) Upon request of the owner in the answer, or upon motion filed by either the Highway Commission or the owner within sixty (60) days after the filing of answer, the clerk shall appoint, after the determination of other issues as provided by § 136-108 of this chapter, three competent, disinterested freeholders residing in the county to go upon the property and under oath appraise the damage to the land sustained by reason of the taking and report same to the court within a time certain. If no request or motion is made for the appointment of commissioners within the time permitted, the cause shall be transferred to the civil issue docket for trial at term as to the issue of just compensation.

(b) Such commissioners, if appointed, shall have the power to make such inspection of the property, hold such hearings, swear such witnesses, and take such evidence as they may, in their discretion, deem necessary, and shall file into court a report of their determination of the damages sustained.

(c) Said report of commissioners shall in substance be in written form as follows:

TO THE SUPERIOR COURT OF COUNTY
We,, and, Commis-

sioners appointed by the Court to assess the damages that have been and will be sustained by, the owner of certain land lying in County, North Carolina, which has been taken by the State Highway Commission for highway purposes, do hereby certify that we convened, and, having first been duly sworn, visited the premises, and took such evidence as was presented to us, and after taking into full consideration the quality and quantity of the land and all other facts which reasonably affect its fair market value at the time of the taking, we have determined the fair market value of the part of the land taken to be the sum of \$..... and the damage to the remainder of the land of the owner by reason of the taking to be the sum of \$..... (if applicable).

We have determined the general and special benefits resulting to said owner from the construction of the highway to be the sum of \$..... (if applicable).

GIVEN under our hands, this the day of, 19.....
 (SEAL)
 (SEAL)
 (SEAL)

(d) A copy of the report shall at the time of filing be mailed to each of the parties. Within thirty (30) days after the filing of the report, either the Commission or the owner, may except thereto and demand a trial de novo by a jury as to the issue of damages. Whereupon the action shall be placed on the civil issue docket of the superior court for trial de novo by a jury at term as to the issue of damages, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of damages in the superior court, nor shall evidence of the deposit by the Commission into the court be competent upon the trial of the issue of damages. If no exception to the report of commissioners is filed within the time prescribed final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners, plus interest computed in accordance with § 136-113 of this chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that such award does not provide just compensation he shall set aside said award and order the case placed on the civil issue docket for determination of the issue of damages by a jury. (1959, c. 1025, s. 2; 1961, c. 1084, s. 5; 1963, c. 1156, s. 6.)

Editor's Note.—The 1961 amendment substituted in subsection (d) “§ 136-113” for “§ 136-114.”

gining of subsection (a), moved the clause as to the determination of issues under § 136-108, which formerly followed the word “answer” in the first sentence of subsection (a), and made other minor changes therein.

The 1963 amendment inserted the words “upon” and “filed” before and after, respectively, the word “motion” near the be-

§ 136-110. Parties; orders; continuances. — The judge may appoint some competent attorney to appear for and protect the rights of any party or parties in interest who are unknown, or whose residence is unknown and who has not appeared in the proceeding by an attorney or agent. The judge shall appoint guardians ad litem for such parties as are minors, incompetents, or other parties who may be under a disability and without general guardian, and the judge shall have the authority to make such additional parties as are necessary to the complete determination of the proceeding and enter such other orders either in law or equity as may be necessary to carry out the provisions of this article.

Upon the coming on of the cause for hearing pursuant to G. S. 136-108 or upon the coming on of the cause for trial, the judge, in order that the material ends of justice may be served, upon his own motion, or upon motion of any of

the parties thereto and upon proper showing that the effect of condemnation upon the subject property cannot presently be determined, may, in his discretion, continue the cause until the highway project under which the appropriation occurred is open to traffic, or until such earlier time as, in the opinion of the judge, the effect of condemnation upon said property may be determined. (1959, c. 1025, s. 2; 1963, c. 1156, s. 7.)

Editor's Note. — The 1963 amendment added the second paragraph.

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.—Any person whose land or compensable interest therein has been taken by the Highway Commission and no complaint and declaration of taking has been filed by said Highway Commission may, within twelve (12) months of the completion of highway project for which the land was taken, file a complaint in the superior court setting forth the names and places of residence of the parties, so far as the same can be ascertained by reasonable diligence; he ascertained, who own or have, or claim to own or have, estates or interests in the said real estate and if any such persons are under a legal disability, it must be so stated, together with a statement as to any encumbrances on said real estate; said complaint shall further allege with particularity the facts which constitute said taking together with the dates that they allegedly occurred; said complaint shall describe the property allegedly owned by said parties and shall describe the area and interests allegedly taken. Upon the filing of said complaint, summons shall issue and together with a copy of said complaint be served on the Director of Highways. The allegations of said complaint shall be deemed denied; however, the Highway Commission within sixty (60) days of service of summons and complaint may file answer thereto, and if said taking is admitted by the Highway Commission, it shall, at the time of filing answer, deposit with the court the estimated amount of compensation for said taking and notice of said deposit shall be given to said owner. Said owner may apply for disbursement of said deposit and disbursement shall be made in accordance with the applicable provisions of § 136-105 of this chapter. If a taking is admitted, the Commission shall, within ninety (90) days of the filing of the answer to the complaint, file a map or plat of the land taken. The procedure hereinbefore set out shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

The plaintiff at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located, said memorandum to be recorded among the land records of said county. The memorandum of action shall contain

- (1) The names of those persons who the plaintiff is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land allegedly taken for public use; and
- (4) The date on which plaintiff alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action. (1959, c. 1025, s. 2; 1961, c. 1084, s. 6; 1963, c. 1156, s. 8.)

Editor's Note.—The 1961 amendment substituted the word "complaint" for the word "petition" in line twelve of the first paragraph and added the second paragraph with subdivisions (1) through (4).

The 1963 amendment increased the period for filing an answer in the third sentence of the first paragraph from 30 to 60 days and inserted the present fifth sentence therein.

§ 136-112. **Measure of damages.**—The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

- (1) Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.
- (2) Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking. (1959, c. 1025, s. 2.)

Editor's Note.—For highway cases discussing offsets against damages prior to the enactment of this section, see note under § 136-19.

Distinction between General and Special Benefits.—The most satisfactory distinction between general and special benefits is that general benefits are those which arise from the fulfillment of the public object which justified the taking, and special benefits are those which arise from the peculiar relation of the land in question to the public improvement. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

Items going to make up the "difference" in subsection (1) of this section embrace compensation for the part taken and compensation for injury to the remaining portion, which is to be offset under the terms of this section by any general and special benefits resulting to the landowner from the utilization of the property taken for a highway. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

Determination of Value.—In estimating the value of property all of the capabilities of the property, and all of the uses to which it may be applied, or for which it is adapted, which affect its value in the market are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by

the owner. *Williams v. State Highway Comm.*, 252 N. C. 514, 114 S. E. (2d) 340 (1960).

Admissible Evidence.— Any evidence which aids the jury in fixing a fair market value of the land and its diminution by the burden put upon it, is relevant and should be heard. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961), citing *Gallimore v. State Highway & Public Works Comm.*, 241 N. C. 350, 85 S. E. (2d) 392 (1955).

The jury should be allowed to hear testimony that construction of a highway greatly increased the property values of all the property along the highway, and the opinion of a witness that petitioners' land had tripled in value in determining what general and special benefits, if any, the petitioners received. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

Questioning of Expert Witness.—An expert witness may be questioned on cross-examination with respect to the sales prices of nearby property to test his knowledge of values and for the purpose of impeachment, but not for the purpose of fixing value. This is especially true if the witness used such sales as a basis for his appraisal of the property taken, or if he had actually appraised the property sold. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

§ 136-113. **Interest as a part of just compensation.**—To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the rate of six per cent (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 article. (1959, c. 1025, s. 2.)

§ 136-114. **Additional rules.**—In all cases of procedure under this article where the mode or manner of conducting the action is not expressly provided for in this article or by the statute governing civil procedure or where said civil procedure statutes are inapplicable the judge before whom such proceeding may be pending shall have the power to make all the necessary orders and rules of procedure necessary to carry into effect the object and intent of this chapter and

the practice in such cases shall conform as near as may be to the practice in other civil actions in said courts. (1959, c. 1025, s. 2.)

§ 136-115. **Definitions.**—For the purpose of this article

- (1) The word "judge" shall mean the resident judge of the superior court in the district where the cause is pending, or special judge residing in said district, or the judge of the superior court assigned to hold the courts of said district or the emergency or special judge holding court in the county where the cause is pending.
- (2) The words "person", "owner", and "party" shall include the plural; and the words "Highway Commission" shall mean the State Highway Commission. (1959, c. 1025, s. 2; 1961, c. 1084, s. 7.)

Editor's Note.—The 1961 amendment inserted the words "or special" in the next to last line of subdivision (1).

§ 136-116. **Final judgments.**—Final judgments entered in actions instituted under the provisions of this article shall contain a description of the property affected, together with a description of the property and estate or interest acquired by the Commission and a copy of said judgment shall be certified to the register of deeds in the county in which the land or any part thereof lies and be recorded among the land records of said county. (1959, c. 1025, s. 2.)

§ 136-117. **Payment of compensation.**—If there are adverse and conflicting claimants to the deposit made into the court by the Highway Commission or the additional amount determined as just compensation, on which final judgment is entered in said action, the judge may direct the full amount determined to be paid into said court by the Highway Commission and may retain said cause for determination of who is entitled to said moneys and may by further order in the cause direct to whom the same shall be paid and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made. (1959, c. 1025, s. 2.)

§ 136-118. **Agreements for entry.**—The provisions of this article shall not prevent the Highway Commission and the owner from entering into a written agreement whereby the owner agrees and consents that the Highway Commission may enter upon his property without filing the complaint and declaration of taking and depositing estimated compensation as herein provided and the Highway Commission shall have the same rights under such agreement with the owner in carrying on work on such project as it would have by having filed a complaint and a declaration of taking and having deposited estimated compensation as provided in this article. (1959, c. 1025, s. 2; 1961, c. 1084, s. 8.)

Editor's Note.—The 1961 amendment inserted the references to depositing estimated compensation and deleted the words "the summonses" formerly appearing after "filing" in line four and the word "summons" formerly appearing before "complaint" in line eight.

§ 136-119. **Costs and appeal.**—The Highway Commission shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted. (1959, c. 1025, s. 2.)

§ 136-120. **Entry for surveys.**—The State Highway Commission without having filed a complaint and a declaration of taking as provided in this article is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings or examinations as may be necessary in carrying out and performing its duties under this chapter, and such entry shall not be deemed a trespass, or taking within the meaning of this article; provided, however, that the

Highway Commission shall make reimbursement for any damage resulting to such land as a result of such activities and the owner, if necessary, shall be entitled to proceed under the provisions of § 136-111 of this chapter to recover for such damage. (1959, c. 1025, s. 2.)

§ 136-121. **Refund of deposit.** — In the event the amount of the final judgment is less than the amount deposited by the Highway Commission pursuant to the provisions of this article, the Highway Commission shall be entitled to recover the excess of the amount of the deposit over the amount of the final judgment and court costs incident thereto: Provided, however, in the event there are not sufficient funds on deposit to cover said excess the Highway Commission shall be entitled to a judgment for said sum against the person or persons having received said deposit. (1959, c. 1025, s. 2.)

Chapter 137.

Rural Rehabilitation.

Article 2.

North Carolina Rural Rehabilitation Corporation.

Sec.

137-31.3. Members of board of directors; terms of office; per diem and expenses.

ARTICLE 2.

North Carolina Rural Rehabilitation Corporation.

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

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

Chapter 138.

Salaries, Fees and Allowances.

Sec. 138-5. Per diem and allowances of State boards, etc.	Sec. 138-6. Travel allowances of State officers and employees. 138-7. Exceptions to G. S. 138-5 and 138-6.
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§ 138-5. **Per diem and allowances of State boards, etc.**—(a) Members of State boards, commissions, and committees which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

- (1) Advisory Budget Commission, seven dollars (\$7.00) per diem: Provided, that the rate during the period from July 1 through December 31 of each even-numbered year shall be twenty-five dollars (\$25.00) per diem;
- (2) All other boards, commissions and committees, except those boards, commissions, and committees the members of which are now serving without compensation, seven dollars (\$7.00) per diem.

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

- (1) For transportation by privately-owned automobile, eight cents (8¢) per mile of travel and the actual cost of tolls paid;
- (2) For bus, railroad, pullman, or other public conveyance, actual fare;
- (3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of twelve dollars (\$12.00) per day when traveling in State or a total of fourteen dollars (\$14.00) when traveling out of State: Provided, that subject to the approval of the Director of the Budget, members who attend meetings of boards, commissions and committees held in their home communities shall be allowed subsistence reimbursement for meals on the days they attend such meetings;
- (4) For convention registration fees, not to exceed ten dollars (\$10.00) per convention.

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

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

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

The 1963 amendment, effective July 1,

1963, increased the mileage allowance from seven cents to eight cents per mile in subdivision (1) of subsection (b).

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

- (1) For transportation by privately-owned automobile, eight cents (8¢) per mile of travel and the actual cost of tolls paid;
- (2) For bus, railroad, pullman, or other conveyance, actual fare;
- (3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of ten dollars (\$10.00) per day when traveling in State or a total of fourteen dollars (\$14.00) per day when traveling out of State;
- (4) For convention registration fees, not to exceed ten dollars (\$10.00) per convention.

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

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

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

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

- Sec. 139-3.1. Change of names in General Statutes.
- 139-4. State Soil and Water Conservation Committee.

Article 2.

Watershed Improvement Districts.

- 139-16. Establishment within soil conservation district authorized.
- 139-17. Petition for establishment; what to set forth.
- 139-18. Notice and hearing on petition; determination of need for district and defining boundaries.
- 139-19. Establishment of watershed improvement district situated in more than one soil conservation district.
- 139-19.1. Supervisors of multi-county soil

Sec.

- and water conservation district may delegate powers.
- 139-20. Inclusion of additional area.
- 139-20.1. Validation of creation of certain districts.
- 139-21. Board of trustees; selection and tenure.
- 139-22. Organization and compensation of board.
- 139-23. Officers, agents and employees; surety bonds; annual audit.
- 139-24. Status and general powers of district; power to levy assessment.
- 139-25. Benefit assessments to defray district expenses; classification of land according to benefits.
- 139-26. Estimate of expenses; filing and confirmation of initial assessment roll; subsequent assessments.
- 139-27. Collection and payment of assessments; expenditure of proceeds

- Sec. thereof and of other district funds.
- 139-27.1. Debts may be incurred to be repaid over more than three years.
- 139-28. Fiscal powers of governing body; may hold referendum on question of incurring indebtedness and issuing bonds.
- 139-29. Conduct of referendum.
- 139-30. Resolution authorizing district to incur indebtedness or issue bonds.
- 139-31. [Repealed.]
- 139-32. Annual assessments to repay indebtedness or bonds and debt service charges.
- 139-33. Powers granted additional to the powers of soil conservation districts; soil conservation districts to continue to exercise their powers.

- Sec.
- 139-34. Power to incur debts and accept gifts, etc.
- 139-35. Supervision by State Board.
- 139-36. Dissolution of watershed improvement district.
- 139-37. Participation by cities, counties, industries and others.
- Article 3.**
- Watershed Improvement Programs;
Expenditure by Counties.**
- 139-39. Alternative method of financing watershed improvement programs by special county tax.
- 139-40. Conduct of election.
- 139-41. Powers of county commissioners.
- 139-42. Article intended as supplementary.
- 139-43. Transfer and continuation of programs.

ARTICLE 1.

General Provisions.

§ 139-1. Title of chapter.

Editor's Note. — Session Laws 1959, c. 781, s. 1, provides: "Chapter 139 of the General Statutes is amended by classify-

ing the first fifteen sections thereof as article 1."

§ 139-2. Legislative determinations, and declaration of policy. —

(a) Legislative Determinations.—It is hereby declared, as a matter of legislative determination:

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

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

- (3) The Appropriate Corrective Methods.—To conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, utilization, and disposal of water, and the development of water resources it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, utilization, and disposal of water and the development of water resources be adopted and carried out. Among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, desilting basins, flood-water retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, contour furrowing, farm drainage, land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments, manurial materials, and fertilizers for the correction of soil deficiencies and to promote increased growth of soil-protecting crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

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

Editor's Note.—

The 1959 amendment rewrote subdivision (3) of subsection (a) and inserted, beginning in line three of subsection (b), the words "and for the prevention of

floodwater and sediment damages, and for furthering the conservation, utilization, and disposal of water, and the development of water resources."

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

- (1) "District" or "soil conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.
- (2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.
- (3) "Committee" or "State Soil Conservation Committee" means the agency created in § 139-4.
- (4) "Petition" means a petition filed under the provisions of article 1 of this chapter for the creation of a soil conservation district, or a petition filed under the provisions of article 2 of this chapter for the creation of a watershed improvement district.
- (5) "Nominating petition" means a petition filed under the provisions of § 139-6 to nominate candidates for the office of supervisor of a soil conservation district.
- (6) "State" means the State of North Carolina.
- (7) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the State.
- (8) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.
- (9) "Government" or "governmental" includes the government of this State, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.
- (10) The terms "land occupier" or "occupier of land", and "landowner" or "owner of land" include any person, firm or corporation who shall hold title to or shall have contracted to purchase any lands lying within a soil conservation district or a watershed improvement district organized under the provisions of this chapter.
- (11) "A qualified voter" includes any person qualified to vote in elections by the people under the Constitution of this State.
- (12) "Due notice" means notice given by posting the same at the courthouse door and at three other public places in the county, including those where it may be customary to post notices concerning county or municipal affairs generally, not less than ten days before the date of the event of which notice is being given. At any hearing held pursuant to such a notice at the time and place designated in such a notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.
- (13) "Trustees" means residents within a watershed improvement district who are appointed or elected to carry on the business of a watershed improvement district, organized under the provisions of article 2 of this chapter.
- (14) "Watershed improvement district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of article 2 of this chapter, for the purposes, with the powers, and subject to the restrictions therein set forth.
- (15) "Notice" as used in article 2 of this chapter shall mean notice published at least once a week for two consecutive weeks in at least one newspaper of general circulation published in each county wherein any part of a watershed improvement district lies or if in any instance

there is no such newspaper then, in lieu thereof, in a newspaper of general circulation in such county.

- (16) "Board" or "State Board" means the Board of Water Commissioners of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Board of Water Commissioners. (1937, c. 393, s. 3; 1947, c. 131, s. 2; 1959, c. 781, s. 4.)

Editor's Note.—

The 1959 amendment rewrote subdivisions (4) and (10) and added subdivisions (13) through (16).

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

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

§ 139-4. State Soil and Water Conservation Committee.—(a) There is hereby established to serve as an agency of the State and to perform the functions conferred upon it in this chapter, the State Soil and Water Conservation Committee which shall be composed of the following members. The following shall serve, ex officio, as members of the Committee: the director of the State Agricultural Extension Service, the director of the State Agricultural Experiment Station, and the State Forester. Three members shall consist each year of the president, first vice-president and the immediate past president of the North Carolina Association of Soil Conservation Districts. Vacancies arising in any of these three positions shall be filled through appointment by the executive committee of the North Carolina Association of Soil Conservation Districts. An additional member shall be designated by the State Soil and Water Conservation Committee for a term of two years; appointment to be made by calendar years beginning January 1. No person so designated by the Committee may be appointed for more than two successive terms. The Committee shall invite the North Carolina State Conservationist, Soil Conservation Service, to serve as an advisory nonvoting member of the Committee. The Committee, in co-operation with the North Carolina State College of Agriculture and Engineering in the State, shall develop a program for soil conservation and for other purposes as provided for in this chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

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

- (1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.
- (2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and co-operation between them.
- (3) To co-ordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.
- (4) To secure the co-operation and assistance of the United States and any

of its agencies, and of agencies of this State, in the work of such districts.

- (5) To disseminate information throughout the State concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.
- (6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the State Committee may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.
- (7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2.)

Editor's Note.—

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

The 1961 amendment deleted the former third and fourth sentences of subsection (a) and inserted the present third

through seventh sentences. By virtue of § 139-3.1 the name of State Soil Conservation Committee has been changed.

Only the subsections mentioned are set out.

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

- (1) The proposed name of said district.
- (2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.
- (3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.
- (4) A request that the State Soil Conservation Committee duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the Committee determine that such a district be created.

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

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

(1959, c. 781, s. 6.)

Editor's Note.—

The 1959 amendment added the last paragraph to subsection (a). As only this

subsection was affected by the amendment the rest of the section is not set out.

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

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

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

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

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

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

- (1) To be responsible for the securing of nominating petitions for the election of the county committee, providing for elections, reporting the results thereof to the district supervisors, who, in turn, shall report the results to the State Committee, all to be done under the supervision of the State Committee;
- (2) To work in close harmony with the district supervisors of their district in the performance by the district supervisors of their duties set out in subdivisions (1), (2), and (6) of § 139-8;

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

Editor's Note.—

The 1963 amendment rewrote the second paragraph.

§ 139-7. Appointment, qualifications and tenure of supervisors.—

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

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

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

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be re-

moved by the State Soil Conservation Committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

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

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

Editor's Note.—

The 1963 amendment rewrote the last sentence of the second paragraph.

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

- (1) To conduct surveys and investigations relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, utilization, and disposal of water, the development of water resources, and the preventive and control measures and works of improvement needed, to publish the results of such surveys and investigations, and to disseminate information concerning such preventive and control measures and works of improvement.
- (2) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (a), subdivision (3) of G. S. 139-2, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands.
- (3) To cooperate, or enter into agreements with, and within the limits or appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupiers of land within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter.
- (4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose

of its property or interests therein in furtherance of the purposes and the provisions of this chapter.

- (5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water and the development of water resources.
- (6) To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.
- (7) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, utilization and disposal of water and development of water resources, within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.
- (8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the State Forest Nursery, operated by the State Department of Conservation and Development in cooperation with the United States Department of Agriculture.
- (9) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.
- (10) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages therein.
- (11) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.
- (12) Nothing contained in this chapter shall authorize or allow the with-

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

Editor's Note.—

The 1959 amendment rewrote this section.

ARTICLE 2.

Watershed Improvement Districts.

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

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

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

- (1) The proposed name of the watershed improvement district;
- (2) That the said district appears to hold promise of administrative, engineering and economic feasibility, and the reasons therefor;
- (3) A description of the area proposed to be organized as a watershed improvement district, and the names and addresses of those landowners therein who are known to petitioners. The description shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the petitioners, the boundaries may be described by any of the following methods or any combination thereof: By reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land;
- (4) That the area described in the petition consists of contiguous territory and in what watershed or watersheds such area lies;

- (5) To the extent feasible, a description of the proposed work or works of improvement for the control and prevention of soil erosion, flood prevention, or the conservation, utilization, and disposal of water and development of water resources, contemplated for said district, together with an explanation of the effect which said work or works of improvement will have upon the lands of the various landowners in the proposed district;
- (6) That none of the land within the proposed watershed improvement district lies within the boundaries of any other watershed improvement district;
- (7) A request that the area described in the petition be organized as a watershed improvement district; and
- (8) The maximum rate of initial annual assessment proposed for levy against specially benefited lands of the proposed district, not in excess of the maximum annual assessment rate provided in G. S. 139-26. (1959, c. 781, s. 8; 1961, c. 746, s. 3; 1963, c. 1151, s. 1.)

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

The 1963 amendment rewrote subdivi-

sion (8), which formerly referred to the amount of the maximum annual assessment as provided in § 139-26.

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

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

- (1) The area proposed to be organized as a district consists of contiguous territory none of which lies in any other watershed improvement district. It is the intention of the General Assembly that the territory of a watershed district shall normally comprise all or part of a single watershed, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases, but it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.
- (2) Any land or structure has been included in the proposed district which cannot be served or benefited by the proposed work or works of improvement and which could be excluded from the boundaries of the district without substantially impairing the effective purpose of the proposed work or works of improvement; and
- (3) The proposed district appears to hold promise of administrative, engineering and economic feasibility.

If, in the judgment of the supervisors there is substantial compliance with these requirements, the supervisors shall issue an order setting dates and places for a referendum (and for registration of voters therefor) to be held, after

publication of the order as herein provided, among the landowners of the proposed district in order to assist the supervisors in determining the administrative and economic feasibility of creating the proposed district. The supervisors shall publish such order once a week for two successive weeks in the manner provided by this article for publication of notices. They shall also send to the board of county commissioners of each county wherein any part of the proposed district lies a copy of the order, together with a request that the said board or boards conduct the referendum within their respective counties on the date set out in the order, and a cash or certified check deposit furnished by the petitioners and sufficient in the judgment of said board or boards to defray the expenses of conducting the referendum within their respective counties. If (in connection with a district that lies in more than one county) the supervisors determine that only a single voting place shall be used or that all voting places should be located within one county, the said order and request shall be sent only to the board of county commissioners of the county containing such voting place or places.

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

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

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

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Carolina not inconsistent therewith, and that I am the owner of land lying within the boundary

of the proposed (here insert name of proposed district) watershed improvement district. So help me, God."

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

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

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

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

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

(h) After all challenges have been heard and decided, and before the day of the referendum, the registrars shall deliver the registration books to the county election authorities responsible for conducting the referendum. The supervisors of the soil conservation district shall cause to be printed or otherwise duplicated ballots for the referendum in substantially the form set forth in G. S. 139-5 (c), but the watershed improvement district shall be substituted by name for the soil conservation district. Not later than the day before the referendum, the supervisors shall cause to be delivered to the county election authorities a number

of said ballots equal to five per cent greater than the number of persons registered to vote therein. The supervisors shall appoint one registrar from each registration place to attend the referendum as a poll watcher and to assist the election authorities in identifying the voters.

(i) The county election authorities shall conduct the referendum at the date and place or places set out in the order published pursuant to subsection (d) of this section. They shall open the polls and superintend the same until the close of elections, shall keep poll books in which shall be entered the name of every person who shall vote, and at the close of the referendum they shall certify the same over their proper signatures and deposit them with the supervisors of the soil conservation district. The polls shall open and close at the same hours as provided for primary and general elections by chapter 163 of the General Statutes. At the end of the referendum at each voting place the polls shall be closed, the ballot boxes opened, and the ballots counted by or under the supervision of the county election authorities in the manner provided for with respect to general elections by chapter 163 of the General Statutes.

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

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

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

(k) The board of county commissioners shall apply the deposit heretofore provided for toward defraying the costs of the election. If there be any excess of such deposit remaining after all such costs have been defrayed, the board

shall return the balance thereof remaining to the petitioners. If the deposit shall prove insufficient to defray all such costs, the petitioners shall pay over sufficient funds to cover any deficit therein within seven days after they have been notified by the board of such deficit.

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

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

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

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

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

Under subsection (e)—

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Carolina not inconsistent therewith, and that I am the duly desig-

nated voting representative of the (here name corporation or association) which is the owner of land lying within the boundary of the proposed (here give name of proposed district) watershed improvement district. So help me, God.”

Under subsection (g)—

“You do solemnly swear (or affirm) that you are a citizen of the United States, that your name is (here insert name given), that in such name you were duly registered as a designated voting representative of the (here name corporation or association) to vote upon the proposed (here insert name of proposed district) watershed improvement district, and that such (corporation) (association) is the owner of lands that lie within the boundaries of the proposed district. So help you, God.” (1959, c. 781, s. 8; 1961, c. 746, s. 4; 1963, c. 918, s. 2.)

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

The 1963 amendment inserted in the

third sentence of subsection (m) the words “together with a certified copy of the petition for establishment of the district.”

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

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

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

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

§ 139-21. Board of trustees; selection and tenure.—(a) Each watershed improvement district shall be governed by a board of trustees to be com-

posed of three members, all of whom shall be residents of the district, and shall be selected in the manner provided in this section.

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

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

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

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

The board of elections of each county wherein any part of the watershed improvement district lies shall provide for a new registration of all qualified voters residing in said district and in their respective counties. Said board or boards shall give notice thereof once a week for two consecutive weeks by advertisement in a newspaper of general circulation published in the district and in their respective counties or, if there is no such newspaper so published, then in a newspaper of general circulation in the district and in their respective counties. The first of such notices shall be published at least thirty days in advance of the first day for such registration. Such notices shall specify the dates, times and places for registration and for challenges to be received. Each registrar shall be furnished with a separate registration book for such watershed improvement dis-

strict registration. The period for registration and the times when the registrars shall attend the polling places with the registration books shall be the same as those provided for the general election in G. S. 163-31. Challenges may be made and shall be heard and decided at the polling places, and at the times and in the manner provided for the general election in G. S. 163-78 to 163-80.

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

(e) Members elected to the board of trustees shall qualify and enter upon the duties of their offices on the first Monday of December next succeeding their election. Appointed members shall qualify and enter upon the duties of the offices not later than the second Monday next succeeding their appointment. All members shall take the oath of office prescribed by the State Constitution before the clerk of the superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths.

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

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

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

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

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

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

§ 139-24. Status and general powers of district; power to levy assessment.—A watershed improvement district organized under the provisions of this article shall constitute a political subdivision of this State, and a public body corporate and politic, exercising public powers, and such watershed improvement district shall have all of the powers of the soil conservation dis-

trict or districts in which the watershed improvement district is situated, and in addition thereto shall have the authority to levy and the county tax collector or collectors shall collect an assessment as hereinafter provided, to be used for the purposes for which the watershed improvement district was created and for the operation and maintenance thereof. (1959, c. 781, s. 8.)

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

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

(b) As soon as practicable after the organization of a district and the formulation of plans for construction of works of improvement, the trustees shall examine and classify the lands in the district (and from time to time may reclassify them) according to the relative benefits they will receive from the activities of the district. The lands may be classified into as many as five classes, marked "Class A", "Class B", etc. In making such classifications the trustees shall consider the fertility of the soil, the proximity of the land to the watercourse (or, in the case of drainage benefits, its proximity to the ditch or a natural outlet), the degree of wetness on the land, the location of the land relative to existing or proposed works of improvement of the district, its susceptibility to damage from floods or erosion, and other factors evidencing anticipated benefits or lack thereof to particular lands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Subsequent to the initial assessment the trustees may annually, biennially, or triennially, at their discretion, levy additional assessments to meet: The total, or amortized portion, of capital costs, including debt service charges consisting of

principal, interest, and other charges on borrowed funds to be paid during the assessment period, and further including cost and expenses incidental to the construction of contemplated additional works of improvement to be completed during the assessment period; and all other expenses of the district, including the expenses of administering the district, maintaining all works of improvement, and interest on borrowed funds, that will accrue during the ensuing fiscal year, biennium or triennium, as the case may be.

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

- (1) The estimate shall be prepared on or before May 20th preceding the fiscal year during which the assessment (or the first installment thereof) shall come due, but failure to comply with this requirement shall not affect the validity of subsequent proceedings;
- (2) The period covered by the estimate of "all other expenses" shall be the succeeding fiscal year, biennium or triennium, as the case may be; and
- (3) The assessment installments, if any, to be indicated on the assessment roll shall be those to be paid during each year of the fiscal biennium or triennium, as the case may be, by landowners electing to pay in installments.

(i) The assessment rate on any assessment roll shall not exceed a maximum annual rate of seven dollars (\$7.00) per acre. (1959, c. 781, s. 8; 1963, c. 1025, s. 2; c. 1151, s. 2; c. 1228, ss. 1-4.)

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

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

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

§ 139-27. Collection and payment of assessments; expenditure of proceeds thereof and of other district funds. — (a) (1) The landowner against whom an assessment is made shall have the option of paying the entire assessment, if he so elects and gives written notice accordingly to the secretary-treasurer of the district within fifteen (15) days after the confirmation of the assessment roll and upon his failure to so notify the district, he shall be deemed to have elected to pay the assessment in annual installments. Any assessment shall be due on the first Monday of August next following after the receipts for the first annual installment are mailed pursuant to subsection (c) of this section but may be paid in multiple annual installments, in amounts and spread over periods determined by the assessment roll, with interest as herein provided. Any annual installment of any assessment, plus accrued interest on the entire assessment, shall be due and payable on the first Monday of August. Any assessment shall bear interest from due date until paid, at the rate of one third of one per cent ($\frac{1}{3}$ of 1%) per month, or fraction thereof, as calculated and illustrated in the table in subsection (i) of this section. Failure or neglect of the property owner to pay any annual installment with accrued interest when the same becomes due and payable shall be just and sufficient cause for enforcing the immediate payment of all remaining unpaid installments and accrued interest on the entire assessment. The entire assessment may be paid at any time by payment of the principal and all interest accrued to that date.

- (2) It is the intent and purpose of this subsection that any assessment (initial, subsequent or annual) may as determined by the assessment roll be paid and collected in multiple annual installments in such installment

amounts and spread over such installment periods as the assessment roll may fix. As to any assessment roll which shall fix and determine multiple annual installment payments spread over periods in excess of three (3) years, the following modifications of designated subsections of this section shall apply:

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

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

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

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

ording subsequent annual installments. You will make monthly settlements of your collections with the secretary-treasurer of the Watershed Improvement District, and in all other respects you will discharge your duties as tax collector as required by law.

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

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

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

Tax Collector County:

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

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

..... Chairman, Board of Commissioners County

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

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

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

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

(h) Form of Assessment Receipts with Stub.—

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

Amount of Entire Assessment	Landowner	Unpaid Balance of Entire Assessment
		Amount of 1st Annual Installment due

Date Paid	If installment is not paid by Sept. 1, 19..., unpaid balance of entire assessment with interest at 1/3 of one percent per month, or fraction thereof, becomes due.	Received by
		(Signature) Tax CollectorCounty

Amount of each Annual Installment	PAYABLE TO TAX COLLECTOR,
	COUNTY, NORTH CAROLINA.
	Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of August, 19.....

Date 1st Ann'l Installment Paid	Landowner	Unpaid Balance of Entire Assessment
		Amount of 2nd Annual Installment due

Date 2nd Ann'l Installment Paid	If installment is not paid by Sept. 1, 19..., unpaid balance of entire assessment with interest at 1/3 of one percent per month, or fraction thereof, becomes due.	Received by
		(Signature) Tax CollectorCounty

PAYABLE TO TAX COLLECTOR,

COUNTY, NORTH CAROLINA.

Date 3rd Ann'l Installment Paid	Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of August, 19..... Landowner Amount of 3rd Annual Installment due If installment is not paid by Septem- Received by ber 1, 19....., it accumulates interest at the rate of $\frac{1}{3}$ of one percent per (Signature) month, or fraction thereof. Tax CollectorCounty
	PAYABLE TO TAX COLLECTOR, COUNTY, NORTH CAROLINA.

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

Date of Payment	Amount Due
On and after April 1, 1960 and on or before September 1, 1960	First installment (or entire assessment) may be paid without interest
After Sept. 1, 1960 and on or before Oct. 1, 1960	If first installment was not paid on time, entire as- sessment becomes due with interest at $\frac{1}{3}$ of one percent of such entire assessment
After Oct. 1, 1960 and on or before Nov. 1, 1960	If first installment was not paid on time, entire as- sessment is due with interest at $\frac{2}{3}$ of one percent of such entire assessment
On or before Sept. 1, 1961	If first installment was paid on time, second install- ment (or entire unpaid balance) may be paid with interest at 4 percent of unpaid balance of entire assessment
After Sept. 1, 1961 and on or before Oct. 1, 1961	If second installment was not paid on time, unpaid balance of entire assessment becomes due with in- terest at $4\frac{1}{3}$ percent of such unpaid balance
After Oct. 1, 1961 and on or before Nov. 1, 1961	If second installment was not paid on time, unpaid balance of entire assessment is due with interest at $4\frac{2}{3}$ percent of such unpaid balance
On or before Sept. 1, 1962	If first and second installments were paid on time, third installment may be paid with interest at 8 percent of unpaid balance of entire assessment
After Sept. 1, 1962 and on or before Oct. 1, 1962	If third installment was not paid on time, unpaid balance of entire assessment becomes due with in- terest at $8\frac{1}{3}$ percent of such unpaid balance
After Oct. 1, 1962	To the balance due on Oct. 1, 1962, add interest at $\frac{1}{3}$ of one percent of such balance per month, or fraction thereof, until paid.

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

Editor's Note.—Prior to the 1963 amendment, which rewrote subsection (a), the landowner had the option of paying the initial assessment in cash or, on giving no-

tice, in three annual installments, with a similar option as to subsequent biennial or triennial assessments.

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

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

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

The trustees, if they so elect, may request the board or boards of election of each county wherein any part of the district lies to call a referendum on the question of whether the district shall incur debt or issue bonds for one or more of the purposes for which it was created. (1959, c. 781, s. 8; 1963, c. 1228, s. 7.)

Editor's Note. — Prior to the 1963 amendment, which rewrote this section, the power to incur indebtedness and issue bonds was subject to the conditions and limitations of this article and to the ap-

proval of the Local Government Commission, and a referendum was required if repayment was not limited to the proceeds of benefit assessments.

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

Shall the Watershed Improvement District (incur an indebtedness to in the amount of) (issue bonds in the amount of) for the purpose of
.....?
vote "Yes" or "No".

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

§ 139-30. Resolution authorizing district to incur indebtedness or issue bonds.—If such referendum is held and a majority of the votes cast are in favor of incurring the indebtedness or issuing the bonds, the trustees of the district shall enter on the records of the district a resolution authorizing the dis-

tract to incur the indebtedness or issue the bonds for one or more of the purposes for which the district was created. (1959, c. 781, s. 8; 1963, c. 1228, s. 8.)

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

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

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

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

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

§ 139-34. **Power to incur debts and accept gifts, etc.**—A watershed improvement district shall have the power, in the manner hereinabove set forth, to incur debts and repay the same over such period of time and at such rate or rates of interest, not exceeding six per centum (6%) per annum, as the lender or lenders agree to; and to accept, receive, and expend gifts, grants or loans from whatever source received. (1959, c. 781, s. 8.)

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

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

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

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

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

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

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

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

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

(e) If the Board has reason to believe that a watershed improvement district is not operating any work of improvement or related structure in accordance with its plan of operations as amended, the Board on its own motion or upon complaint may order a hearing to be held thereon upon not less than thirty days written notification to the district and complainant, if any, by personal service or registered mail. Notice of such hearing shall be published at least once a week for two successive weeks. In connection with any such hearing the Board shall be empowered to administer oaths; to take testimony; and, in the same manner as the superior court, to order the taking of depositions, issue subpoenas, and to compel the attendance of witnesses and production of documents. If the Board determines from evidence of record that the district is not operating any work of improvement or related structure in accordance with its plan of operations, as amended, the Board may issue an order directing the district to comply therewith or to take other appropriate corrective action. Upon failure by a district to comply with any such order, the Board may institute an action for injunctive relief in the superior court of any county wherein such noncompliance occurs, and the procedure in any such action shall be as provided in article 37, chapter 1, of the General Statutes.

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

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

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

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

- (2) Public hearings held, as provided in § 139-18; and
- (3) An order of the supervisors of the soil conservation district or districts approving the action sought.

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

§ 139-37. Participation by cities, counties, industries and others.

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

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

- (1) Provide a source (respectively) of county or municipal water supply; or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity; or
- (2) Protect against or alleviate the effects of flood-water or sediment damages affecting, or provide drainage benefits for, (respectively) county or municipally owned property or the property (respectively) of county or municipal inhabitants located outside the boundaries of such district but within the respective boundaries of such county or municipality.

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

ARTICLE 3.

Watershed Improvement Programs; Expenditure by Counties.

§ 139-39. Alternative method of financing watershed improvement programs by special county tax.—The board of county commissioners in any county is authorized to call a special election to determine whether it be the will of the qualified voters of the county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars (\$100.00) valuation of property in said county, to be known as a "Watershed Improvement Tax", the funds therefrom, if the levy be authorized by the voters of said county, to be used for the prevention of flood-water and sediment damages, and for furthering the conservation, utilization and disposal of water and the development of water resources, within the county. (1959, c. 781, s. 10.)

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

§ 139-40. Conduct of election.—(a) There shall be no new registration of voters for such an election. The registration books shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such

registration of new voters shall be published in a newspaper circulated in said county, once, not less than thirty days before and not more than forty days before, the close of the registration books, stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections.

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

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

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

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

leted the first sentence of subsection (b) and inserted in lieu thereof the present first two sentences. It also rewrote subsection (d).

Editor's Note.—The 1961 amendment de-

§ 139-41. **Powers of county commissioners.** — (a) If the majority of the qualified voters voting in such election favor the levying of such tax, then and in that extent, the board of county commissioners shall have all powers of soil conservation districts as set forth in subdivisions (1), (2), (3), (5), (6), (7), (8), and (10) of G. S. 139-8 (subject to the limitations set forth in subdivision (12) of such section) concerning flood prevention, development of water resources, floodwater and sediment damages, and conservation, utilization and disposal of water. It is the intention of the General Assembly that such powers shall normally be exercised within all or parts of one or more single watersheds, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases; provided, however, it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(b) The board of county commissioners may itself exercise such powers or, for that purpose, may create a Watershed Improvement Commission to be composed of three members appointed by the board. The terms of office of the members of the Commission shall be six years, with the exception of the first two

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

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

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

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

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

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

§ 139-43. **Transfer and continuation of programs.** — A watershed improvement program initiated under this article may be discontinued as a county program and thereafter transferred to or renewed as a watershed district program under article 2, upon compliance with the provisions of said article 2 for initiating district programs; and a watershed improvement district program initiated under article 2 may be discontinued as a district program and thereafter transferred to or renewed as a county program under this article, upon compliance with the provisions of this article for initiating county programs. (1959, c. 781, s. 10.)

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1.

North Carolina Museum of Art.

- Sec.
 140-1. Agency of State; functions.
 140-2. Board of trustees; membership; appointment and terms; officers; meetings; powers and duties.
 140-3. Director of Museum of Art; election and service; salary; powers and duties.
 140-4. Gifts maintained as special fund.
 140-5. Gifts exempt from taxation.
 140-5.1. Transfer of right, title and interest of State Art Society to Museum of Art.

Article 3.

State Art Society.

- Sec.
 140-11. State patronage; board of directors, composition, number, appointment and terms of office.
 140-12. Department of Administration authorized to provide space for Art Society.
 140-13. Annual audit by State Auditor; report to General Assembly.
 140-14. Promotion of public appreciation of art; organization of art exhibits; lectures on art; developing effective support of Museum of Art; encouraging the acquisition of works of art, etc.
 140-15. Exemption from taxes.

ARTICLE 1.

North Carolina Museum of Art.

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

Editor's Note. — The 1961 amendment, effective July 1, 1961, inserted the present article in lieu of former articles 1 and 1A, designated "State Art Society" and "Acquisition and Preservation of Works of Art," respectively. Repealed article 1 was

derived from Public Acts 1929, c. 314 and Session Laws 1943, c. 752, and repealed article 1A was derived from Session Laws 1947, c. 1097; 1951, c. 1168 and 1953, c. 696. Public Acts 1929, c. 314, had been amended by Session Laws 1961, c. 547, s. 3.

§ 140-2. **Board of trustees; membership; appointment and terms; officers; meetings; powers and duties.**—(a) The board of trustees of the North Carolina Museum of Art shall consist of the Governor, the Superintendent of Public Instruction or a person designated by him, four members elected by the board of directors of the North Carolina State Art Society, Incorporated, and eight members appointed by the Governor. All fourteen members shall be entitled to vote. Of the initial appointments to the board of trustees, four shall be for terms of three years and four shall be for terms of six years. Of the initial elections to the board of trustees by the board of directors of the North Carolina State Art Society, Incorporated, two shall be for terms of three years and two shall be for terms of six years. Thereafter, all regular appointments or elections shall be for terms of six years. All members shall serve until their successors are appointed or elected and qualified. All initial terms shall begin July 1, 1961. The Governor shall appoint to fill for the unexpired term any vacancy occurring in the appointive membership of the board of trustees. The board of directors of the North Carolina State Art Society, Incorporated, shall elect to fill for the unexpired term any vacancy occurring in the positions filled by that board. A member of the board of trustees shall not be deemed to be a public officer, or to be holding office with-

in the meaning of article XIV, section 7, of the Constitution of North Carolina, but a member shall be deemed a commissioner for a special purpose.

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

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

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

- (1) To adopt bylaws for its own government.
- (2) To adopt policies, rules, and regulations for the conduct of the North Carolina Museum of Art.
- (3) To elect the Director of the North Carolina Museum of Art and to prescribe his powers and duties, consistent with the provisions of this article.
- (4) To establish such advisory boards and committees as the board of trustees may deem advisable.
- (5) On behalf and in the name of the North Carolina Museum of Art, to inspect, appraise, obtain attributions and evaluations of, purchase, acquire, exchange, transport, exhibit, lend, store, and receive upon consignment or as loans, statuary, paintings, and other works of art of any and every kind and description which are worthy of acquisition, preservation, and exhibition.
- (6) To be responsible for the care, custody, storage, and preservation of all works of art acquired by the North Carolina Museum of Art, or received by it upon consignment or loan.
- (7) On behalf and in the name of the North Carolina Museum of Art, to acquire by gift or will, absolutely or in trust, from individuals, corporations, the federal government, or from any other source, money or other property which may be retained, sold, or otherwise used to promote the purposes of the North Carolina Museum of Art. The net proceeds of the sale of all property acquired under the provisions of this paragraph shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund."
- (8) To exchange works of art owned by the North Carolina Museum of Art for other works of art which, in the opinion of the board of trustees, would improve the quality, value, or representative character of the art collection of the Museum.
- (9) To sell any work of art owned by the North Carolina Museum of Art if the board of trustees finds that it is in the best interest of the Museum to do so, unless such sale would be contrary to the terms of acquisition. The net proceeds of each such sale, after deduction of the expenses attributable to that sale, shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund," and shall be used only for the purchase of other works of art. No work of art owned by the North Carolina Museum of Art may be pledged or mortgaged.
- (10) To make a biennial report to the Governor and the General Assembly on the activities of the board of trustees and of the North Carolina Museum of Art. (1961, c. 731.)

§ 140-3. Director of Museum of Art; election and service; salary; powers and duties.—(a) The board of trustees of the North Carolina Mu-

seum of Art shall elect the Director of the North Carolina Museum of Art, who shall serve at the pleasure of the board.

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

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

- (1) Under the supervision of the board of trustees, to direct and administer the North Carolina Museum of Art in accordance with the policies, rules, and regulations adopted by the board of trustees.
- (2) To employ such persons as may be necessary to perform the functions of the Museum, subject to the provisions of chapter 143, article 2, of the General Statutes.
- (3) To serve as secretary to the board of trustees.
- (4) To serve as director of collections of the Museum. (1961, c. 731.)

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

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

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

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

ARTICLE 3.

State Art Society.

§ 140-11. **State patronage; board of directors, composition, number, appointment and terms of office.**—The North Carolina State Art Society, Incorporated, shall continue to be under the patronage of the State. The governing body of the North Carolina State Art Society, Incorporated, shall be a board of directors consisting of sixteen members, of whom the Governor of the State, the Superintendent of Public Instruction, the Treasurer of the State of North Carolina and the chairman of the art committee of the North Carolina Fed-

eration of Women's Clubs shall be ex officio members, and four others shall be named by the Governor of the State. The remaining eight directors shall be chosen by the members of the North Carolina State Art Society, Incorporated, in such manner and for such terms as that body shall determine. The four directors named by the Governor shall serve for terms of four years each. (1961, c. 1152.)

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

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

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

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

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

Chapter 140A.

State Awards System.

Sec.

140A-1. Annual awards established; form and design.

140A-2. Fields of recognition; periods covered.

140A-3. Annual award to native living outside State.

Sec.

140A-4. Awards Commission; creation; powers and duties.

140A-5. Selection of recipients for awards.

140A-6. Administration expense.

§ 140A-1. Annual awards established; form and design.—The State of North Carolina hereby establishes annual awards, not to exceed six in number, each bearing the name of the recipient, with an appropriate inscription reciting

the reason for the award, which form and design shall be approved by the Governor and Council of State. (1961, c. 1143, s. 1.)

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

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

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

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

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

Chapter 142.

State Debt.

ARTICLE 6.

Citations to Bond and Note Acts.

52. Capital Improvement State Voted Bond Improvement Act of 1959. 1959, c. 1038.
53. State Capital Improvement Act of 1959. 1959, c. 1039.
54. State Capital Improvement Legislative Bond Act of 1961. 1961, c. 951.
55. State Capital Improvement Voted Bond Act of 1961. 1961, c. 1037.
56. Stadium Revenue Bond Act. 1963, c. 686.
57. State Capital Improvement Legislative Bond Act of 1963. 1963, c. 838.
58. Bonds to provide funds for public school facilities in the counties of the State. 1963, c. 1079.

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

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

Sec.

- 143-8. Statements of State Disbursing Officer as to legislative expenditures.
- 143-31.2. Appropriation, allotment, and expenditure of funds for historic and archeological property.

Article 2A.

Incentive Award Program for State Employees.

- 143-47.1. Incentive award program established; purpose.
- 143-47.2. State Personnel Council to adopt rules and regulations governing program.
- 143-47.3. State Employees' Incentive Awards Committee; appointment; terms of office; compensation and expenses; duties; approval of award; facilities and personnel.
- 143-47.4. Awards.
- 143-47.5. Duration of program.

Article 3.

Purchase and Contract Division.

- 143-52.1. Certification that bids were submitted without collusion.
- 143-59. Rules and regulations covering certain purposes; sales and exchanges by Memorial Art Center.

Article 8.

Public Building Contracts.

- 143-134.1. Interest on final payments due to prime contractors.

Article 9.

Building Code Council and Building Code.

- 143-139. Enforcement of Building Code.

Article 10.

Various Powers and Regulations.

- 143-144 to 143-151. [Repealed.]

Article 12A.

State Law Enforcement Officers' Death Benefit Act.

- 143-166.1. Purpose.
- 143-166.2. Definitions.

Sec.

- 143-166.3. Payments; determination.
- 143-166.4. Funds; conclusiveness of award.
- 143-166.5. Other benefits not affected.
- 143-166.6. Awards exempt from taxes.

Article 13.

Publications.

- 143-168. Reports; conciseness; controls.
- 143-169. Limitations on publications.

Article 14.

State Planning Board.

- 143-171 to 143-177.1. [Repealed.]

Article 15.

Commission on Interstate Co-operation.

- 143-178. North Carolina Commission on Interstate Co-operation.
- 143-179. Officers of the Commission.
- 143-180. Senate members on interstate co-operation.
- 143-181. House members on interstate co-operation.
- 143-182. Terms of office of members.
- 143-186. Council of State Governments a joint governmental agency.
- 143-187. [Renumbered.]
- 143-188. [Repealed.]

Article 16.

Spanish-American War Relief Fund.

- 143-189, 143-190. [Repealed.]

Article 19B.

Historic Swansboro Commission.

- 143-204.5. Appointment of Commission; ex officio members; vacancies.
- 143-204.6. Powers.
- 143-204.7. Appropriations.

Article 20.

Recreation Commission.

- 143-207. Membership of Commission; terms; removal; vacancies; meetings; expenses.
- 143-210.1. Governor's Co-ordinating Council on Recreation.

Article 21.

State Stream Sanitation and Conservation.

- 143-214. Organization of Committee; meetings.

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Article 22.

State Ports Authority.

Sec.

- 143-216. Creation of Authority; membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.
- 143-218.1. Approval of acquisition and disposition of real property.
- 143-224. Jurisdiction of the Authority; appointment and authority of special police.

Article 23A.

Stadium Authority.

- 143-236.2 to 143-236.13. [Repealed.]

Article 24.

Wildlife Resources Commission.

- 143-241. Appointment and terms of office of Commission members.

Article 29A.

Governor's Committee on Employment of the Handicapped.

- 143-283.1. Short title.
- 143-283.2. Purpose of article; cooperation with President's Committee.
- 143-283.3. Celebration of National Employ the Physically Handicapped Week.
- 143-283.4. Governor's Committee; how constituted.
- 143-283.5. Governor's Executive Committee; how constituted.
- 143-283.6. Organization of Governor's Executive Committee; meetings; powers.
- 143-283.7. Funds, expenses and gifts; reports.
- 143-283.8. Governor's Committee nonpartisan and nonprofit.
- 143-283.9. Executive Committee a governmental agency; oaths of members; compensation; bonds.
- 143-283.10. Allocations from Contingency and Emergency Fund.

Article 30.

John H. Kerr Reservoir Development Commission.

- 143-286. Powers and duties generally; employees as special peace officers.
- 143-290.1. Responsibility and duties of Department of Conservation and Development.

Article 31.

Tort Claims against State Departments and Agencies.

Sec.

- 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.
- 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

Article 34.

Board of Water Commissioners; Water Conservation and Education; Emergency Allocations.

- 143-317 to 143-328. [Repealed.]

Article 38.

Department of Water Resources.

- 143-348. Short title.
- 143-349. Department of Water Resources created.
- 143-350. Definitions.
- 143-351. Declaration of policy.
- 143-352. Purpose of article.
- 143-353. Board of Water Resources; composition, powers, appointment of Director.
- 143-354. Ordinary powers and duties of the Board.
- 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Conservation and Development and of the Director of said Department.
- 143-356. Continuation of Stream Sanitation Committee, Division of Water Pollution Control and Director of Division within Department of Water Resources.
- 143-357. Transfer of property, records, and appropriations.
- 143-358. Cooperation of State officials and agencies.
- 143-359. Biennial reports of Board of Water Resources.

Article 39.

U. S. S. North Carolina Battleship Commission.

- 143-360. Title.
- 143-361. Definitions.
- 143-362. Statement of purpose.
- 143-363. Battleship Commission created; membership; duration.
- 143-364. Meetings of Commission; organization.

Sec.

- 143-365. Compensation of commissioners.
- 143-366. Duties of Commission.
- 143-367. Funds.
- 143-368. Employees.
- 143-369. Employees not to have interest.

Article 40.

Advisory Commission for State Museum of Natural History.

- 143-370. Commission created; membership.
- 143-371. Duties of Commission; meetings, formulation of policies and recommendations to Governor and General Assembly.
- 143-372. No compensation of members; reimbursement for expenses.
- 143-373. Reports to General Assembly.

Article 41.

Space and Technology Research Center.

- 143-374. Creation of Center.
- 143-375. Administration by Board of Space and Technology.
- 143-376. Acceptance of funds.
- 143-377. Applicability of Executive Budget Act.

Article 42.

Board of Space and Technology.

Sec.

- 143-378. Creation; purpose.
- 143-379. Members; appointment; terms of office; qualifications; vacancies.
- 143-380. Powers and duties.
- 143-381. Facilities; employees.
- 143-382. Per diem and expense allowances of members.
- 143-383. Budget.

Article 43.

North Carolina Seashore Commission.

- 143-384. Commission created; members; chairman.
- 143-385. Appointment and terms; vacancies.
- 143-386. Vice-chairman; secretary; meetings; rules, regulations and by-laws; quorum.
- 143-387. Ex officio members.
- 143-388. Powers and duties.
- 143-389. Reports; recommendations and suggestions.
- 143-390. Expenses and per diem.
- 143-391. Board of Water Resources to provide staff assistance and facilities.

ARTICLE 1.

Executive Budget Act.

§ 143-3.2. **Issuance of warrants upon State Treasurer.** — Upon the transfer of functions from the Auditor's office to the Director of the Budget, as provided in § 143-3.1, the Director of the Budget shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer; and to carry out this responsibility the Director shall designate a State Disbursing Officer whose duties shall be performed as a function of the Department of Administration. All warrants upon the State Treasurer shall be signed by the State Disbursing Officer, who before issuing same shall determine the legality of payment and the correctness of the accounts; provided that the State Auditor and the State Treasurer shall have the exclusive authority to issue all warrants for the operation of their respective department and such warrants shall be paid by the State Treasurer from the appropriations provided therefor; and provided further, that when considered expedient, due to its size or location, a State agency may upon approval of the Director of the Budget make expenditures through a disbursing account with the State Treasurer. All deposits in such disbursing accounts shall be by the State Disbursing Officer's warrant, and a copy of each voucher making withdrawals from such disbursing accounts, together with such supporting data as may be required by the Director of the Budget, shall be forwarded to the Department of Administration monthly or otherwise as may be required by the Director of the Budget; provided, however, that a central payroll unit operating under the Department of Administration may make deposits and withdrawals directly to and from a disbursing account which shall constitute a revolving fund for servicing payrolls passed through such central payroll unit. The State Disbursing Officer is authorized to

use a facsimile signature machine in affixing his signature to warrants. The Director of the Budget shall secure insurance and/or a bond in an amount of not less than twenty-five thousand dollars (\$25,000) to protect the State of North Carolina against any misuse or unauthorized use of the facsimile signature machine by any person. It is further required that the State Disbursing Officer shall be placed under an official bond in a penal sum to be fixed by the Governor and Advisory Budget Commission at not less than fifty thousand dollars (\$50,000). Such official bond shall be a bond with corporate surety and furnished by a company admitted to do business in the State, and the premiums will be paid by the State out of the appropriations to the Department of Administration. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1961, c. 1194.)

Editor's Note.—

The 1961 amendment added the proviso at the end of the third sentence.

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

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

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

Editor's Note.—

The 1961 amendment substituted "State

Disbursing Officer" for "State Auditor" in line five.

§ 143-31. Building and permanent improvement funds spent in accordance with budget.—All buildings and other permanent improvements, which shall be erected and/or constructed, shall be erected and/or constructed, and carried on and the money spent therefor in strict accordance with the budget requests of such institution, board, commission, agency, person, or corporation

filed with the Director of the Budget. The expenditure of appropriations for maintenance shall be in strict accordance with the budget recommendations for such institution, board, commission, agency, person or corporation and/or as amended or changed by the General Assembly. It shall be the duty of the Director of the Budget to see that all money appropriated for either permanent improvements or maintenance shall be expended in strict accordance with the budget recommendations and/or as amended by the General Assembly, for each department, institution, board, commission, agency, person or corporation. If the Director of the Budget shall ascertain that any department, institution, board, commission, agency, person or corporation has used any of the moneys appropriated to it for any purpose other than that for which it was appropriated and budgeted, as herein required, and not in strict accordance with the terms of this article, the Director of the Budget shall have the power and he is hereby authorized to notify such institution, board, commission, agency, person or corporation that no further sums from any appropriation made to it will be available to such department, institution, board, commission, agency, person or corporation until and after the persons responsible for the diversion of the said funds shall have replaced the same, and the Director of the Budget shall have the power and he is hereby authorized to notify the State Disbursing Officer not to approve or issue any further warrants for such department, institution, board, commission, agency, person or corporation for any unexpended appropriation and the State Disbursing Officer is hereby prohibited from approving or issuing any further warrants for such department, institution, board, commission, agency, person or corporation until he shall have been otherwise directed by the Director of the Budget. (1925, c. 230, s. 3; 1929, c. 100, s. 33; 1961, c. 1181, s. 3.)

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

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

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

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

Archives and History has found that there is a feasible and practical method of providing funds for the acquisition, restoration and/or operation of such property. (1963, c. 210, s. 3.)

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

Editor's Note.—

Disbursing Officer" for "State Auditor" in

The 1961 amendment substituted "State line seven.

ARTICLE 2.

State Personnel Department.

§ 143-35. State Personnel Department established.

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

Two of the Council members shall be appointed by the Governor to serve

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

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

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

(1961, c. 625.)

Editor's Note. — The 1961 amendment, effective July 1, 1961, rewrote subsection (b), increasing the membership of the Council from five to seven members. As the rest of the section was not affected by the amendment it is not set out.

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

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

When the personnel survey and investigation is completed with respect to a particular State department, bureau, agency or commission, the State Personnel Director shall file a report with the Governor and with the head of such department, bureau, agency or commission, setting out the classification of each State position, and the salaries and wages to be paid to each of the employees in said State department, bureau, agency or commission, and the scale of increments to be granted at least once each year to each State employee whose services have met the standard of efficiency as established by the State Personnel Director and approved by the Council and Governor: Provided, however, in establishing the standard of efficiency for the purpose of annual increments, the regulations shall provide that all State employees whose services merit retention in service shall, as hereinafter set forth, be granted annual increments up to but not exceeding the intermediate salary step nearest to the middle of the salary range established for the respective classification and/or position, and those State employees whose services meet higher standards, as formulated and fixed by the State Personnel Director and Council, shall, as hereinafter set forth, be given annual increments up to but not exceeding the maximum of the salary range for the respective classification and/or position.

Notwithstanding any other provisions of this section, the State Personnel

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

Editor's Note.—

The 1961 amendment, effective July 1, 1961, added the last paragraph.

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

Editor's Note.—

The 1963 amendment added the second proviso at the end of this section.

§ 143-46. Exemptions; persons and employees not subject to this article.—The provisions of this article shall not apply to certain persons and employees as follows: Persons employed solely on an hourly basis except as to fixing compensation; public school superintendents; principals and teachers and other public school employees; instructional and research staff of the educational institutions of the State; employees of the State Farmers' Market at Raleigh; Business Managers of the University of North Carolina, Consolidated, the University of North Carolina, the State College of Agriculture and Engineering, the Woman's College, East Carolina College, and the Appalachian State Teachers College; professional staff of hospitals, asylums, reformatories and correctional institutions of the State; members of boards, bureaus, agencies, commissions, councils and advisory councils, compensated on a per diem basis; constitutional officers of the State and except as to salaries, their chief administrative assistant; officials and employees whose salaries are fixed by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State, or Advisory Budget Commission, by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by the Governor subject to the approval of a definitely named officer, agent, bureau, agency or commission of the State by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by statute or by virtue of a specific statutory method other than by the method provided by this article explicitly pertaining to such officials and/or employees. In all cases of doubt or where any question

arises as to whether or not any person, official or employee is subject to the provisions of this article, the doubt, controversy or question shall be investigated and decided by the State Personnel Director with the approval of the Council and such decision shall be final. Where the approval of any appointment, employment and/or salary is required by statute to be made by the Budget Bureau or assistant to the Director of the Budget (by whatever title or name), all such authority and power of approval, in whatever manner or form exercised, is hereby transferred to and vested in the State Personnel Director, and all such statutes shall be deemed to be amended to such extent. (1949, c. 718, s. 1; 1957, c. 1447; 1961, c. 833, s. 23.1; 1963, c. 958.)

Editor's Note.—

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

The 1963 amendment inserted the words "except as to fixing compensation" near the beginning of this section. The amenda-

tory act states that it is "the intent and purpose of this act to make article 2 of chapter 143 of the General Statutes applicable to persons employed solely on an hourly basis for the purpose of surveying and resurveying positions held by such persons and prescribing rates of compensation therefor."

ARTICLE 2A.

Incentive Award Program for State Employees.

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

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

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

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

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

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

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

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

ARTICLE 3.

Purchase and Contract Division.

§ 143-49. **Powers and duties of Director.**

- (4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer and/or exchange to or between all State

departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to have supervision of inventories of all fixed property and moveable equipment, supplies and materials belonging to the State government, or any of its departments, institutions or agencies; the duties imposed by this subsection shall not relieve any department, institution or agency of the State government from accountability for equipment, materials or supplies under its control.

(1961, c. 310.)

Editor's Note.—

The 1961 amendment substituted "have supervision of" for the word "maintain" in line six and added the rest of subdivi-

sion (4) beginning with the words "the duties" in line eight. As only subdivision (4) was changed the rest of the section is not set out.

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

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

- (1) Requiring monthly reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.
- (2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.
- (3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions or agencies in compliance with specifications.
- (4) Prescribing the manner in which purchases shall be made by the Director of Administration in all emergencies as defined in § 143-55.
- (5) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article.

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

Editor's Note.—

The 1961 amendment added the provi-

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-117. **Institutions included.**—All persons admitted to Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, John Umstead Hospital, Murdoch School, O'Berry School, Caswell School at Kinston, Stonewall Jackson Training School for Boys at Concord, the State Home and Industrial School for Girls at Samarcand, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County, the School for the Deaf at Morganton, and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29; 1959, c. 1028, ss. 1-7.)

Editor's Note.—

The 1959 amendment changed the names of the State Hospital at Raleigh, State Hospital at Morganton, State Hospital at Goldsboro, State Hospital at Butner, Butner Training School, Goldsboro Training

School and Caswell Training School to Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, John Umstead Hospital, Murdoch School, O'Berry School and Caswell School, respectively.

ARTICLE 8.

Public Building Contracts.

§ 143-128. **Separate specifications for building contracts; responsible contractors.**—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the State, or for any county or municipality, when the entire cost of such work shall exceed twenty thousand dollars (\$20,000.00), must have prepared separate specifications for each of the following branches of work to be performed:

- (1) Heating and ventilating and accessories.
- (2) Plumbing and gas fitting and accessories.
- (3) Electrical installations.
- (4) Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions, provided, however, that when heating and ventilating, and air conditioning for comfort cooling, is to be constructed using essentially the same conductive facilities or duct work, or the said systems for heating, ventilating and/or air conditioning are to be constructed as parts of the same contract, a combined bid for these two classes of work may be submitted. All contracts hereafter awarded by the State, or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work. When the estimated cost of work to be performed in any single subdivision is less than one thousand dollars (\$1,000.00), the same may be included in one of the several other contracts, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For

the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State, or with any county or municipality, for the erection, construction or alteration of any building or buildings. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7.)

Editor's Note.—

The 1963 amendment made this section applicable to buildings erected, etc., for counties and municipalities, as well as for the State. It also substituted "twenty

thousand dollars (\$20,000.00)" for "fifteen thousand dollars (\$15,000.00)" in the first paragraph and added the proviso to the first sentence of the second paragraph.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.—No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three thousand five hundred dollars (\$3,500.00) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand dollars (\$2,000.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall elapse between the date of publication of notice and the date of the opening of the bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision: Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than three thousand dollars (\$3,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other subdivision wherein there is no newspaper published and the estimated cost of the contract is less than three thousand dollars (\$3,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door of the county in which such city, town or other subdivision is situated and at least one public place in such city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this article and no board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality, performance and the time spec-

ified in the proposals for the performance of the contract. In the event the lowest responsible bid is in excess of the funds available for such purpose, such board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned and may award such contract to such bidder if such bidder will agree to perform the same, without making any substantial changes in the plans and specifications, at a sum within the funds available therefor. If the contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, the said letting and make such changes in the plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor. No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation, in an amount equal to not less than five per cent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within ten days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the State, or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects: Provided, that in the case of contracts for the purchase of apparatus, supplies, materials, or equipment the board or governing body may waive the requirement for the deposit of a surety bond or securities as required herein.

The owning agency or the Budget Bureau, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, and funds of political subdivisions of the State, in contracts with such political subdivisions, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State gov-

ernment or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of G. S. 143-131.

The Director of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; 1933, c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226.)

Local Modification. — City of Greensboro: 1959, c. 1137, s. 14.

By virtue of Session Laws 1963, c. 768, s. 3, Guilford should be stricken from the replacement volume.

Editor's Note.—

The first 1959 amendment added the proviso to the third paragraph, and the second 1959 amendment rewrote the last two paragraphs.

The 1961 amendment inserted the paragraph relating to sealed bids.

Session Laws 1959, c. 910, ss. 1A and 1B, provide: "Nothing in this act shall be construed to authorize the Division of Purchase and Contract of the Department of Administration to make any purchases for or on behalf of any county, city or town government in this State or any other political subdivision.

"The powers granted herein are in addi-

tion to and not in substitution for existing powers granted by general laws or special acts to cities and towns."

Public policy has for many years required governmental needs to be supplied pursuant to contracts with low bidders ascertained by public advertisement. North Carolina has for many years so provided by this section. *Douglas Aircraft Co. v. Local Union 379*, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

Contract Made in Violation, etc.—

Where plaintiffs laid water lines as a business investment pursuant to an agreement with the city's director of utilities that the city would reimburse them for the moneys so expended if the lines were incorporated within the city's limits, the contract was void. *Styers v. Gastonia*, 252 N. C. 572, 114 S. E. (2d) 348 (1960).

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.—All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five hundred dollars (\$500.00) or more but less than the limits prescribed in G. S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contracts to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172.)

Local Modification.—By virtue of Session Laws 1963, c. 768, s. 3, Guilford should be stricken from the replacement volume.

Editor's Note.—

The 1959 amendment rewrote this section.

The 1963 amendment substituted "five hundred dollars (\$500.00)" for "two hundred dollars (\$200.00)."

§ 143-132. **Minimum number of bids for public contracts.**—No contracts to which § 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective line of endeavor, when the estimated cost of the project exceeds the sum of twenty thousand dollars (\$20,000.00); however, this section shall not apply to contracts which are negotiated as provided for in § 143-129. Provided that if after advertisement for bids as required by G. S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State institution or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289.)

Editor's Note.—

The 1959 amendment added the proviso.
The 1963 amendment substituted in the

first sentence "twenty thousand dollars (\$20,000.00)" for "fifteen thousand dollars (\$15,000.00)."

§ 143-134.1. **Interest on final payments due to prime contractors.**—On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except the construction of roads, highways, bridges and their approaches, the balance due prime contractors shall be paid in full within forty-five days after respective prime contracts of the project have been accepted by the owner, certified by the architect or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purposes for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the forty-five-day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than forty-five days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of six per cent (6%) per annum on such unpaid balance as may be due. Funds for payment of such interest on State-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. (1959, c. 1328.)

§ 143-135. **Limitation of application of article.**

Local Modification.—Ashe: 1959, c. 627; city of Marion: 1959, c. 553; Moore: 1959, Brunswick: 1961, c. 503; McDowell and c. 439.

ARTICLE 9.

*Building Code Council and Building Code.***§ 143-136. Building Code Council created; membership.**

Cited in *Jenkins v. Leftwich Electric Co.*, 254 N. C. 553, 119 S. E. (2d) 767 (1961).

§ 143-138. North Carolina State Building Code.**History.—**

See *Jenkins v. Leftwich Electric Co.*, 254 N. C. 553, 119 S. E. (2d) 767 (1961).

Building Code Has Force of Law.—

By virtue of subsection (f) of this section, on July 13, 1957, the North Carolina Building Code of 1953 had the force of law. *Drum v. Bisaner*, 252 N. C. 305, 113 S. E. (2d) 560 (1960).

National Electrical Code Has Force of Law.—On 10 November 1959, the National Electrical Code, as approved by the American Standards Association on 5 August 1959, and which Code is filed in the office of the Secretary of State of North Carolina, by virtue of this section has the force and effect of law in North Carolina. *Jenkins v. Leftwich Electric Co.*, 254 N. C. 553, 119 S. E. (2d) 767 (1961).

And Violation Thereof Is Negligence Per Se.—Violations of the National Electrical Code, authorized by this section, are negligence per se. *Jenkins v. Leftwich Electric Co.*, 254 N. C. 553, 119 S. E. (2d) 767 (1961).

Since article 300, sections 3008-3009, of the National Electrical Code has the force and effect of a statute, the failure to use a box or terminal fitting or bushing where the conductors left the electrical metal tubing on a kitchen exhaust fan was negligence per se. *Drum v. Bisaner*, 252 N. C. 305, 113 S. E. (2d) 560 (1960).

Applied in *Swaney v. Peden Steel Co.*, 259 N. C. 531, 131 S. E. (2d) 601 (1963).

§ 143-139. Enforcement of Building Code. — (a) **Procedural Requirements.—**Subject to the provisions set forth herein, the Building Code Council shall adopt such procedural requirements in the North Carolina State Building Code as shall appear reasonably necessary for adequate enforcement of the Code while safeguarding the rights of persons subject to the Code.

(b) **General Building Regulations.—**The Insurance Commissioner shall have general supervision, through the Division of Engineering of the Department of Insurance, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code, the enforcement of which is specifically allocated to other agencies by subsections (c) and (d) below. The Insurance Commissioner, by means of the Division of Engineering, shall exercise his duties in the enforcement of the North Carolina State Building Code (including local building codes which have superseded the State Building Code in a particular political subdivision pursuant to G. S. 143-138 (e) in cooperation with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners pursuant to article 11, chapter 160 of the General Statutes of North Carolina, or G. S. 160-200(29), or G. S. 153-9(47) and (52), or any other applicable statutory authority.

(c) **Boilers.—**The Bureau of Boiler Inspection of the Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to boilers of the types enumerated in article 7 of chapter 95 of the General Statutes.

(d) **Elevators.—**The Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to elevators, moving stairways, and amusement de-

vices such as merry-go-rounds, roller coasters, Ferris wheels, etc. (1957, c. 1138; 1963, c. 811.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section.

ARTICLE 10.

Various Powers and Regulations.

§§ 143-144 to 143-151: Repealed by Session Laws 1959, c. 683, s. 6.

ARTICLE 12.

Law Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law Enforcement Officers' Benefit and Retirement Fund.

(b) For the purpose of determining the recipients of benefits under this section and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund," which shall consist of the State Auditor, who shall be chairman ex officio of said Board, the State Treasurer, the State Insurance Commissioner, and four members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one from the group of law enforcement officers as hereinafter defined, employed by the State, and one representing the public at large. No member of said Board of Commissioners shall receive any salary, compensation or expenses other than that provided in G. S. 138-5 for each day's attendance at duly and regularly called and held meetings of the Commission, the total of which meetings for which per diem may be allowable as herein provided not to exceed eight meetings in any one year. Four members of said Board shall constitute a quorum at any of said meetings, and no business shall be transacted unless a quorum be present. Ex officio members shall not receive any per diem.

(g) The Board of Commissioners of the said Fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said Fund in accordance with the purposes of this article. And the Board shall have the authority to invest and reinvest any funds not immediately needed in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the federal intermediate credit banks, federal home loan banks, Federal National Mortgage Association, banks for cooperatives, and federal land banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties, and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services;
- (7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency

- of the United States Government, or by some other agency of the United States Government;
- (8) In certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the Federal Deposit Insurance Corporation not to exceed the sum of ten thousand dollars (\$10,000.00) in any one bank or trust company; and
 - (9) In the shares of federal savings and loan associations and State chartered building or savings and loan associations in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed ten thousand dollars (\$10,000.00) in any one of such associations.

Subject to the limitations set forth above, said Board shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this article, he shall voluntarily pay into the Fund herein created a percentage of his monthly salary, which percentage shall be determined by the said Board: Provided, that any officer so voluntarily contributing to the Fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the Fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the Retirement Fund herein provided for, shall voluntarily pay into the Fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the Fund for credit to the individual account of such member, either or both:

- (1) An amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall not exceed in any year fifteen per cent (15%) of such member's compensation; and
- (2) A sum not to exceed three times the value of prior service of such member as determined by the Board of Commissioners;

such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the

basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law enforcement officer an amount equal to three times the value of his prior service and an amount equal to three times the cost of matching his contribution. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided by chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law Enforcement Officers' Benefit and Retirement Fund.

(m) Law enforcement officers in the meaning of this article shall include sheriffs, deputy sheriffs, constables, police officers, prison wardens and deputy wardens, prison camp superintendents, prison stewards, prison foremen and guards, highway patrolmen, and any citizen duly deputized as a deputy by a sheriff or other law enforcement officer in an emergency, and all other officers of this State, or of any political subdivision thereof, who are clothed with the full power of arrest and whose primary duties consist of enforcing on public property the criminal laws of the State and/or serving civil processes.

(1961, c. 397; 1963, cc. 144, 939, 953.)

Editor's Note.—

The 1961 amendment changed subsection (g) by substituting "three" for "two" in line two of subdivision (6) and rewriting subdivision (7).

The first 1963 amendment struck out "a per diem of not exceeding seven dollars (\$7.00)" following the word "than" in the second sentence of subsection (b) and inserted in lieu thereof "that provided in G. S. 138-5."

The second 1963 amendment rewrote the latter part of subsection (m).

The third 1963 amendment substituted

"fifteen per cent (15%)" for "five per cent (5%)" in subdivision (1) of the third paragraph of subsection (i) and inserted "three times" near the beginning of subdivision (2) of the same paragraph. The third amendment also inserted "three times" and "an amount equal to three times" in the first sentence of the fourth paragraph of subsection (i).

As only subsections (b), (g), (i) and (m) were changed by the amendments the rest of the section is not set out.

Social Security Coverage for Members.

—For act making appropriations so as to

provide social security coverage for State Benefit and Retirement Fund, see Session law enforcement officers who are mem- Laws 1959, c. 1169.
bers of the Law Enforcement Officers'

ARTICLE 12A.

*State Law Enforcement Officers'
Death Benefit Act.*

§ 143-166.1. **Purpose.** — In consideration of hazardous public service rendered to the State and as deferred compensation to law enforcement officers employed by the State, there is hereby provided a system of death benefits for dependents who are closely related to such officers as may be violently killed in the discharge of their official duties. (1959, c. 1323, s. 1.)

Editor's Note.—Section 2 of the act inserting this article provides that the provisions of the act shall also apply and be in full force and effect with respect to any State law enforcement officer violently killed in the discharge of his official duties on or after January 1, 1949.

Section 2½ of the act inserting this article provides that the provisions of the act shall not apply to any State law enforcement officer accidentally or violently killed in the discharge of his official duties after June 20, 1959.

§ 143-166.2. **Definitions.**—The following words and phrases, when used in this article, shall have the meanings assigned to them by this section unless the context clearly indicates another meaning:

- (1) The term "State law enforcement officer" or the term "officer" shall mean officers and members of the State Highway Patrol and officers and special agents of the State Bureau of Investigation;
- (2) The term "widow" shall mean the wife of an officer who survives him and who was residing with such officer at the time of and during the six months next preceding the time of violent injury to such officer which resulted in his death and who also resided with such officer from the date of injury up to and at the time of his death;
- (3) The term "dependent child" shall mean any unmarried child of the deceased officer, whether natural, adopted or posthumously born, who was under eighteen years of age and dependent upon and receiving his chief support from said officer at the time of his death;
- (4) The term "dependent parent" shall mean a parent of an officer, whether natural or adoptive, who was dependent upon and receiving his chief support from the officer at the time of the violent injury which resulted in his death;
- (5) The term "violently killed" shall mean death of an officer resulting from wounds intentionally inflicted on such officer by any assailant, known or unknown. (1959, c. 1323, s. 1.)

§ 143-166.3. **Payments; determination.**—When any State law enforcement officer shall be violently killed while in the discharge of his official duties, the Council of State shall award the total sum of ten thousand dollars (\$10,000.00) as follows:

- (1) To the widow of such officer if there be a surviving widow; or
- (2) If there be no widow qualifying under the provisions of this article, then said sum shall be awarded to any surviving dependent child of said officer, and if there is more than one surviving dependent child, then said sum shall be awarded to and equally divided among all surviving dependent children; or
- (3) If there be no widow and no dependent child or children qualifying under the provisions of this article, then the sum shall be awarded

to the surviving dependent parent of such officer; and if there be more than one surviving dependent parent, then said sum shall be awarded to and equally divided between the surviving dependent parents of said officer. (1959, c. 1323, s. 1.)

§ 143-166.4. **Funds; conclusiveness of award.**—Such awards of death benefits as are provided for by this article shall be made by the Council of State from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this article are hereby appropriated from said fund for this special purpose.

The Council of State shall have power to make necessary rules and regulations for the administration of the provisions of this article. It shall be vested with power to make all determinations necessary for the administration of this article and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Council itself. The Council of State shall keep a record of all proceedings conducted under this article and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Council shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Council of State may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder or to testify with respect to any matter relevant to proceedings conducted under this article, the Superior Court of Wake County, on application of the Council of State, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt. (1959, c. 1323, s. 1.)

§ 143-166.5. **Other benefits not affected.**—None of the other benefits now provided for State law enforcement officers or their dependents by the Workmen's Compensation Act or other laws shall be affected by the provisions of this article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1959, c. 1323, s. 1.)

§ 143-166.6. **Awards exempt from taxes.**—Any award made under the provisions of this article shall be exempt from taxation by the State or any political subdivision thereof, but so much of any such award as may be necessary to satisfy any valid claims of creditors against the deceased officer may be liable therefor, but the Council of State shall not be responsible for any determination of the validity of such claims and shall distribute the death benefits awards directly to the dependent or dependents entitled thereto under the provisions of this article. (1959, c. 1323, s. 1.)

ARTICLE 13.

Publications.

§ 143-168. **Reports; conciseness; controls.**—The annual or biennial reports now authorized or required to be printed by the several State agencies and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of those agencies and institutions. The details of the work of the agencies and institutions shall not be printed when not necessary to an intelligent understanding of such work, but totals and results may be tabulated and printed in their reports. The Department of Administration shall make such rules as may be necessary prescribing the scope and format of the matter to be published in annual or biennial reports, the methods of reproduction to be employed, and the number of copies of such reports to be published by

the several State agencies and institutions. (1911, c. 211, s. 2; 1917, c. 202, s. 2; C. S., s. 7294; 1931, c. 261, s. 3; 1955, c. 983; 1961, c. 243, s. 2.)

Editor's Note.—

The 1961 amendment rewrote this section.

§ 143-169. **Limitations on publications.**—(a) The Department of Administration shall make such rules as may be necessary prescribing the format of the matter to be published, the number of copies to be published, and the methods of reproduction to be employed in the publications of the several State agencies and institutions, other than annual or biennial reports.

(b) Every publication published at State expense which makes use of the multi-color process is prohibited except:

- (1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;
- (2) When the publication is a project of the Department of Conservation and Development, or is a part of the magazine "Wildlife in North Carolina", published under the auspices of the Wildlife Resources Commission; or
- (3) When the express approval of the Department of Administration is obtained. (1911, c. 211, s. 2; C. S., s. 7302; 1931, c. 261, s. 3; 1931, c. 312, ss. 14, 15; 1955, c. 1203; 1961, c. 243, s. 3.)

Editor's Note.—

The 1961 amendment rewrote this section.

ARTICLE 14.

State Planning Board.

§§ 143-171 to 143-177.1: Repealed by Session Laws 1959, c. 24.

ARTICLE 15.

Commission on Interstate Co-operation.

§ 143-178. **North Carolina Commission on Interstate Co-operation.**

—There is hereby established the North Carolina Commission on Interstate Co-operation. This Commission shall be composed of ten members as follows:

- (1) Speaker of the House of Representatives;
- (2) Three senators designated by the President of the Senate;
- (3) Three representatives designated by the Speaker of the House; and
- (4) Three administrative officials designated by the Governor. (1937, c. 374, s. 4; 1947, c. 578, s. 3; 1959, c. 137, s. 2; 1961, c. 1108.)

Editor's Note.—

The 1959 act abolishing the Governor's Committee on Intestate Co-operation and revising the membership of the North Carolina Commission on Interstate Co-operation, repealed former §§ 143-178

through 143-182, 143-186 and 143-188. The act also enacted new §§ 143-178 through 143-182, amended § 143-183 and renumbered § 143-187 as § 143-186.

The 1961 amendment rewrote this section.

§ 143-179. **Officers of the Commission.** — The Governor shall biennially designate the chairman of the Commission from among the legislative members of the Commission. The Commission shall biennially elect its secretary from its membership. (1937, c. 374, s. 4; 1947, c. 578, s. 3; 1959, c. 137, s. 2.)

§ 143-180. **Senate members on interstate co-operation.** — The President of the Senate shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the

Senate as members of the Commission on Interstate Co-operation. (1937, c. 374, s. 1; 1947, c. 578, s. 1; 1959, c. 137, s. 2.)

§ 143-181. **House members on interstate co-operation.** — The Speaker of the House of Representatives shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the House as members of the Commission on Interstate Co-operation. (1937, c. 374, s. 2; 1947, c. 578, s. 2; 1959, c. 137, s. 2.)

§ 143-182. **Terms of office of members.** — Each of the Senate and House members of the Commission shall serve until his successor as a member of the Commission is designated. Each administrative member of the Commission shall serve for a term of two years and until his successor is designated. (1959, c. 137, s. 2.)

§ 143-183. **Functions and purpose of Commission.** — It shall be the function of this Commission:

- (1) To carry forward the participation of this State as a member of the Council of State Governments.
- (2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.
- (3) To endeavor to advance co-operation between this State and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:
 - a. The adoption of compacts,
 - b. The enactment of uniform or reciprocal statutes,
 - c. The adoption of uniform or reciprocal administrative rules and regulations,
 - d. The informal co-operation of governmental offices with one another,
 - e. The personal co-operation of governmental officials and employees with one another, individually,
 - f. The interchange and clearance of research and information, and
 - g. Any other suitable process.
- (4) To study, analyze, and report to the Governor and the General Assembly its recommendations concerning interstate compacts affecting the interests of North Carolina and studies and reports prepared by the Council of State Governments and similar agencies; regularly to inform the members of the General Assembly and other State officials of the publications and services which the Council of State Governments makes available to them; and to attend appropriate national and regional conferences of State officials considering interstate problems of concern to North Carolina and report thereon to the Governor and the General Assembly.
- (5) In short, to do all such acts as will, in the opinion of this Commission, enable this State to do its part—or more than its part—in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose. (1937, c. 374, s. 6; 1959, c. 137, s. 3.)

Editor's Note. — The 1959 amendment division (5) and inserted new subdivision renumbered former subdivision (4) as sub- (4).

§ 143-186. **Council of State Governments a joint governmental agency.**—The Council of State Governments is hereby declared to be a joint

governmental agency of this State and of the other states which co-operate through it. (1937, c. 374, s. 10; 1959, c. 137, s. 4.)

Editor's Note. — The 1959 amendment renumbered former § 143-187 as this section.

§ 143-187: Renumbered as § 143-186 by Session Laws 1959, c. 137, s. 4.

§ 143-188: Repealed by Session Laws 1959, c. 137, s. 1.

ARTICLE 16.

Spanish-American War Relief Fund.

§§ 143-189, 143-190: Repealed by Session Laws 1961, c. 481.

ARTICLE 18.

Rules and Regulations Filed with Secretary of State.

§ 143-195. **Certain State agencies to file administrative regulations or rules of practice with Secretary of State; rate, service or tariff schedules, etc., excepted.**

Cited in *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962); *Swaney v. Peden Steel Co.*, 259 N. C. 531, 131 S. E. (2d) 601 (1963).

ARTICLE 19B.

Historic Swansboro Commission.

§ 143-204.5. **Appointment of Commission; ex officio members; vacancies.**—The Governor is hereby authorized, empowered and directed to appoint a commission of not less than 15 members, to be known as the Historic Swansboro Commission. In addition to the members to be appointed by the Governor, the mayor of the town of Swansboro, the chairman of the board of commissioners of Onslow County, and the Director of the State Department of Archives and History shall serve on the said Commission as ex officio members. The Governor is authorized to fill any vacancies on the Commission occasioned by the members appointed by him. (1963, c. 607, s. 1.)

§ 143-204.6. **Powers.**—The aforesaid Commission is authorized and empowered to acquire title to historic properties in or near the town of Swansboro, and to repair, restore or otherwise improve such properties and to maintain them until the work of the Commission shall be terminated. (1963, c. 607, s. 2.)

§ 143-204.7. **Appropriations.**—Any appropriations voted by the General Assembly that may be for the purposes stated above shall be made to the State Department of Archives and History. (1963, c. 607, s. 3.)

ARTICLE 20.

Recreation Commission.

§ 143-205. **Recreation Commission created.**—There is hereby created an agency to be known as the North Carolina Recreation Commission. (1945, c. 757, s. 1; 1963, c. 542.)

Editor's Note. — The 1963 act re-enacted this section without change.

§ 143-206. **Definitions.**—(a) Recreation, for the purposes of this article, is defined to mean those activities which are diversionary in character and which

aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature.

(b) Commission means the North Carolina Recreation Commission.

(c) Committee means the Advisory Recreation Committee.

(d) Council means the Governor's Co-ordinating Council on Recreation. (1945, c. 757, s. 2; 1963, c. 542.)

Editor's Note. — The 1963 amendment and "nature" in subsection (a) and added deleted the word "time" between "leisure" subsection (d).

§ 143-207. **Membership of Commission; terms; removal; vacancies; meetings; expenses.**—(a) The Recreation Commission shall consist of ten members, and shall include the Governor, the chairman of the Committee, a representative of the Council, the President of the North Carolina Recreation Society, and six other members who shall be appointed by the Governor. The six original members so appointed by the Governor shall serve for terms as follows: One member shall be appointed for a term of six (6) years, one for a term of five (5) years, one for a term of four (4) years, one for a term of three (3) years, one for a term of two (2) years, and one for a term of one (1) year. Successive members shall be appointed to serve for terms of six (6) years each. In addition, the Governor shall appoint the representative of the Council who shall serve for a term of two (2) years. The Committee chairman and the President of the North Carolina Recreation Society shall serve on the Commission only while holding these offices.

(b) In making appointments to the Commission, the Governor shall choose persons who understand the rural, urban, governmental, private and professional membership groups, and commercial recreation interests of North Carolina and the nation. The Commission shall elect one of its members to act as chairman. A majority of the Commission shall constitute a quorum.

(c) Any appointed member of the Commission may be removed by the Governor.

(d) Vacancies in the Commission shall be filled by the Governor for the unexpired term.

(e) The Commission shall meet quarterly on dates to be fixed by the chairman. The Commission may be convoked at such other times as the Governor or chairman may deem necessary.

(f) Members of the Commission shall be allowed travel and maintenance expense at the rates allowed to members of the State commissions and boards while attending meetings of the commission, or its committees, or while engaged in the performance of official duties for the commission. (1945, c. 757, s. 3; 1963, c. 542.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 143-208. **Duties of Commission.**—It shall be the duty of the Commission:

- (1) To study and appraise recreation needs of the State and to assemble and disseminate information relative to recreation.
- (2) To co-operate in the promotion and organization of local recreation systems for counties, municipalities, townships, and other political subdivisions of the State and to aid them in designing and laying out recreation areas and facilities, and to advise them in the planning and financing of recreation programs.
- (3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.
- (4) To establish and promote recreation standards.
- (5) To co-operate with State and federal agencies, the Governor's Co-ordi-

nating Council on Recreation, the Recreation Advisory Committee, private membership groups and with commercial recreation interests, in the promotion of recreation opportunities, and to act as representative of the State in recreation conferences, study groups, and other matters of recreation concern.

- (6) To submit a biennial report of its activities to the Governor. (1945, c. 757, s. 4; 1963, c. 542.)

Editor's Note. — The 1963 amendment substituted "recreation" for "recreational" in subdivisions (1) and (5) and in three places in subdivision (2). It also inserted in subdivision (5) the reference to the

Governor's Co-ordinating Council on Recreation, and at the end of subdivision (5) the provision as to acting as representative of the State.

§ 143-209. Powers of Commission.—The Commission is hereby authorized:

- (1) To make rules and regulations for the proper administration of its duties.
- (2) To accept any grant of funds made by the United States, or any agency thereof, for the purpose of carrying out any of its functions.
- (3) To accept gifts, bequests, devises and endowments. The funds, if given as an endowment, shall be invested in such securities as designated by the donor, or, if there is no designation, in those in which the State Sinking Fund may be invested. All such gifts, bequests, devices, and all proceeds from such invested endowments, shall be used for carrying out the purpose for which they are made.
- (4) To administer all funds available to the Commission, and to advise agencies, departments, organizations and groups in the planning, application and use of federal and State Funds which are assigned to or administered by the State for recreation programs and services on land water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.
- (5) To act jointly, when advisable, with any other State agency, institution, department, board or commission in order to carry out the Commission's and other objectives and responsibilities. The Commission and other agencies shall co-operate in the furtherance of the purposes of this article.
- (6) To employ, with the approval of the Governor, an executive director, and upon the recommendation of the executive director such other persons as may be needed to carry out the provisions of this article. The executive director shall act as secretary to the Commission.
- (7) To serve as the recreation co-ordinative and advisory agency for the Governor, the Council of State and the agencies and departments of State government when the use of federal funds for recreation purposes are contemplated, are requested, or are made available for use in North Carolina. (1945, c. 757, s. 5; 1963, c. 542.)

Editor's Note. — The 1963 amendment added all of subdivision (4) following the word "Commission" near the beginning of

the subdivision. It also rewrote subdivision (5) and added subdivision (7).

§ 143-210. Advisory Committee.—The Governor shall name a Recreation Advisory Committee consisting of thirty members who shall serve for terms of two (2) years. The Governor shall name one member to act as a chairman of the Committee. Vacancies occurring on the Committee shall be filled by the Governor for the unexpired term.

Members of the Committee shall represent, insofar as feasible, all groups and phases of beneficial recreation in the State.

The Committee shall meet once each year with the Commission at a time and place to be fixed by the Commission. Members of the Committee shall serve without

compensation, but shall be allowed travel and maintenance expense at the rates allowed to members of other State commissions and boards for attendance at the annual meeting and such other meetings as may be recommended by the executive director and approved by the chairman.

The Committee shall act in an advisory capacity to the Commission, discuss recreation needs of the State, exchange ideas, and make to the Commission recommendations for the advancement of recreation opportunities. (1945, c. 757, s. 6; 1963, c. 542.)

Editor's Note. — The 1963 amendment made minor changes in the first and fourth paragraphs and added to the third paragraph the provision for travel and maintenance expense.

§ 143-210.1. **Governor's Co-ordinating Council on Recreation.**—(a) The Governor shall name a Governor's Co-ordinating Council on Recreation. Members shall be appointed for two-year terms from the staff and boards or commissions of agencies and departments of State government, from regional and federal agencies and departments, from State and national groups and from private and commercial agencies and organizations.

(b) The Council shall act in a State recreation correlation capacity, for the Governor and the Commission.

(c) The Governor shall appoint, for two-year terms, a Council member who shall serve as the representative of the Governor and the Council and as a commissioner on the Commission.

(d) The Council shall meet quarterly, and at other times, at the call of the Governor, who shall serve as chairman. The chairman of the Commission shall be vice-chairman of the Council and shall serve as its chairman in the absence of the Governor. (1963, c. 542.)

ARTICLE 21.

State Stream Sanitation and Conservation.

§ 143-212. **Definitions.**

- (1) The term "Committee" shall mean the committee in the North Carolina Department of Water Resources as hereinafter provided, and the term "member" shall mean member of said committee.

(1959, c. 779, s. 8.)

Editor's Note.—

The 1959 amendment substituted "Department of Water Resources" for "State Board of Health" in subdivision (1). As

only this subdivision was affected by the amendment the rest of the section is not set out.

§ 143-213. **State Stream Sanitation Committee; creation.** — (a) Establishment of Committee. — For the purpose of administering this article, there is hereby created within the Department of Water Resources a permanent committee to be known as the "State Stream Sanitation Committee", which shall be composed of seven members appointed by the Governor, two who shall, at the time of appointment, be actively connected with and have had production experience in the field of agriculture, one who shall, at the time of appointment, be actively connected with and have had experience in the wildlife activities of the State, two who shall, at the time of the appointment, be actively connected with and have had practical experience in waste disposal problems of municipal government, and two who shall, at the time of appointment, be actively connected with and have had industrial production experience in the field of industrial waste disposal. Of the members initially appointed by the Governor, two shall serve for terms of two years each, two shall serve for terms of four years each, and two shall serve for a term of six years. Thereafter, all appointments shall be for terms of six years; provided, that the additional member representing agricul-

ture provided for in this subsection shall be appointed initially for a term of two years. Ex officio members shall have all the privileges, rights, powers and duties held by appointed members under the provisions of this article except the right to vote.

(1959, c. 779, s. 8.)

Editor's Note.—

The 1959 amendment substituted "Department of Water Resources" for "State Board of Health" in subsection (a).

Prior to the amendment the committee had nine members. The other two being the chief engineer of the State Board of

Health, and the chief engineer of the Water Resources and Engineering Division of the Department of Conservation and Development. As only this subsection was affected by the amendment the rest of the section is not set out.

§ 143-214. Organization of Committee; meetings.—(a) First Meeting; Organization; Rules; Regulations.—The Committee shall, within 30 days after its appointment, meet and organize, and elect from among its members a chairman and such other officers as it may choose for such terms as may be specified by the Committee in its rules and regulations. The chairman may appoint members to such committees as the work of the Committee may require.

(b) Meeting of Committee. — The Committee shall meet regularly, at least once every six months, at places and dates to be determined by the Committee. Special meetings may be called by the chairman on his own initiative, and must be called by him at the request of two or more members of the Committee. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum. (1951, c. 606; 1957, c. 1267, s. 2; 1959, c. 779, s. 8.)

Editor's Note.—

The 1959 amendment changed the catchline and deleted former subsections (c)

and (d) which as rewritten are now subsections (c) and (d) of § 143-356.

§ 143-215.1. Control of new sources of pollution. —(a) Required Permits.—After the effective date applicable to any watershed, no person shall:

- (1) Make any new outlet into the waters of such watershed;
- (2) Construct or operate any new disposal system within such watershed;
- (3) Alter or change the construction or the method of operation of any existing disposal system within such watershed;
- (4) Increase the quantity (determined by such method of measurement as the Committee shall prescribe by its official regulations) of sewage, industrial waste, or other waste discharged through any existing outlet or processed in any existing disposal system to an extent which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water, or to an extent beyond such minimum limits as the Committee may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;
- (5) Change the nature of the sewage, industrial waste, or other wastes discharged through any existing outlet or processed in any existing disposal system in any way which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water: Unless such person shall have applied to the Committee for and shall have received from the Committee a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit, and in this connection no such permit shall be granted for the disposal of sewage or industrial wastes into waters classified as sources of public water supply, or into unclassified waters used as sources of public water supply where the State Board of Health determines and advises the Committee that

such disposal is sufficiently close to the source of the public water supply as to have an adverse effect thereon, until the Committee has referred the complete plans and specifications to the State Board of Health and said Board advises the Committee in writing that same are approved in accordance with the provisions of G. S. 130-161. In any case where the Committee denies a permit, it shall state in writing the reason for such denial and shall also state the Committee's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. If any person has obtained the approval of the State Board of Health for the construction, alteration, or change of any disposal system and a contract has been entered into for the construction thereof, or construction has been begun thereon, or a bond election has been authorized therefor, prior to the effective date applicable to any watershed in which such disposal system is located, such person shall not be required to obtain a permit from the Committee with respect to such construction, alteration or changes.

(1959, c. 779, s. 8.)

Editor's Note.—

The 1959 amendment changed subdivision (5) of subsection (a). As only this

subsection was changed the rest of the section is not set out.

§ 143-215.3. **General powers of Committee.** — (a) Auxiliary Powers. — In addition to the specific powers prescribed elsewhere in this article, and for the purpose of carrying out its duties, the Committee shall have the power:

- (1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this article and rules of procedure establishing and amplifying the procedures to be followed in the administration of the article: Provided, that no regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by § 143-215.4;
- (2) To conduct such investigations as it may deem necessary to carry out its duties as prescribed by this article, and for this purpose to enter upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste and to require written statements or reports under oath with respect to pertinent questions relating to the operation of any sewer system, disposal system or treatment works: Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision;
- (3) To conduct public hearings in accordance with the procedures prescribed by this article;
- (4) To delegate such of the powers of the Committee as the Committee deems necessary to one or more of its members or to any qualified employee of the Board of Water Resources; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Committee; and further provided that the Committee shall not delegate to persons other than its own members the power to conduct hearings and to make decisions with respect to the classification of waters, the assignment of classifications, or the issuance of any special order for the abatement of existing pollution;
- (5) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business,

as the Committee may deem necessary for enforcement of any of the provisions of this article or of any official actions of the Committee, including proceedings to enforce subpoenas or for the punishment of contempt of the Committee;

- (6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.
- (7) To investigate any killing of fish and wildlife which, in the opinion of the Committee, is of sufficient magnitude to justify investigation, and is known or believed to have resulted from the pollution of waters as defined in this article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly, or unlawfully, or willfully and unlawfully, caused pollution of waters as defined in this article, in such quantity, concentration or manner that fish or wildlife are killed as a result thereof, the Committee may recover, in the name of the State, damages from such person.

The measures of damages shall be the amount determined by the Committee and the North Carolina Wildlife Resources Commission or the North Carolina Department of Conservation and Development, whichever has jurisdiction over the fish or wildlife destroyed, to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith.

Upon receipt of the estimate of damages caused, the Committee shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as it deems proper and reasonable and if no settlement is reached within a reasonable time, the Committee shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Committee on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this article or any other law of the State shall not bar any such action.

The proceeds of any recovery had, less the cost of investigations recovered and retained or otherwise disbursed by the Committee to the appropriate investigating agencies, shall be paid to the appropriate State agency to be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in the waters in question. Any such funds received are hereby appropriated for these designated purposes.

Nothing in this subdivision shall be construed in any way to limit or prevent any other action which is now authorized by this article.

(c) Relation with the Federal Government.—The Committee as official agency for the State is delegated to act in local administration of all matters covered by

Public Law 660, 84th Congress, as amended, and future legislation by Congress relating to water quality.

(1959, c. 779, s. 8; 1963, c. 1086.)

Editor's Note.—

The 1959 amendment substituted "Board of Water Resources" for "State Board of Health" in line three of subdivision (4) of subsection (a). It also rewrote subsection (c).

The 1963 amendment added subdivision (7) to subsection (a).

As only subsections (a) and (c) were affected by the amendments the rest of the section is not set out.

ARTICLE 22.

State Ports Authority.

§ 143-216. **Creation of Authority; membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.**

—The North Carolina State Ports Authority is hereby created, consisting of and governed by a board of nine members, said North Carolina State Ports Authority being hereinafter for convenience designated as the Authority. On or after the first day of July, 1961, the Governor shall appoint the members of said board and the membership thereof shall be selected from the State at large, and insofar as is practicable, so as to fairly represent each section of the State and all of the business, agricultural, and industrial interests of the State. Of the nine members appointed in 1961, three shall be appointed for terms of two years each, three shall be appointed for terms of four years each, and three shall be appointed for terms of six years each; thereafter, all regular appointments shall be for terms of six years. Any vacancy occurring in the membership on said board for any cause shall be filled by the Governor for the unexpired term. The board shall elect one of its members as chairman, one as vice-chairman, and shall also elect a secretary and a treasurer who may not necessarily be a member of the Authority. The board shall meet upon the call of its chairman and a majority of its members shall constitute a quorum for the transaction of its business. The members of the Authority shall not be entitled to compensation for their services but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242.)

Editor's Note.—

The 1959 amendment increased the membership of the Ports Authority from seven to nine members. Section 2 of the amendatory act provided for the appointment of the two new members.

The 1961 amendment substituted "July, 1961" for "June, 1953" in line four. It also struck out the former third and fourth sentences and inserted in lieu thereof the present third sentence.

Re-enactment of Repealed Parts of Article.

—Chapter 446 of the Session Laws of 1959 provides: "Article 22, of chapter 143, of the General Statutes of North Carolina, creating the North Carolina State Ports Authority, to the extent that all or any part of said article was heretofore repealed by chapters 269 or 584, of the Session Laws of 1957, the same is hereby re-enacted."

§ 143-218. **Powers of Authority.**

- (9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Author-

ity shall constitute an indebtedness of the State of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

(1959, c. 523, ss. 3-5.)

Editor's Note.—

The 1959 amendment added the phrases "or from any public or private sources available" and "or any public or private lender or donor" in subdivision (9), and deleted the words "by any such federal

agency" which formerly appeared immediately preceding the proviso in said subdivision. As only subdivision (9) was affected by the amendment the rest of the section is not set out.

§ 143-218.1. Approval of acquisition and disposition of real property.—Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State Ports Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the North Carolina State Ports Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "North Carolina State Ports Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina State Ports Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right of way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1959, c. 523, s. 6.)

§ 143-224. Jurisdiction of the Authority; appointment and authority of special police.—The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

The Executive Director of the Authority is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have all the powers of policemen of incorporated towns. Such policemen shall have the power to arrest without warrant persons committing violations of State law in their presence in or on any of the grounds and in any of the harbors and seaports within the State over which the Authority has jurisdiction. Employees appointed as such special policemen shall take the general oath of office prescribed by General Statutes 11-11. (1945, c. 1097, s. 9; 1959, c. 523, s. 7.)

Editor's Note. — The 1959 amendment added the second paragraph.

§ 143-225. Treasurer of the Authority. — The Authority shall select its own treasurer. The Authority shall require a surety bond of such appointee in such amount as the Authority may fix, and the premium or premiums thereon

shall be paid by said Authority as a necessary expense of said Authority. (1945, c. 1097, s. 10; 1959, c. 523, s. 8.)

Editor's Note. — Prior to the 1959 amendment the Authority was required to select one of its members as treasurer.

ARTICLE 23.

Armory Commission.

§ 143-236.1. Unexpended portion of State appropriation.

Cited in *Great American Ins. Co. v. Johnson*, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

ARTICLE 23A.

Stadium Authority.

§§ 143-236.2 to 143-236.13: Repealed by Session Laws 1963, c. 686, effective July 1, 1963.

ARTICLE 24.

Wildlife Resources Commission.

§ 143-237. Title.

Cross Reference. — As to Motorboat Committee of the Wildlife Resources Commission and enforcement of the motorboat law by the Commission, see § 75A-3.

§ 143-239. Statement of purpose.

Cross Reference.—For powers and duties of Wildlife Resources Commission as to agents for distribution and sale of hunting, fishing and trapping licenses, see § 113-81.4 et seq.

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.—There is hereby created a Commission to be known as the North Carolina Wildlife Resources Commission. The Commission shall consist of eleven citizens of North Carolina, who shall be competent and qualified as herein provided, and who shall be appointed by the Governor. At least one of the Commission members shall be appointed from each of the following geographical districts; plus two members at large as provided in G. S. 143-241:

First district to be composed of the following counties:

Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties:

Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties:

Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties:

Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, New Hanover, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties:

Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties:

Anson, Cabarrus, Davidson, Mecklenburg, Moore, Montgomery, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties:

Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties:

Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties:

Madison, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems. (1947, c. 263, s. 4; 1961, c. 737, s. 1½.)

Editor's Note. — The 1961 amendment eleven and made other changes in the first increased the membership from nine to paragraph.

§ 143-241. Appointment and terms of office of Commission members.—The terms of office of the members of the North Carolina Wildlife Resources Commission now serving in such capacity shall expire as of midnight June 30, 1961.

On the first day of July, 1961, the Governor shall appoint members of the North Carolina Wildlife Resources Commission from the several districts created by G. S. 143-240 as follows: One member each from the first, fourth and seventh districts, who shall serve for terms of two years; one member each from the second, fifth and eighth districts, who shall serve for terms of four years; and one member each from the third, sixth and ninth districts, who shall serve for terms of six years. Thereafter, as the terms of office of the members of the Commission from the districts expire, their successors shall be appointed for terms of six years each.

In addition to the members appointed from the several districts herein provided for, the Governor shall appoint two additional members from the State at large, one of whom shall serve for a term of four years and the other shall serve for a term of two years. Thereafter, as the terms of office of the members appointed from the State at large expire, their successors shall be appointed for terms of four years each.

All members appointed pursuant to this section shall serve until their successors are appointed and qualified. Any member of the Commission appointed pursuant to this section may be removed by the Governor for cause. (1947, c. 263, s. 5; 1961, c. 737, s. 1.)

Editor's Note. — The 1961 amendment rewrote this section.

§ 143-246. Executive Director; appointment, qualifications, duties, oath of office, and bond.

Cross Reference.—As to duties respecting hunting and fishing license agents, see § 113-81.8.

§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.

Cross Reference.—
For powers and duties of Wildlife Resources Commission as to agents for dis-
tribution and sale of hunting, fishing and trapping licenses, see § 113-81.4 et seq.

ARTICLE 29.

Commission to Study the Care of the Aged and Handicapped.

§ 143-280. Membership. — The Commission shall consist of one member from the North Carolina State Department of Mental Health, one member

from the State Board of Health, one member from the State Board of Public Welfare, one member from the boards of county commissioners, one county superintendent of public welfare, one local health director, one clerk of the superior court. (1949, c. 1211, s. 2; 1957, c. 1357, s. 12; 1963, c. 1166, s. 10.)

Editor's Note.—
Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental

Health" has been substituted for "Hospitals Board of Control."

ARTICLE 29A.

Governor's Committee on Employment of the Handicapped.

§ 143-283.1. **Short title.**—This article may be cited as "The Governor's Committee on Employment of the Handicapped Act." (1961, c. 981.)

Editor's Note.—Former Article 29A entitled "Commission on Employ the Physically Handicapped" and inserted by Session Laws 1953, c. 1224, ss. 1-5 was re-written by Session Laws 1961, c. 981, effective July 1, 1961, to appear as the present article.

§ 143-283.2. **Purpose of article; cooperation with President's Committee.**—The purpose of this article is to carry on a continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating State-wide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field. The Governor's Committee shall work in close cooperation with the President's Committee on Employment of the Physically Handicapped to more effectively carry out the purpose of this article, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (1961, c. 981.)

§ 143-283.3. **Celebration of National Employ the Physically Handicapped Week.**—The Governor's Committee shall, by proclamation, designate the first full week in October of each year as "National Employ the Physically Handicapped Week." The committee shall promote and encourage the holding of appropriate ceremonies throughout the State during said week, the purpose of which ceremonies shall be to enlist public support for and interest in the employment of the physically handicapped. The Governor shall, in his proclamation designating National Employ the Physically Handicapped Week, invite the mayors of all cities, heads of other instrumentalities of government, leaders of industry and business, educational and religious groups, labor, veterans, women, farm, scientific and professional, and all other organizations and individuals having an interest to participate in said ceremonies. (1961, c. 981.)

§ 143-283.4. **Governor's Committee; how constituted.**—The Governor's Committee shall consist of members composed of State leaders and representatives of industry, business, agriculture, labor, veterans, women, religious, educational, civic, fraternal, welfare, scientific, and medical and other professions, and all other interested groups or individuals who are approved by the Governor's Executive Committee, hereinafter provided for. (1961, c. 981.)

§ 143-283.5. **Governor's Executive Committee; how constituted.**—There is hereby also created the Governor's Executive Committee on the Employment of the Handicapped, consisting of fifteen members to be appointed by the Governor, five of whom shall be initially appointed for a term of one year, five for two years, and five for three years. Thereafter as their terms expire, their successors shall be appointed for terms of three years each. Vacancies shall be filled by appointment by the Governor for the unexpired term. In addition to the fifteen appointed members, the Governor, the Commissioner of Labor,

the Commissioner of Insurance, the Chairman of the Employment Security Commission and the Director of Vocational Rehabilitation shall serve ex officio as members of the Executive Committee. The Governor shall be honorary chairman of the Executive Committee. (1961, c. 981.)

§ 143-283.6. Organization of Governor's Executive Committee; meetings; powers.—The Governor's Executive Committee shall formulate policies and goals, not inconsistent with this article, for promoting the employment of the handicapped citizens; and its Executive Committee is authorized to appoint such administrative personnel as are necessary to carry out this article, who shall be subject to all the provisions of the State Personnel Act. The Executive Committee of the Governor's Committee shall elect from its membership, a chairman, vice chairman, secretary and a treasurer. The officers shall be elected for a term of one year, but may succeed themselves. The administrative powers and duties of the Governor's Committee shall be vested in the Governor's Executive Committee. An organizational meeting shall be held within sixty days after ten members of the Executive Committee have been appointed and qualified. The Executive Committee shall meet quarterly in regular sessions but special meetings may be called by six members of the Executive Committee.

The Governor's Executive Committee shall call a meeting at least once a year inviting the members of the Governor's Committee to attend in order to properly inform them of work during the year and program for the ensuing year. (1961, c. 981.)

§ 143-283.7. Funds, expenses and gifts; reports.—There is hereby created in the State treasury a special revolving fund to be known as "Employment of the Handicapped Revolving Fund." The fund shall consist of all monies received by the committee, or in behalf of the committee, from the United States, any federal or State agency or institution, gifts, contributions, donations and requests, but not excluding any other source of revenue for the purpose of promoting the employment and rehabilitation of handicapped citizens of North Carolina. The Executive Committee may use said revolving fund to pay the salaries, and general expenses of the administrative office, personnel, materials, supplies, equipment, travel, provide awards, citations, scholarships, but not excluding other purposes for the promoting of the employment and rehabilitation of handicapped citizens. All expenditures from said fund shall be subject to the provisions of the Executive Budget Act.

Any monies remaining in said revolving fund at the end of any fiscal year or biennium shall not revert to the general fund or any other fund but shall continue to remain in said revolving fund to be expended for the purposes of this article.

The Governor's Executive Committee shall accept, hold in trust, and authorize the use of any grant or devise of land, or any donation or bequests of money or other personal property made to the Committee or Executive Committee so long as the terms of the grant, donation, bequest or will are carried out. The Governor's Executive Committee may invest and reinvest any funds and money, lease, or sell any real or personal property, and invest the proceeds for the purpose of promoting the employment and rehabilitation of the handicapped unless prohibited by the terms of the grant, donation, bequest, gift, or will. If, due to circumstances, the requests of the person or persons making the grant, donation, bequest, gift, or will, cannot be carried out, the Executive Committee shall have the authority to use the remainder thereof for the purpose of this article. Said funds shall be deposited in the revolving fund to carry out the provisions of this article. Such gifts, donations, bequests or grants shall be exempt for tax purposes. The committee shall report annually to the Governor all moneys and properties received and expended by virtue of this section.

All funds and properties in the hands of the North Carolina Commission on Employ the Physically Handicapped on July 1, 1961, shall be transferred to the

Governor's Executive Committee created by this article for use in furtherance of the purposes of this article. (1961, c. 981.)

§ 143-283.8. **Governor's Committee nonpartisan and nonprofit.** — The Governor's Committee shall be nonpartisan, nonprofit, and shall not be used for the dissemination of partisan principles, nor for the promotion of the candidacy of any person seeking public office or preferment. (1961, c. 981.)

§ 143-283.9. **Executive Committee a governmental agency; oaths of members; compensation; bonds.**—The Executive Committee is hereby constituted an agency of the State of North Carolina and the exercise by the Executive Committee of the power and duties conferred by this article shall be deemed to be an exercise of the governmental functions of the State. Members of the Executive Committee shall execute the oath or oaths of offices prescribed by the Constitution and statutes of the State of North Carolina. Members of the Executive Committee shall not receive compensation or expenses for services rendered.

Bond premiums for any bonds which may be required shall be paid by the Executive Committee from its revolving fund. (1961, c. 981.)

§ 143-283.10. **Allocations from Contingency and Emergency Fund.** —The Governor, with the approval of the Council of State, is hereby authorized to allocate to the Executive Committee from the State's Contingency and Emergency Fund from time to time such sum as may be deemed wise and expedient to be used for the salaries and expenses of employees, including travel, supplies, materials, equipment, citations, and all other purposes necessary to carry out the provisions of this article. (1961, c. 981; 1963, c. 1210.)

Editor's Note. — The 1963 amendment deleted the words "not exceeding twenty-year" formerly following the word "expedient" near the middle of the section. (\$2500.00) per fiscal

ARTICLE 30.

John H. Kerr Reservoir Development Commission.

§ 143-284. **Commission created; membership; terms of office; vacancies.**—There is hereby created a commission to be known as the "John H. Kerr Reservoir Development Commission." The Commission hereby created shall consist of 12 members to be appointed by the Governor. One member of said Commission shall be a resident of Vance County; one member shall be a resident of Granville County and one member shall be a resident of Warren County and four members shall be appointed as members at large, one member shall be appointed from the membership of the Wildlife Resources Commission, one member shall be appointed from the membership of the Board of Conservation and Development, and one member shall be appointed from the membership of the North Carolina Recreation Commission. The members appointed from the Board of Conservation and Development, and the Wildlife Resources Commission and the North Carolina Recreation Commission shall serve as ex officio members of the Commission created by this article, and shall serve on this Commission in such capacity only during the tenure of their terms as members of the Board of Conservation and Development and the Wildlife Resources Commission and the North Carolina Recreation Commission respectively. Of the other seven members to be appointed to this Commission two shall serve for two years, two shall serve for four years, and three shall serve for six years and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the Commission to serve for terms of six years. The Governor shall accept resignations of members of the Commission and shall appoint members to serve the unexpired terms of those caused by resignation, death or otherwise. Members of the Com

mission created by this article shall be appointed by the Governor on or before the first day of July, 1951.

Upon the expiration of the terms of the present incumbents, in lieu of the one member now serving from each of the counties of Granville, Vance and Warren, and the four members now serving at large, the Governor shall appoint two members of the Commission who shall be residents of Granville County, two members who shall be residents of Vance County, two members who shall be residents of Warren County, and three members at large. Two members shall be appointed by the Governor in accordance with the above provisions on July 1, 1961, for terms of six years each. It is provided, however, that nothing in this paragraph shall affect the terms of the present incumbents. (1951, c. 444, s. 1; 1953, c. 1312, s. 2; 1961, c. 650.)

Editor's Note.—

The 1961 amendment substituted 12 for 10 in line three, deleted the words "from the eastern section of North Carolina"

formerly following the word "appointed" in line six, and added the second paragraph.

§ 143-286. Powers and duties generally; employees as special peace officers.—The Commission shall endeavor to promote the development of the John H. Kerr area situated in northeastern North Carolina, and it shall be the duty of the Commission to study the development of this area and to initiate and carry out policies that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation. It shall confer with the various department, agencies, commissions and officials of the federal government and the governments of the adjoining states in connection with the development of this John H. Kerr area. It shall also advise and confer with any other State officials or agencies or departments in the State of North Carolina that may be directly or indirectly concerned in the development of the resources of this area, but it shall not in any manner take over or supplant any agencies in their work in this area except so far as is expressly provided for in this article. It shall also advise and confer with various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall have full power and authority to confer with any similar commission created or acting in that part of the area lying in the state of Virginia for the purpose of working out uniform practices and plans affecting the entire area in both states.

Upon application by the John H. Kerr Reservoir Development Commission, the Governor is hereby authorized and empowered to commission as special officers such of the employees of the John H. Kerr Reservoir Development Commission as the Commission may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of parks, lakes, reservations and other lands or waters under the control or supervision of the John H. Kerr Reservoir Development Commission. Such employees shall receive no additional compensation for performing the duties of special peace officers. Employees so commissioned special peace officers as herein provided shall have the same powers of arrest, give bond, and be required to take an oath as provided for special police officers under G. S. 113-28.2, 113-28.3 and 113-28.4. (1951, c. 444, s. 3; 1953, c. 1312, s. 3; 1961, c. 214; 1963, c. 612, s. 1.)

Editor's Note.—

The 1961 amendment added the second paragraph.

The 1963 amendment substituted in the first sentence the words "initiate and carry

out" for the words "recommend to the Department of Conservation and Development and the Wildlife Resources Commission and the North Carolina Recreation Commission."

§ 143-286.1. **Nutbush Conservation Area.**—The Board of Conservation and Development is hereby authorized to enter into lease agreements with the proper agencies of the federal government covering the marginal land area of the John H. Kerr Reservoir or so much thereof as may be necessary or desirable in order to develop said area for park purposes and to carry on a program of conservation, forestry development and wildlife protection. The area so obtained shall be known as the Nutbush Conservation Area. The John H. Kerr Reservoir Development Commission is hereby authorized to control and develop the area so leased and to enter into sublease agreements on terms as may be authorized in the original lease agreement. All proceeds obtained from any sublease agreement shall be used exclusively for the further development of the Nutbush Conservation Area. (1953, c. 1312, s. 4; 1963, c. 612, s. 2.)

Editor's Note. — The 1963 amendment rewrote the third sentence.

§ 143-290. **Requests for funds.**—The John H. Kerr Reservoir Development Commission is authorized and empowered to include in its budget request for funds to aid and support the work of the Commission. (1951, c. 444, s. 7; 1963, c. 612, s. 3.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 143-290.1. **Responsibility and duties of Department of Conservation and Development.**—The Department of Conservation and Development shall continue to have the responsibility of, and perform the routine duties with respect to, preparation of materials relating to the payroll of the Commission, issuing checks and other bookkeeping or keeping of records in the same manner and to the same extent as before the enactment of the 1963 amendments to this article. (1963, c. 612, s. 4.)

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. **Industrial Commission constituted a court to hear and determine claims; damages.**

Editor's Note.—

For note on the right of subrogation under the provisions of this article, see 32 N. C. Law Rev. 242. For note on the distinction between intentional and negligent conduct under this article, see 35 N. C. Law Rev. 564. For a note on the distinction between nonfeasance and misfeasance under this article, see 36 N. C. Law Rev. 352. For note on judicial abrogation of the doctrine of municipal immunity to tort liability, see 41 N. C. Law Rev. 290.

Intention of Article Is to Enlarge Rights and Remedies.—The obvious intention of the General Assembly in enacting the Tort Claims Act was to enlarge the rights and remedies of a person injured by the actionable negligence of an employee of a State agency while acting in the course of his employment. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

But It Authorizes Claims against State Agencies Only.—The only claim authorized by the Tort Claims Act is a claim against

the State agency. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Strict Construction.—

For comment on the construction of this article, see 33 N. C. Law Rev. 613.

Application of Article to Local Units.—The Tort Claims Act, applicable to the State Board of Education and to the State departments and agencies, except as amended by § 143-300.1, does not include local units such as county and city boards of education. *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

This article has no application with respect to acts of employees of city or county administrative units. *McBride v. North Carolina State Board of Education*, 257 N. C. 152, 125 S. E. (2d) 393 (1962).

A county board of education, unless it has duly waived immunity from tort liability, as authorized in § 115-53, is not liable in a tort action or proceeding involving a tort except such liability as may be established

under the Tort Claims Act. *Huff v. Northampton County Board of Education*, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Recovery Must Be Based on Actionable Negligence of Employee.—*Recovery*, if any, under the Tort Claims Act, must be based upon the actionable negligence of an employee of such agency while acting within the scope of his employment. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Meaning of Employee.—

A person employed by a city board of education to do maintenance work in the city school grounds is not an employee of the State, and demurrer of the State Board of Education is properly sustained in proceedings against it under this section to recover for the negligence of such employee in the discharge of his duties. *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Personal Liability of Employee.—Prior to the enactment of the Tort Claims Act the Highway Commission, as an agency or instrumentality of the State, enjoyed immunity to liability for injury or loss caused by the negligence of its employees. Even so, then as now, an employee of such agency was personally liable for his own actionable negligence. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

There is no inconsistency in respect of plaintiff's claims against the Highway Commission and actions against an employee since both are grounded on the actionable negligence of the employee and are cumulative and consistent. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Recovery, if any, against the alleged negligent employee must be by common-law action. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Claim Not "Another Action Pending" within Meaning of § 1-127.—A claim filed by plaintiffs with the Industrial Commission against the North Carolina Highway Commission to recover for injuries and damages sustained in a collision and filed prior to an action for negligence against a member of the Highway Patrol did not constitute another action pending between the same parties within the meaning of § 1-127 (3). *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

An action to recover for the wrongful death of a prisoner assigned to work under the supervision of the State Highway and Public Works Commission could be maintained under the State Tort Claims Act, the sole remedy not being under the

Workmen's Compensation Act prior to the 1957 amendment to § 97-13 (c). *Lawson v. North Carolina State Highway & Public Works Comm'n*, 248 N. C. 276, 103 S. E. (2d) 366 (1958). See § 97-13 and note thereto.

The second 1957 amendment to § 97-13 (c) does not bar a prisoner from maintaining an action under this section, for if the legislature intended to withdraw altogether a prisoner's right to pursue a tort claim, the logical procedure would be by amendment to the Tort Claims Act. *Ivey v. North Carolina Prison Department*, 252 N. C. 615, 114 S. E. (2d) 812 (1960).

Recovery May Be Had Only for Negligent Acts.—No recovery can be had for the intentional shooting of plaintiff's decedent by a state highway patrolman, since the Tort Claims Act does not permit recovery for wrongful and intentional injuries, but limits recovery to negligent acts. *Jenkins v. North Carolina Dept. of Motor Vehicles*, 244 N. C. 560, 94 S. E. (2d) 577 (1956).

But Such Acts Need Not Be Sole Proximate Cause of Injury.—It was not the intent of the legislature to limit liability under the Tort Claims Act to situations where the negligence of an employee was the sole proximate cause of the injury or damages inflicted. *Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Since State Agency Regarded as Private Person.—The legal limitation on the right to allow a claim under the provisions of this section is limited to the same category with respect to tort claims against the agency covered as if such agency were a private person and such private person would be liable under the laws of North Carolina. *Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Claimant Must Be Free of Contributory Negligence.—The Tort Claims Act does not authorize recovery unless the claimant is free from contributory negligence. *Huff v. Northampton County Board of Education*, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Applied in *Gordon v. North Carolina State Highway & Public Works Comm.*, 250 N. C. 645, 109 S. E. (2d) 376 (1959); *Gay v. Wake County Board of Education*, 254 N. C. 622, 119 S. E. (2d) 460 (1961).

Cited in *General Ins. Co. of America v. Faulkner*, 259 N. C. 317, 130 S. E. (2d) 645 (1963).

§ 143-293. Appeals to superior and Supreme Courts.

Necessity for Exceptions and Taking of Appeal.—Where the record failed to show any exception to the findings, conclusions and order of the Industrial Commission dismissing plaintiff's claim or an appeal taken as permitted by this section, the superior court was without jurisdiction to hear plaintiff's claim. *McBride v. North Carolina State Board of Education*, 257 N. C. 152, 125 S. E. (2d) 393 (1962).

Finding of Commission Conclusive, etc.—

If there is any competent evidence to support findings of fact by the Industrial Commission, such findings are conclusive, and on appeal are not subject to review by the superior court or the Supreme Court

even though there is evidence that would support a finding to the contrary. *English Mica Co. v. Avery County Board of Education*, 246 N. C. 714, 100 S. E. (2d) 72 (1957); *Gordon v. North Carolina State Highway & Public Works Comm.*, 250 N. C. 645, 109 S. E. (2d) 376 (1959); *Jordan v. State Highway Comm.*, 256 N. C. 456, 124 S. E. (2d) 140 (1962).

Applied in *Gay v. Wake County Board of Education*, 254 N. C. 622, 119 S. E. (2d) 460 (1961).

Quoted in *Tucker v. State Highway & Public Works Comm'n*, 247 N. C. 171, 100 S. E. (2d) 514 (1957); *Adams v. State Board of Education*, 248 N. C. 506, 103 S. E. (2d) 854 (1958).

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.—In all claims listed in § 13 of chapter 1059 of the Session Laws of 1951, and all claims which may hereafter be filed against the various departments, institutions, and agencies of the State, the claimant or the person in whose behalf the claim is made shall file with the Industrial Commission an affidavit in duplicate, setting forth the following information:

- (1) The name of the claimant;
- (2) The name of the department, institution or agency of the State against which the claim is asserted, and the name of the State employee upon whose alleged negligence the claim is based;
- (3) The amount of damages sought to be recovered;
- (4) The time and place where the injury occurred;
- (5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

Upon receipt of such affidavit in duplicate, the Industrial Commission shall enter the case upon its hearing docket and shall hear and determine the matter in the county where the injury occurred unless the parties agree that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard.

Immediately upon docketing the case, the Industrial Commission shall forward one copy of plaintiff's affidavit to the office of the Attorney General of North Carolina if the claim is asserted against any department, institution, or agency of the State other than the State Highway Commission. If the claim is asserted against the State Highway Commission, one copy of said affidavit shall be forwarded to the chief counsel for that department.

The department, institution or agency of the State against whom the claim is asserted shall file answer, demurrer or other pleading to the affidavit within thirty (30) days after receipt of copy of same setting forth any defense it proposes to make in the hearing or trial, and no defense may be asserted in the hearing or trial unless it is alleged in such answer, except such defenses as are not required by the Code of Civil Procedure or other laws to be alleged. (1951, c. 1059, s. 9; 1963, c. 1063.)

Editor's Note.—

The 1963 amendment added the last paragraph.

How Jurisdiction Invoked.—It is only necessary in order to invoke the jurisdiction

of the Industrial Commission for the claimant, or person in whose behalf the claim is made, to file with the Industrial Commission an affidavit in duplicate setting forth the material facts, as required by this

section. *Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

This section does not require the use of legal, technical or formal language. *Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Nor formal pleadings.—*Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

But Claim Must State Sufficient Facts.—Adherence to formal rules of pleading is not required under this section but the claim should state facts sufficient to identify the agent or employee and a brief statement of the negligent act that caused the injury. *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959); *Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

And Defective Claim May Be Challenged by Demurrer.—If a claim, upon its face, shows that the State department or agency sought to be charged is not liable, the Commission may end the proceeding, and a

proper way to take advantage of the defect is by demurrer. *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

The purpose of this section in requiring the negligent employee to be named is to enable the department of the State against which the claim is made to investigate, not all of its employees, but the particular ones actually involved. *Tucker v. North Carolina State Highway & Public Works Comm'n*, 247 N. C. 171, 100 S. E. (2d) 514 (1957).

Stipulation Obviates Error in Naming Employee in Affidavit and Claim.—Where, prior to the hearing, the parties stipulate the name and position of the State employee charged with negligence, such stipulation meets the requirements of this section that the negligent employee be named and obviates error in naming the employee in the affidavit and claim, and the allowance of an amendment to this effect on appeal to the superior court is immaterial. *Tucker v. North Carolina State Highway & Public Works Comm'n*, 247 N. C. 171, 100 S. E. (2d) 514 (1957).

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.

Cited in *Tucker v. State Highway & Public Works Comm'n*, 247 N. C. 171, 100 S. E. (2d) 514 (1957).

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.—(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged negligent act or omission of the driver of a public school bus or school transportation service vehicle when the salary of such driver is paid from the State Nine Months School Fund who is an employee of the county or city administrative unit of which such board is the governing board, and which driver was at the time of such alleged negligent act or omission operating a public school bus or school transportation service vehicle in the course of his employment by such administrative unit or such board. The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by § 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy

of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made. It shall thereupon be the duty of such superintendent to deliver such affidavit promptly to the attorney for such county or city board of education. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is the governing board.

(b) The Attorney General shall not be charged with any duty with reference to tort claims against such county or city board of education, but it shall be the duty of the attorney of such board to perform for such board with reference to such claims all duties which the Attorney General is required by this article to perform in respect to tort claims against the State Board of Education.

(c) In the event that the Industrial Commission shall make any award of damages against any county or city board of education pursuant to this section, such county or city board shall draw a requisition upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall then have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the nine months school term. It shall be the duty of the county or city board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the county or city board of education, the county or city administrative unit, nor the tax levying authorities for the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such requisition by the State Board of Education: Provided, that in all claims made hereunder in which the award made by the North Carolina Industrial Commission is in excess of one thousand dollars (\$1,000.00) the State Board of Education shall not honor or pay any requisition drawn upon it for such award unless the county or city board of education involved shall have contested and defended against such claim in good faith and with the services of its attorney, and if said county or city board of education does not so contest and defend them the county or city board of education against which the claim was filed shall pay the award: Provided, further, that nothing herein shall prohibit the attorney for any such board of education, after due investigation, from negotiating for and entering into a settlement of such claim if such settlement is approved by the board of education concerned and the North Carolina Industrial Commission.

(d) Neither the State Board of Education nor any other department, institution or agency of the State shall be liable for the payment of any tort claim arising out of the operation of any public school bus or for school transportation service vehicle, or for the payment of any award made pursuant to the provisions of this article on account of any such claim. (1955, c. 1283; 1961, c. 1102, ss. 1-3.)

Editor's Note.—The 1961 amendment inserted the references to "school transportation service vehicle" in subsections (a) and (d). It also added the provisos at the end of subsection (c).

If an award is made it must be based on the negligent act or omission of the driver of a public school bus who was employed at the time by the county or city administrative unit of which such board was the governing body. Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

And Not on Act or Omission of Principal or Board of Education. — An award against a county board of education under the provisions of the Tort Claims Act may not be predicated on the negligent act or omission of a school principal or the county board of education. Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

State Board of Education Relieved of Responsibility as to School Buses.—The General Assembly relieved the State Board of Education from all responsibility in con-

nection with the operation and control of school buses in this State by the enactment of § 115-180 et seq., which authorizes county and city boards of education to operate buses for the transportation of pupils enrolled in the public schools of such county or city administrative units. *Huff v. Northampton County Board of Education*, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Applied in *English Mica Co. v. Avery*

County Board of Education, 246 N. C. 714, 100 S. E. (2d) 72 (1957).

Quoted in *Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

Stated in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Cited in *McBride v. North Carolina State Board of Education*, 257 N. C. 152, 125 S. E. (2d) 393 (1962).

ARTICLE 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§ 143-306. Definitions.

Cross Reference. — See note to § 105-241.2.

Editor's Note. —

For note on determination of validity of rules and regulations before their application in specific cases, see 36 N. C. Law Rev. 473.

The Tax Review Board is an "administrative agency" within the purview of this section. It is an agency of the executive

branch of the State government, has no authority or duties with respect to the granting or revocation of licenses, and its decisions are not subject to review under any statute or statutes other than this article. In re *Halifax Paper Co., Inc.*, 259 N. C. 589, 131 S. E. (2d) 441 (1963).

Cited in *State v. Warren*, 252 N. C. 690, 114 S. E. (2d) 660 (1960).

§ 143-307. Right to judicial review.

Statute Providing for Review "by Proceedings in Nature of Certiorari."—While § 160-178 provides expressly for a review "by proceedings in the nature of certiorari," this is an "adequate procedure for judicial review" within the meaning of this section only if the scope of review is equal to that under this chapter. *Jarrell v. Board of Adjustment for High Point*, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Section Inapplicable to Order Revoking Real Estate Broker's or Salesman's License.—Section 93A-6, regulating real estate brokers and salesmen, provides adequate procedure for judicial review of an order of the Real Estate Licensing Board revoking a license, and this section does not apply. In re *Dillingham*, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Necessity for Exhaustion of Administrative Remedies.—Only those who have exhausted their administrative remedies can seek the benefit of this section. *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

Meaning of "Person Aggrieved."—The expression "person aggrieved" has no technical meaning. What it means depends on the circumstances involved. It has been variously defined: "Adversely or injuriously affected; damnified, having a grievance, having suffered a loss or injury, or injured; also having cause for complaint.

More specifically the word (s) may be employed meaning adversely affected in respect of legal rights, or suffering from an infringement or denial of legal rights." In re *Halifax Paper Co., Inc.*, 259 N. C. 589, 131 S. E. (2d) 441 (1963).

When Appeals by Public Officials and Governmental Units Allowed.—Where statutes exist permitting appeals by persons aggrieved, appeals by public officials and governmental units are usually allowed in cases involving questions of law relating to taxation and public funds. In re *Halifax Paper Co., Inc.*, 259 N. C. 589, 131 S. E. (2d) 441 (1963).

One may be aggrieved when he is affected only in a representative capacity. In re *Halifax Paper Co., Inc.*, 259 N. C. 589, 131 S. E. (2d) 441 (1963).

Administrative Agency as Person Aggrieved.—An administrative agency cannot be a person aggrieved by its own order, but it may be an aggrieved party to secure judicial review of a decision of an administrative reviewing agency. In re *Halifax Paper Co., Inc.*, 259 N. C. 589, 131 S. E. (2d) 441 (1963).

Appeal by Commissioner of Revenue from Decision of Tax Review Board.—The Tax Review Board is an administrative agency of the State within the purview of § 143-306, and the Commissioner of Revenue is entitled to appeal under this section from

a decision of the Board reversing in part an assessment of taxes made by the Commissioner. Section 105-241.3 does not impliedly amend this section so as to preclude the right of the Commissioner to ap-

peal, but the two statutes must be construed together and effect given the provisions of both. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

§ 143-309. Manner of seeking review; time for filing petition; waiver.

Applied in *Thomas v. State Board of Alcoholic Control*, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

§ 143-310. Contents of petition; copies served on all parties.

Applied in *Thomas v. State Board of Alcoholic Control*, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

§ 143-312. Stay of board order.

Applied in *Thomas v. State Board of Alcoholic Control*, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

§ 143-314. Review by court without jury on the record.

Review of Order of Real Estate Board.—Under § 93A-6, review of an order of the Real Estate Licensing Board suspending or revoking a license is de novo in the superior court in all cases, and this article does

not apply regardless of whether the board has made a record of its proceedings. In re *Dillingham*, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

§ 143-315. Scope of review; power of court in disposing of case.

Findings Based on Unsworn Statements.—Absent stipulations or waiver, a zoning board of adjustment may not base critical findings of fact as to the existence or non-existence of a nonconforming use on unsworn statements. *Jarrell v. Board of Adjustment for High Point*, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

court is without authority to make findings at variance with the findings of the Board when the findings of the Board are supported by material and substantial evidence. In re *Property of Pine Raleigh Corp.*, 258 N. C. 398, 128 S. E. (2d) 855 (1963).

Review of Order of Real Estate Board.—See note to § 143-314.

Review of Order of State Board of Assessment.—Upon review of an order of the State Board of Assessment, the superior

Evidence held incompetent to sustain a finding of the State Board of Alcoholic Control that a licensee sold beer to a minor or failed to give his licensed premises proper supervision. *Thomas v. State Board of Alcoholic Control*, 258 N. C. 513, 128 S. E. (2d) 884 (1963).

ARTICLE 34.

Board of Water Commissioners; Water Conservation and Education; Emergency Allocations.

§§ 143-317 to 143-328: Repealed by Session Laws 1959, c. 779, s. 2.

ARTICLE 36.

Department of Administration.

§ 143-336. Definitions.—As used in this article:

“Agency” includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

“Department” means the Department of Administration, unless the context otherwise requires.

“Director” means the Director of Administration, unless the context otherwise requires.

“Division” means a division of the Department of Administration, unless the context otherwise requires.

“State buildings” mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, and bridge structures.

But under no circumstances shall this article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 269, s. 1; 1963, c. 1, s. 6.)

Editor’s Note.—The 1963 amendment inserted “except the State Legislative Building” in the definition of “State buildings.”

§ 143-341. Powers and duties of Department.

(4) Real property control:

- a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, metes and bounds description, source of title, condition, current value, and current use of all land (including swamp lands or marsh lands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys shall be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land shall be prepared, or copies obtained where such maps or plats are available.
- b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space, condition, floor plans, and current value of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.
- c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.
- d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems

advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

- e. To make all sales of real property (including marsh lands or swamp lands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G. S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamp lands or marsh lands shall be dealt with in the manner required by the Constitution and statutes.
- f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.
- g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State. Provided, that the authority granted in this paragraph shall not apply to the State Legislative Building and grounds.
- h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.
- i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded

instruments which conveyed title to or from the State or any State agency or officer re-indexed, where necessary, to show the State of North Carolina as grantor or grantee, as the case may be, and the cost of such re-indexing shall be paid from the State Land Fund.

- j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.
- k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.
- l. To manage and control the vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to chapter 146 of the General Statutes.

(1959, c. 683, ss. 2-4; 1963, c. 1, s. 5.)

Editor's Note. — The 1959 amendment changed subdivision (4) by rewriting paragraphs d through f, inserting the last sentence of paragraph i, and adding paragraph l.

The 1963 amendment added the last sentence in paragraph g of subdivision (4).

As only subdivision (4) was affected by the amendments the rest of the section is not set out.

ARTICLE 38.

Department of Water Resources.

§ 143-348. **Short title.**—This article may be cited as the Department of Water Resources Act. (1959, c. 779, s. 1.)

§ 143-349. **Department of Water Resources created.**—There is hereby created the Department of Water Resources. (1959, c. 779, s. 1.)

§ 143-350. **Definitions.**—Definitions as used in this article:

“Department” means the Department of Water Resources, unless the context otherwise requires.

“Board” means the Board of Water Resources unless the context otherwise requires.

“Person” shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country. (1959, c. 779, s. 1.)

§ 143-351. **Declaration of policy.**—It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent of which they are capable. (1959, c. 779, s. 1.)

§ 143-352. **Purpose of article.**—The purpose of this article is to create a State agency to coordinate the State's water resource activities; to devise plans and policies and to perform the research and administrative functions necessary for a more beneficial use of the water resources of the State, in order to insure improvements in the methods of conserving, developing and using those resources. (1959, c. 779, s. 1.)

§ 143-353. **Board of Water Resources; composition, powers, appointment of Director.**—(a) The Department shall be governed by a Board of Water Resources to consist of seven members to be appointed by the Governor. Except as otherwise expressly provided in this article, the Board shall direct the exercise of all the functions of the Department. Of the initial appointees, three

shall serve terms of two years each; two, terms of four years each; and two, terms of six years each. Thereafter all appointments shall be for six-year terms. The Governor shall designate a chairman from among the members of the Board and, by appointment to the unexpired term, shall fill all vacancies occurring otherwise than by expiration of term.

(b) Within thirty days after the appointment of the initial Board members, the Governor shall call an organizational meeting of the Board. At such meeting and annually thereafter the Board shall elect one of its members to serve as secretary. Each Board member, while in performance of the duties of his office shall receive for his services ten dollars (\$10.00) per day and regular State travel expenses.

The Board shall meet regularly, at least once every six months, at places and dates to be determined by the Board. Special meetings may be called by the chairman on his initiative, and must be called by him at the request of two or more members of the Board. All the members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum.

(c) With approval of the Governor, the Board shall appoint a full-time Director to serve at the pleasure of the Board. The salary of the Director shall be set by the Governor subject to the approval of the Advisory Budget Commission. The Director shall serve as administrative officer of the Board; shall direct and supervise the work of the Department in accordance with the policies of the Board; shall appoint all employees of the Department in accordance with the provisions of the State Personnel Act and Executive Budget Act; may employ consultants as he deems necessary subject to the Executive Budget Act and approval of the Board; and shall perform such other functions as are delegated to him by the Board.

(d) The Board shall organize the work of the Department into two or more divisions and other units. These shall include:

- (1) A Division of Water Pollution Control as provided for in G. S. 143-356;
- (2) A Division of Navigable Waterways to perform the administrative and staff work incidental to the carrying out of the provisions of G. S. 143-355 (b) and (d) of this article; and
- (3) Such other divisions and units as the Board deems necessary.

The Board may appoint one or more advisory committees whose membership may include, among others, representatives from other State Departments and agencies. The members of any such advisory committee shall serve without compensation but shall receive regular State subsistence and travel expenses during performance of their duties. (1959, c. 779, s. 1.)

§ 143-354. Ordinary powers and duties of the Board. — (a) Powers and Duties in General.—Except as otherwise specified in this article, the powers and duties of the Board shall be as follows:

- (1) The Board shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State.
- (2) The Board shall advise the Governor as to how the State's present water research activities might be coordinated.
- (3) The Board, based on information available, shall notify any municipality or other governmental unit of potential water shortages or emergencies foreseen by the Board affecting the water supply of such municipality or unit together with the Board's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or unit. Failure reasonably to follow such recommendations shall make such municipality or other governmental unit ineligible to receive any emergency diversion of waters as hereinafter provided.

- (4) The Board is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Board.
- (5) Recognizing the complexity and difficulties attendant upon the recommendation to the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Board shall solicit from the various water interests of the State their suggestions thereon.
- (6) The Board may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.
- (7) All recommendations for proposed legislation made by the Board shall be available to the public.
- (8) The Board shall adopt such rules and regulations as may be necessary to carry out the purposes of this article.
- (9) Any member of the Board or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.

(b) Declaration of Water Emergency.—Upon the request of the governing body of a county, city or town the Board shall conduct an investigation to determine whether the needs of human consumption, necessary sanitation and public safety require emergency action as hereinafter provided. Upon making such determination, the Board shall conduct a public hearing on the question of the source of relief water after three days' written notice of such hearing has been given to any persons having the right to the immediate use of water at the point from which such water is proposed to be diverted. After determining the source of such relief water the Board shall then notify the Governor and he shall have the authority to declare a water emergency in an area including said county, city or town and the source or sources of water available for the relief hereinafter provided; provided, however, that no emergency period shall exceed thirty days but the Governor may declare any number of successive emergencies upon request of the Board.

(c) Water Emergency Powers and Duties of the Board.—Whenever, pursuant to this article, the Governor has declared the existence of a water emergency within a particular area of the State, the Board shall have the following duties and powers to be exercised only within said area and only during such time as the Governor has, pursuant to this article, designated as the period of emergency:

- (1) To authorize any county, city or town in which an emergency has been declared to divert water in the emergency area sufficient to take care of the needs of human consumption, necessary sanitation and public safety. Provided, however, there shall be no diversion of waters from any stream or body of water pursuant to this article unless the person controlling the water or sewerage system into which such waters are diverted shall first have limited and restricted the use of water in such water or sewerage system to human consumption, necessary sanitation and public safety and shall have effectively enforced such restrictions. Diversion of waters shall cease upon the termination of the water emergency or upon the finding of the Board that the person controlling the water or sewerage system using diverted waters has failed to enforce effectively the restrictions on use to human consumption and necessary sanitation and public safety. In the event waters are diverted pursuant to this article, there shall be no diversion to the same person in any subsequent year unless the Board finds as fact from evidence presented that the person controlling the water or sewerage system has

made reasonable plans and acted with due diligence pursuant thereto to eliminate future emergencies by adequately enlarging such person's own water supply.

- (2) To make such reasonable rules and regulations governing the conservation and use of diverted waters within the emergency area as shall be necessary for the health and safety of the persons who reside within the emergency area; and the violation of such rules and regulations during the period of the emergency shall constitute a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year or both within the discretion of the court; provided, however, that before such rules and regulations shall become effective, they shall be published in not less than two consecutive issues of not less than one newspaper generally circulated in the emergency area.

(d) Temporary Rights of Way.—When any diversion of waters is ordered by the Board pursuant to this article, the person controlling the water or sewerage system into which such waters are diverted is hereby empowered to lay necessary temporary water lines for the period of such emergency across, under or above any and all properties to connect the emergency water supply to an intake of said water or sewerage system. The route of such water lines shall be prescribed by the Board.

(e) Compensation for Water Allocated During Water Emergency and Temporary Rights of Way.—Whenever the Board, pursuant to this article has ordered any diversion of waters, the person controlling the waters or sewerage system into which such waters are diverted shall be liable to all persons suffering any loss or damage caused by or resulting from the diversion of such waters or caused by or resulting from the laying of temporary water lines to effectuate such diversion. The Board, before ordering such diversion, shall require that the person against whom liability attaches hereunder to post bond with a surety approved by the Board in an amount determined by the Board and conditioned upon the payment of such loss or damage. (1959, c. 779, s. 1.)

§ 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Conservation and Development and of the Director of said Department.—(a) Transfer Generally. — There are hereby transferred to the Department of Water Resources those powers, duties, functions and responsibilities relating to water resources now vested in the Department of Conservation and Development of the State of North Carolina, and the Director thereof.

(b) Functions to Be Performed.—It shall be the duty of the Department of Water Resources to perform the following functions:

- (1) To request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control and shore-erosion prevention.
- (2) To initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.
- (3) To prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.
- (4) To make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning

- purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects; and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.
- (5) To cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.
 - (6) To cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.
 - (7) To cooperate with the United States Army Corps of Engineers in planning and developing navigation, flood-control, hurricane-protection, and shore-erosion-prevention projects.
 - (8) To provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.
 - (9) To discuss, with federal, State, and municipal officials and other interested persons, a program of development of rivers, harbors, and related resources.
 - (10) To make investigations and render reports requested by the Governor and the General Assembly.
 - (11) To participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State Governments, the Conservation Foundation, and other National agencies concerned with conservation and development of water resources.
 - (12) To prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.
 - (13) To formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.
 - (14) To include in the biennial budget the cost of performing the additional functions indicated above.

(c) : Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State.—The Department of Water Resources is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights of way for the Intra-Coastal Waterway; or to authorize the Department of Water Resources to represent the State in connection with such duties.

(e) Registration with Department of Water Resources Required; Registration Periods.—Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, shall register annually with the North Carolina Department of Water Resources on forms to be furnished by the said Department. The registration required hereby shall be made during the period from July 1 to July 31 or during the period from January 1 to January 31 of each year.

(f) Samples of Cuttings to Be Furnished the Department of Water Resources When Requested; Requirements for Samples; Analysis of Samples; Furnishing Information with Regard to Analysis.—Every person, firm or corporation engaged

in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department of Water Resources samples of cuttings from such depths as the Department may require from all wells drilled or constructed by said person, firm or corporation, when such samples are required specifically from any well by the Department of Water Resources. These samples shall be approximately one-half pound in weight and shall be shipped to the Department of Water Resources by express or parcel post collect in sample bags to be furnished by said Department. The Department of Water Resources shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed and shall report on such copy to said owner the presence of all minerals and petroleum in said samples; the Department of Water Resources shall not report the presence of any such minerals to any other person whatsoever until more than one year after said report shall have been furnished to the owner of said property.

(g) Additional Information to Be Furnished Department of Water Resources by Drillers When Requested: Copy of Report to Be Furnished Landowner.— Each person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, when requested by the Department of Water Resources, furnish to said Department on forms to be provided by the said Department, information as to the size, depth, yield (measured in gallons per minute), method of testing, length of test, drawdown in feet, number of feet of casing used, and how the well is finished (whether screened or with open end). The information required to be submitted under this section shall be submitted when a well is completed, but only if said information is requested by the Department of Water Resources specifically from the driller. The person, firm or corporation making such report to the Department of Water Resources shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(h) Drillings for Petroleum and Minerals Excepted. — The provisions of this article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation.—Any person violating the provisions of subsections (e), (f) and (g) of § 143-355 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of fifty dollars (\$50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties. — There are also transferred to the Department of Water Resources the duties of the Board of Conservation and Development, as set forth in G. S. 113-8, to make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well drilling law the Department of Conservation and Development shall, if requested by the Department of Water Resources, prepare analyses of well cuttings for mineral and petroleum content. (1959, c. 779, s. 3; 1961, c. 315.)

Editor's Note.—The 1961 amendment repealed subsection (c).

§ 143-356. Continuation of Stream Sanitation Committee, Division of Water Pollution Control and Director of Division within Department of Water Resources. — (a) The State Stream Sanitation Committee as provided for by article 21, chapter 143 G. S., as amended is hereby transferred to and continued within the State Department of Water Resources without change in its powers, duties, responsibilities and functions.

(b) The Division of Water Pollution Control of the State Board of Health and the office of Director of such Division as provided for in G. S. 143-214 are

hereby transferred to and continued within the Department of Water Resources as the Division of Water Pollution Control of the Department of Water Resources. The Board of Water Resources may transfer additional functions to the said Division and Director and may revise their titles appropriately to reflect any such transfer of functions.

(c) The Department of Water Resources as Administrative Agent of State Stream Sanitation Committee.—The Department of Water Resources through its Division of Water Pollution Control, shall be the administrative agent of the State Stream Sanitation Committee, and subject to the general policies of the Committee, shall make such inspections, conduct such investigations, and do such other things as may be necessary to carry out the provisions of article 21 of chapter 143 of the General Statutes. The Attorney General shall act as attorney for the Committee, and shall initiate actions in the name of, and at the request of, the Committee.

(d) Division of Water Pollution Control.—The Division of Water Pollution Control shall be responsible for administering the provisions of article 21 of chapter 143 and shall be responsible for performing such other duties relating to the control of municipal, institutional, and industrial sewerage and waste collection and disposal systems as may be assigned to it by the Board of Water Resources. The Director of such Division shall be selected by the Board of Water Resources from nominees acceptable to both the Board and the Committee. He shall be a well-qualified sanitary engineer, fully trained and experienced in the field of waste disposal. He shall:

- (1) Serve as administrative officer and secretary of the Committee and shall attend all meetings of the Committee, without voting power, and shall keep an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work, and shall make these records available for public inspection at all reasonable times;
- (2) Review and approve plans, specifications and other such documents as may be required in connection with applications filed for certificates of approval, permits, or other documents of approval under the provisions of this article; and
- (3) Perform such other related duties as the Committee or Board of Water Resources may from time to time direct. (1959, c. 779, s. 4.)

§ 143-357. Transfer of property, records, and appropriations. —

(a) In connection with the transfers made by G. S. 143-354, 143-355 and 143-356 all records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments and executory contracts of the State Board of Water Commissioners, the State Stream Sanitation Committee, the Division of Water Pollution Control of the State Board of Health and of the affected divisions of the Department of Conservation and Development are hereby transferred to the Department of Water Resources, effective July 1, 1959. In the case of the Division of Water Pollution Control the records transferred shall include, among other things, all plans and specifications upon the basis of which documents of approval have been issued under the authority of article 21 of this chapter. The transfers directed by this subsection shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences and disputes arising incident to such transfers.

(b) Insofar as practical the expenses necessary to carry out the provisions of this article shall, during the 1959-1961 biennium, be provided out of appropriations made to the presently existing agencies whose functions are to be transferred to the Department of Water Resources; and in the event additional funds are necessary to carry out the provisions of this article, the Governor, with the approval

of the Council of State, is hereby authorized to appropriate such additional funds from the Contingency and Emergency Fund.

(c) No transfer of functions to the Department of Water Resources provided for in this article shall affect any action, suit, proceeding, prosecution, contract, lease or other transaction involving such a function which was initiated, undertaken or entered into prior to or pending the time of the transfer, but (except in the case of the Stream Sanitation Committee) the Department shall be substituted for the agency from which the function was transferred and so far as practicable the procedure provided for in this article shall be employed in completing or disposing of the matter. (1959, c. 779, s. 5.)

§ 143-358. **Cooperation of State officials and agencies.**—All State agencies and officials shall cooperate with and assist the State Board of Water Resources in enforcing and carrying out the provisions of this article and the rules, regulations and policies adopted by the Board pursuant thereto. (1959, c. 779, s. 6.)

§ 143-359. **Biennial reports of Board of Water Resources.** — The Board shall file with the Governor and the General Assembly a biennial report summarizing the activities of the Department for the preceding two years and recommending changes deemed necessary in laws, policies and administrative organization for a more beneficial use of the State's water resources. (1959, c. 779, s. 7.)

ARTICLE 39.

U. S. S. North Carolina Battleship Commission.

§ 143-360. **Title.**—This article shall be known and may be cited as the "Battleship U. S. S. North Carolina Act." (1961, c. 158.)

§ 143-361. **Definitions.**—As used in this article unless the context clearly requires otherwise:

- (1) The word "Commission" shall mean the U. S. S. North Carolina Battleship Commission.
- (2) The word "Battleship" shall mean the Battleship U. S. S. North Carolina.
- (3) The word "funds" shall mean any funds appropriated by any municipality, county or State governing body, or received from the United States of America; any gifts, bequests, donations or grants from any organization, firm, corporation or individual, or any other moneys or securities made available for the purpose of acquiring, transporting, berthing, equipping or maintaining the Battleship U. S. S. North Carolina.
- (4) The word "site" shall mean the location either temporary or permanent, of the Battleship U. S. S. North Carolina, at which it shall be secured and maintained as a memorial and exhibit available to inspection by the general public. (1961, c. 158.)

§ 143-362. **Statement of purpose.**—The purpose of this article is to create a separate State agency to be known as the "U. S. S. North Carolina Battleship Commission," the function, purpose and duty of which shall be to assist in acquiring, transporting, berthing, equipping, maintaining and exhibiting the Battleship U. S. S. North Carolina, as a permanent memorial commemorating the heroic participation of the men and women of North Carolina in the prosecution and victory of the Second World War, and to provide for establishment of appropriate activities to encourage interest in, and to perpetuate the memory of, North Carolinians who gave their lives in the course of that participation, and in the events in which the Battleship was a participant. (1961, c. 158.)

§ 143-363. Battleship Commission created; membership; duration.

—There is hereby created a Commission to be known as the “U. S. S. North Carolina Battleship Commission.” The Commission shall consist of not more than fifteen (15) competent and qualified citizens of North Carolina, including as ex officio member, at least one person from the board or staff of the North Carolina Department of Conservation and Development. Members shall be appointed by the Governor within ten (10) days after April 4, 1961, for terms of two years, provided that any member of the Commission may be removed by the Governor for cause. Vacancies in the Commission shall be filled by the Governor by appointment of a competent and qualified person for the unexpired term. Upon the expiration of the terms of the initial members, the Governor shall appoint qualified members for terms of two years, or until the Commission shall cease to exist by act of the General Assembly. The Commission shall continue in existence until the General Assembly shall otherwise provide.

It is specifically provided that members of the Commission are commissioners for a special purpose, within the meaning of Article XIV, section 7 of the Constitution of North Carolina. (1961, c. 158; 1963, c. 52.)

Editor’s Note.—The 1963 amendment inserted the last two sentences of the first paragraph in lieu of the former last sentence, which read: “The Commission shall

cease to exist at the expiration of the terms of the initial members unless the General Assembly shall otherwise provide.”

§ 143-364. Meetings of Commission; organization.—The Commission shall hold at least two meetings annually at the site of the Battleship, and five members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such times and places within the State as may be deemed necessary. The Commission may hold additional meetings at the call of the chairman or on call of three members of the Commission. The Commission shall determine its own organization and procedure in accordance with the provisions of this article and shall have an official seal. Officers of the Commission shall be provided by it at the site. The Commission shall elect, at its first meeting, a chairman, vice-chairman, secretary, and treasurer, such officers to hold office for a period of one year and shall be authorized to require the treasurer to be bonded. (1961, c. 158.)

§ 143-365. Compensation of commissioners. — The members of the Commission shall receive no compensation for their services other than per diem, subsistence and travel allowed by law for State boards and commissions generally while such members are in attendance at meetings of the Commission or engaged in authorized business of the Commission, all such per diem and travel expenses to be paid from the funds of the Commission as hereinafter provided in this article. (1961, c. 158.)

§ 143-366. Duties of Commission.—The Commission shall have the duty and authority to select an appropriate site for the permanent berthing of the Battleship U. S. S. North Carolina, taking into consideration factors including, but not limited to, the accessibility, location in relation to roads and highways, scenic attraction, protection from hazards of weather, fire and sea, cost of site and berthing, cooperation of local governmental authorities in securing, equipping, and maintaining appropriate areas surrounding the site, and others which may affect the suitability of such site for establishment of the ship as a permanent memorial and exhibit; to accept gifts, grants, and donations for the purposes of this article; to transport to, and berth the ship at the site; to ready the ship for visitation by the public; to establish and provide for a proper charge for admission to the ship, and for safekeeping of funds; to maintain and operate the ship as a permanent memorial and exhibit, and to allocate funds for the fulfillment of the duties and authority herein provided as may be necessary and appropriate for the purpose of this article. (1961, c. 158.)

§ 143-367. **Funds.**—The Commission shall establish and maintain a "Battleship Fund" composed of the moneys which may come into its hands from admission or inspection fees, gifts, donations, grants, or bequests, which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial; such records and books shall be available for audit at any time by the State Auditor of North Carolina, and shall be annually audited by him in the same manner as audits are made of other State agencies and departments. The Commission shall establish a reserve fund to be maintained and used for contingencies and emergencies beyond those occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina. (1961, c. 158.)

§ 143-368. **Employees.**—The Commission is hereby authorized to hire laborers, artisans, caretakers, stenographic and administrative employees, and other personnel, in accordance with the provisions of the State Personnel Act, as may be necessary in carrying out the purposes and provisions of this article, and to maintain the ship in a clean, neat, and attractive condition satisfactory for exhibition to the public. Employees shall be residents of the State of North Carolina except as may, in emergency conditions, be necessary for the procurement of specially trained or specially skilled employees. Any materials used for any purpose in maintaining and operating the ship for the purposes of this article shall be, in so far as practicable, North Carolina materials. The Commission is hereby authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division for the procurement of materials and supplies, in accordance with the provisions of article 3, chapter 143 of the General Statutes. (1961, c. 158.)

§ 143-369. **Employees not to have interest.**—It shall be unlawful for any member of the Commission or for any employee thereof to charge, receive, or obtain, directly or indirectly, any fee, commission, retainer or brokerage other than established salaries to be fixed by the Commission, and no member of the Commission or employee thereof shall have any interest in any land, materials, commissions or contracts sold to or made with the Commission, or with any member or employee thereof. Violation of any provisions of this section shall be a misdemeanor and upon conviction shall be punishable by removal from membership or employment and by a fine of not less than one hundred dollars (\$100.-00) or by imprisonment not to exceed six months or both, in the discretion of the court. (1961, c. 158.)

ARTICLE 40.

Advisory Commission for State Museum of Natural History.

§ 143-370. **Commission created; membership.**—There is hereby created an Advisory Commission for the Museum of Natural History which shall determine its own organization. It shall consist of at least nine (9) members, which shall include the Director of the Museum of Natural History, the Commissioner of Agriculture, the State Geologist and State Forester of the Department of Conservation and Development, the Director of the Institute of Fisheries Research of the University of North Carolina, the Director of the Wildlife Resources Commission, the Superintendent of Public Instruction, or qualified representative of any or all of the above-named members, and at least three (3) persons representing the East, the Piedmont, the Western areas of the State. Members appointed by the Governor shall serve for terms of two (2) years with the first appointments to be made effective September 1, 1961. Any member may be removed by the Governor for cause. (1961, c. 1180, s. 1.)

§ 143-371. **Duties of Commission; meetings, formulation of policies and recommendations to Governor and General Assembly.**—It shall be the duty of the Advisory Commission for the Museum of Natural History to meet at least twice each year, to formulate policies for the advancement of the said Museum, to make recommendations to the Governor and to the General Assembly concerning the Museum, and to assist in promoting and developing wider and more effective use of the Museum of Natural History as an educational, scientific and historical exhibit. (1961, c. 1180, s. 2.)

§ 143-372. **No compensation of members; reimbursement for expenses.**—Members of the Advisory Commission shall serve without compensation and shall be reimbursed for actual expenses incurred while in attendance at meetings of the Commission at the same rate as that established for reimbursement of State employees. Payment for such reimbursement for actual expense shall be made from the Contingency and Emergency Fund. (1961, c. 1180, s. 3.)

§ 143-373. **Reports to General Assembly.**—The Commission shall prepare and submit to the 1963 General Assembly, and to each succeeding General Assembly, a report outlining the needs of the State Museum of Natural History, and their recommendation for improvement of the effectiveness of the said State Museum of Natural History for the purpose hereinabove set forth. (1961, c. 1180, s. 4.)

ARTICLE 41.

Space and Technology Research Center.

§ 143-374. **Creation of Center.**—There is hereby created the "North Carolina Space and Technology Research Center" at the Research Triangle. (1963, c. 846, s. 1.)

§ 143-375. **Administration by Board of Space and Technology.**—The activities of the North Carolina Space and Technology Research Center will be administered by the North Carolina Board of Space and Technology. (1963, c. 846, s. 2.)

§ 143-376. **Acceptance of funds.**—The North Carolina Space and Technology Research Center is authorized and empowered to accept funds from private sources and from governmental and institutional agencies to be used for construction, operation and maintenance of the Center. (1963, c. 846, s. 4.)

§ 143-377. **Applicability of Executive Budget Act.**—The North Carolina Space and Technology Research Center is subject to the provisions of article 1, chapter 143, of the General Statutes of North Carolina. (1963, c. 846, s. 5.)

ARTICLE 42.

Board of Space and Technology.

§ 143-378. **Creation; purpose.**—There is hereby created the North Carolina Board of Space and Technology herein referred to as "the Board." The purpose of the Board shall be, through the exercise of its powers and performance of the duties set forth in this article, to encourage, promote, and support the scientific, engineering, and industrial research and applications in North Carolina to the end that the State will benefit from, and contribute to, economic and technical developments resulting from advances in the space and related sciences. (1963, c. 1006, s. 1.)

§ 143-379. **Members; appointment; terms of office; qualifications; vacancies.**—The Board shall consist of fifteen members, and the Governor, who shall serve as chairman. On the first day of July, 1963, the Governor shall appoint the fifteen members of the Board. Seven members shall be appointed to serve for terms of two (2) years each; eight members shall be appointed for terms of four (4) years each; and upon the expiration of the respective terms of the original members, the successor shall be appointed by the Governor for terms of four (4) years each thereafter. Two members shall be from the University of North Carolina at Chapel Hill; two members shall be from North Carolina State College at Raleigh; two members shall be from Duke University; one member shall be from the membership of the Governor's Scientific Advisory Committee; one member shall be from the membership of the North Carolina Advisory Committee on Atomic Energy; three members shall be from the membership of the General Assembly; three members shall be from industry within the State; and one member shall be appointed upon nomination by the executive committee of the Board of the Research Triangle Institute. The members appointed from the University of North Carolina at Chapel Hill and from North Carolina State College at Raleigh shall be nominated by the President of the University of North Carolina. The members appointed from Duke University shall be nominated by the President of Duke University. All members appointed to the Board shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board because of death, resignation, or otherwise, shall be filled by the Governor for the unexpired term of such member. Appointees to the Board shall have demonstrated their interest in, and ability to contribute to, the fulfillment of the purpose of the Board. (1963, c. 1006, s. 2.)

§ 143-380. **Powers and duties.**—The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of article 1, chapter 143 of the General Statutes:

- (1) The Board shall be responsible for the allocation of funds for, but not necessarily limited to, such objects as grants for scientific engineering or technological projects, the support of scientific or research personnel, the purchase of equipment or supplies, the construction or modification of facilities, and the employment of consultants. In general, such allocations will be made for the support of activities, equipment and facilities in the space and associated science fields relevant to the objectives of the Board which are associated with the existing public or private agencies in the State, such as the public and private institutions of higher education, the Research Triangle Institute and similar entities.
- (2) The Board shall be responsible for the review of the expenditure of all funds allocated by the Board, subject to the provisions of the Executive Budget Act.
- (3) The Board's activities shall be centered in the Research Triangle, and will be closely allied to the Research Triangle Institute.
- (4) The Board shall encourage liaison between industry, educational institutions, the Research Triangle of North Carolina, and federal agencies, such as the National Aeronautics and Space Administration, the Atomic Energy Commission, the Department of Defense, the National Science Foundation, and the National Institute of Health.
- (5) The Board shall hold regular meetings to inform industry of the possible space and nuclear applications which can accelerate the growth of the North Carolina industrial economy.
- (6) The Board shall encourage the cooperation of the State's industrial community, to the end that industry shall assist in screening and identifying research results for possible industrial applications.

- (7) The Board will from time to time, arrange to have seminars, short courses, visits and practical demonstrations held to foster interest in the results of research as a means of achieving economic progress. (1963, c. 1006, s. 4.)

§ 143-381. **Facilities; employees.**—In order to effectuate the provisions of this article, the Board shall be furnished suitable facilities at the Research Triangle, and shall, within the limits of funds provided by law, appoint such employees as shall be sufficient to carry out the provisions of this article, such employees being subject to the provisions of article 2, chapter 143 of the General Statutes, entitled "State Personnel Department." (1963, c. 1006, s. 5.)

§ 143-382. **Per diem and expense allowances of members.**—Members of the Board shall receive no compensation for their services other than such per diem allowances and allowance for travel expenses as may be provided in each biennial appropriation act for such members. (1963, c. 1006, s. 6.)

§ 143-383. **Budget.**—The necessary expenditures of the Board shall be provided in a budget subject to the provisions of article 1, chapter 143 of the General Statutes, entitled "The Executive Budget Act." (1963, c. 1006, s. 7.)

ARTICLE 43.

North Carolina Seashore Commission.

§ 143-384. **Commission created; members; chairman.** — There is hereby created a commission to be known as the "North Carolina Seashore Commission," to consist of twenty members and a chairman, all of whom shall be appointed by the Governor, and ex officio members as hereinafter set forth. (1963, c. 989, s. 2.)

Editor's Note.—The act adding this article became effective Aug. 31, 1963.

§ 143-385. **Appointment and terms; vacancies.**—On or before September 1, 1963, the Governor shall appoint twenty members of the original Commission, ten to serve for two (2) years, and ten to serve for four (4) years, and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the Commission to serve for terms of four (4) years. Members of the Commission shall be eligible for reappointment. The Governor shall accept the resignation of members, and shall appoint members to serve the unexpired terms caused by resignation or death of any of the members of the Commission. Terms of the original members shall commence on September 1, 1963, and members shall continue to hold office until their successors are appointed and qualified. The Governor shall appoint a chairman of the Commission to serve at the pleasure of the Governor. (1963, c. 989, s. 3.)

§ 143-386. **Vice-chairman; secretary; meetings; rules, regulations and bylaws; quorum.**—At its first meeting, the Commission shall elect a vice-chairman and a secretary. The vice-chairman shall be a member of the Commission, but the secretary need not but may be a member of the Commission. The Commission shall meet upon call of the chairman, and shall adopt such rules, regulations, and bylaws governing its operation as it shall deem necessary. Twelve members of the Commission shall constitute a quorum for the transaction of business. (1963, c. 989, s. 4.)

§ 143-387. **Ex officio members.**—Ex officio members to advise, assist and help coordinate matters in which the Commission is concerned, shall include the following: The chairman, Board of Water Resources; the Property Control Officer of the Department of Administration; the Director, North Carolina Recrea-

tion Commission; a member of the Wildlife Resources Commission; a member of the State Highway Commission; the chairman of the State Parks Committee, of the Board of Conservation and Development; the Director of North Carolina Civil Defense. (1963, c. 989, s. 5.)

§ 143-388. **Powers and duties.**—The Commission shall have the duty, authority and responsibility to:

- (1) Assist in the development of plans to achieve preservation of the shore line of the State of North Carolina;
- (2) Assist in the sound development of the seacoast areas of the State, giving emphasis to the advancement and development of the travel attractions and facilities for accommodating travelers in these areas;
- (3) Assist in planning, promoting and developing recreational and industrial developments in these areas, with emphasis upon making the seashore areas of North Carolina attractive to visitors and to permanent residents;
- (4) Coordinate the activities of local governments, agencies of the State and agencies of the federal government in planning and development of the seacoast areas for the purpose of attracting visitors and new industrial growth, and to develop and implement plans for preservation of the coastal areas of North Carolina.

It shall be the duty of the Commission to study the development of the seacoast areas and to recommend policies which will promote preservation of the seacoast, and development of the coastal area, with particular emphasis upon the development of the scenic and recreational resources of the seacoast. It shall advise and confer with various interested individuals, organizations and agencies which are interested in development of the seacoast area and shall use its facilities and efforts in planning, developing, and carrying out overall programs for the development of the area as a whole. It shall act as liaison between agencies of the State, local government, and agencies of the federal government concerned with development of the seacoast region. (1963, c. 989, s. 6.)

§ 143-389. **Reports; recommendations and suggestions.**—The Commission shall make an annual report to the Governor covering its work during the preceding twelve (12) months, and shall make such other reports as the Governor may request from time to time. It shall file such recommendations or suggestions as it may deem proper with other agencies of the State, local, or federal governments. (1963, c. 989, s. 7.)

§ 143-390. **Expenses and per diem.**—The members of the Commission shall receive their necessary travel and subsistence expense, at the rate being currently paid to other State boards and commissions, and shall receive a per diem of seven dollars (\$7.00) per day for each day engaged in official duties of the Commission. All such expenses of the Commission shall be paid from the Contingency and Emergency Fund upon application in the manner prescribed in G. S. 143-12. (1963, c. 989, s. 8.)

§ 143-391. **Board of Water Resources to provide staff assistance and facilities.**—The Board of Water Resources shall provide staff assistance and facilities as may be necessary in carrying out the provisions of this article. (1963, c. 989, s. 9.)

Chapter 145.
State Flower, Bird and Tree.

Sec.

145-3. Pine adopted as official State tree.

§ 145-3. Pine adopted as official State tree.—The Pine is hereby adopted as the official State tree of the State of North Carolina. (1963, c. 41.)

Chapter 146.
State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

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- 146-2. Department of Administration given control of certain State lands; general powers.

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- 146-3. What lands may be sold.
- 146-4. Sales of certain lands; procedure; deeds; disposition of proceeds.
- 146-5. Reservation to the State.
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- 146-7. Sale of timber rights; procedure; instruments conveying rights; disposition of proceeds.
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Article 5.

General Provisions.

- 146-21. Intent of subchapter.

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Acquisitions.

- 146-22. All acquisitions to be made by Department of Administration.
- 146-23. Agency must file statement of needs; Department must investigate.
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Article 7.

Dispositions.

- 146-27. All sales, leases, and rentals to be made by Department of Administration.
- 146-28. Agency must file application with Department; Department must investigate.
- 146-29. Procedure for sale, lease, or rental.
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SUBCHAPTER III. ENTRIES AND GRANTS.

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- 146-40. Record of surveys to be kept.
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Article 11.

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- 146-44. Card index system for grants.
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- 146-46. When grants may issue.
- 146-47. Change of county line before grant issued or registered.
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- 146-50. Resurvey of lands to correct grants.
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- 146-56. Time for registering grants extended.
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Article 13.

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- 146-64. Definitions.
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SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. **Intent of subchapter.** — It is the purpose and intent of this subchapter to vest in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State as hereinafter provided, responsibility for the management, control and disposition of all vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands, title to which is vested in the State or in any State agency, to be exercised subject to the provisions of this subchapter. (1959, c. 683, s. 1.)

Editor's Note.—

Session Laws 1959, c. 683, repealed former chapter 146 and enacted the provisions of this chapter in lieu thereof. For-

mer chapter 146 contained §§ 146-1 through 146-113. The new chapter contains §§ 146-1 through 146-83.

§ 146-2. **Department of Administration given control of certain State lands; general powers.**—The power to manage, control, and dispose of the vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands is hereby vested in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State, and subject to the provisions of this subchapter. The Department of Administration shall have the following general powers and duties with respect to those lands:

- (1) To take such measures as it deems necessary to establish, protect, preserve, and enhance the interest of the State in those lands, and to call upon the Attorney General for legal assistance in performing this duty.
- (2) Subject to the approval of the Governor and Council of State, to adopt such rules and regulations as it may deem necessary to carry out its duties under the provisions of this subchapter. (1959, c. 683, s. 1.)

ARTICLE 2.

Dispositions.

§ 146-3. **What lands may be sold.**—Any State lands may be disposed of by the State in the manner prescribed in this chapter, with the following exceptions:

- (1) No submerged lands may be conveyed in fee, but easements therein may be granted, as provided in this subchapter.
- (2) No natural lake belonging to the State or to any State agency on January 1, 1959, and having an area of fifty acres or more, may be in any manner disposed of, but all such lakes shall be retained by the State for the use and benefit of all the people of the State and administered as provided for other recreational areas owned by the State. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; Rev., s. 1693; 1911, c. 8; C. S., ss. 7540, 7544; 1929, c. 165; G. S., ss. 146-1, 146-7, 146-12; 1959, c. 683, s. 1.)

§ 146-4. **Sales of certain lands; procedure; deeds; disposition of proceeds.**—The Department of Administration may sell the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every deed convey-

ing any part of those lands in fee shall be executed in the manner required by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required. The net proceeds of all such sales of those lands shall be paid into the State Literary Fund. Whenever negotiations are begun by the Department for the purpose of selling swamp land or the timber thereon, the Department shall promptly notify the State Board of Education of that fact. If the Board deems the proposed sale inadvisable, it may so inform the Governor and Council of State, who may give due consideration to the representations of the Board in determining whether to approve or disapprove the proposed transaction. (R. C., c. 66, s. 12; 1872-3, c. 194, s. 2; Code, ss. 2514, 2515, 2529; 1889, c. 243, s. 4; Rev., s. 4049; C. S., s. 7621; G. S., s. 146-94; 1959, c. 683, s. 1.)

§ 146-5. Reservation to the State.—In any sale of the vacant and unappropriated lands or swamp lands by the State, the following powers may be expressly reserved to the State, to be exercised according to law:

- (1) The State may make any reasonable and expedient regulations respecting the repair of the canals which have been cut by the State, or the enlargement of such canals.
- (2) The State may impose taxes on the lands benefited by those canals for their repair, and they shall not be closed.
- (3) The navigation of the canals shall be free to all persons, subject to a right in the State to impose tolls.
- (4) All landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by law in such cases.
- (5) The roads along the banks of the canals shall be public roads. (1872-3, c. 118; Code, s. 2534; Rev., s. 4050; C. S., s. 7622; G. S., s. 146-95; 1959, c. 683, s. 1.)

§ 146-6. Title to land raised from navigable water.—(a) If any land is, by any process of nature or as a result of the erection of any pier, jetty or breakwater, raised above the high water mark of any navigable water, title thereto shall vest in the owner of that land which, immediately prior to the raising of the land in question, directly adjoined the navigable water. The tract, title to which is thus vested in a riparian owner, shall include only the front of his formerly riparian tract and shall be confined within extensions of his property lines, which extensions shall be perpendicular to the channel, or main watercourses.

(b) If any land is, by act of man, raised above the high water mark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the Governor and Council of State shall have previously approved, in the manner provided in subsection (c) of this section, the commission of the act which caused the raising of the land in question.

(c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such riparian owner shall have thirty days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The

granting by the State of the permit or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied with all requisite conditions precedent to the issuance of such permit or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefor to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(d) If an island is, by any process of nature or by act of man, formed in any navigable water, title to such island shall vest in the State and the island shall become a part of the vacant and unappropriated lands of the State. Provided, however, that if in any process of dredging, by either the State or federal government, for the purpose of deepening any harbor or inland waterway, or clearing out or creating the same, a deposit of the excavated material is made upon the lands of any owner, and title to which at the time is not vested in either the State or federal government, or any other person, whether such excavation be deposited with or without the approval of the owner or owners of such lands, all such additions to lands shall accrue to the use and benefit of the owner or owners of the land or lands on which such deposit shall have been made, and such owner or owners shall be deemed vested in fee simple with the title to the same.

(e) The Governor and Council of State may, upon proof satisfactory to them that any land has been raised above the high water mark of any navigable water by any process of nature or by the erection of any pier, jetty or breakwater, and that this, or any other provision of this section vests title in the riparian owner thereof, whenever it may be necessary to do so in order to establish clear title to such land in the riparian owner, direct execution of a quitclaim deed thereto, conveying to such owner all of the State's right, title, and interest in such raised land. (1959, c. 683, s. 1.)

§ 146-7. Sale of timber rights; procedure; instruments conveying rights; disposition of proceeds. — The Department of Administration may sell timber rights in the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying timber rights shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of all sales of timber from those lands shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

Cited in *Williams v. McSwain*, 248 N. C. 13, 102 S. E. (2d) 464 (1958).

§ 146-8. Disposition of mineral deposits in State lands under water.—The State, acting at the request of the Department of Conservation and Development, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Conservation and Development, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting

at the request of the Department of Conservation and Development, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Conservation and Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 385; G. S., s. 113-26; 1959, c. 683, s. 1.)

Cited in *Williams v. McSwain*, 248 N. C. 13, 102 S. E. (2d) 464 (1958).

§ 146-9. Disposition of mineral deposits in State lands not under water.—The Department of Administration may sell, lease, or otherwise dispose of mineral rights or deposits in the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, not lying beneath the waters of the State, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying such rights shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of dispositions of all such mineral rights or deposits shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

§ 146-10. Leases.—The Department of Administration may lease or rent the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, at such times, upon such consideration, in such portions, and upon such terms as it may deem proper. Every lease or rental of such lands by the Department shall be approved by the Governor and Council of State, or by the agency designated by the Governor and Council of State to approve such leases and rentals. (1959, c. 683, s. 1.)

§ 146-11. Easements, rights-of-way, etc. — The Department of Administration may grant easements, rights-of-way, dumping rights and other interests in State lands, for the purpose of

- (1) Cooperating with the federal government,
- (2) Utilizing the natural resources of the State, or
- (3) Otherwise serving the public interest.

The Department shall fix the terms and consideration upon which such rights may be granted. Every instrument conveying such interests shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such interests. (1959, c. 683, s. 1.)

§ 146-12. Easements in lands covered by water.—The Department of Administration may grant, to adjoining riparian owners, easements in lands covered by navigable waters or by the waters of any lake owned by the State for such purposes and upon such conditions as it may deem proper, with the approval of the Governor and Council of State. The Department may, with the approval of the Governor and Council of State, revoke any such easement upon the violation by the grantee or his assigns of the conditions upon which it was granted.

Every such easement shall include only the front of the tract owned by the riparian owner to whom the easement is granted, shall extend no further than the deep water, and shall in no respect obstruct or impair navigation.

When any such easement is granted in front of the lands of any incorporated town, the governing body of the town shall regulate the line on deep water to which wharves may be built. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; 1889, c. 555; 1891, c. 532; 1893, cc. 4, 17, 349; 1901, c. 364; Rev., s. 1696; C. S., s. 7543; G. S., s. 146-6; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-6.

In *State v. Eason*, 114 N. C. 787, 19 S. E. 88 (1894), it was held that a city whose limits extended to a navigable stream has jurisdiction only to the low-water mark. In view of this case it would seem that a city can only regulate the deep water line, for the purpose of entry when the stream is in the city, and it has not the power of regulating the deep water line when it extends only to the stream, unless so provided by its charter or express legislation.

Entry by Riparian Owner.—Navigable waters may be entered to the deep water line, for wharfage purposes. *Barfoot v. Willis*, 178 N. C. 200, 100 S. E. 303 (1919), but this right of entry is restricted to a riparian owner, and applies only to his immediate water front. *Bond v. Wood*, 107 N. C. 139, 12 S. E. 281 (1890).

A grant to a riparian owner of land covered by navigable water conveys only an easement therein, and a deed of the land adjoining the navigable water conveys the easement in the land covered by the water. *Shepard's Point Land Co. v. Atlantic Hotel*, 132 N. C. 517, 44 S. E. 39 (1903).

Regulating Deep Water Line by Mandamus.—Mandamus will lie by the riparian owner of land lying within the limits of an incorporated town, or city, to compel the town or city to "regulate the deep water line to which wharves may be built" as required by this section. *Wool v. Edenton*, 115 N. C. 10, 20 S. E. 165 (1894).

§ 146-13. Erection of piers on State lakes restricted.—No person, firm, or corporation shall erect upon the floor of, or in or upon, the waters of any State lake, any dock, pier, pavilion, boathouse, bathhouse, or other structure, without first having secured a permit to do so from the Department of Administration, or from the agency designated by the Department to issue such permits.

Prior to this case the court had held, because of the former wording of the statute, that a riparian owner in a city could not make an entry and the Secretary of State could not issue a grant until the line of deep water had been regulated by the municipal corporation. *Wool v. Saunders*, 108 N. C. 729, 13 S. E. 294 (1891).

Rights Go with Land.—Riparian rights being incident to land abutting on navigable water cannot be conveyed without a conveyance of such land, and lands covered by navigable water are subject to entry only by the owner of the land abutting thereon. *Zimmerman v. Robinson*, 114 N. C. 39, 19 S. E. 102 (1894); *Land Co. v. Hotel*, 134 N. C. 397, 46 S. E. 749 (1904). An adjacent riparian owner acquires only an easement in the bed of navigable waters in front of his shore lots for the purpose of building a wharf. *Atlantic, etc., R. Co. v. Way*, 172 N. C. 774, 90 S. E. 937 (1916).

Same—Fishing Rights.—The right to build a wharf in front of riparian property does not give the riparian owner exclusive fishing privilege in the navigable part of the stream on which his property fronts. But the riparian owner will be protected from wrongful interference. *Beil v. Smith*, 171 N. C. 116, 87 S. E. 987 (1916).

Erroneous Survey of the Deep Water Line.—In case the line marked out is not the deep water line a riparian owner has a right to have the error corrected, and he will not be estopped because of a grant had under the erroneous survey. *Wool v. Edenton*, 117 N. C. 1, 23 S. E. 40 (1895).

Each permit shall set forth in required detail the size, cost, and nature of such structure; and any person, firm, or corporation erecting any such structure without a proper permit or not in accordance with the specifications of such permit shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not exceeding thirty days. The State may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3; G. S., s. 146-10; 1959, c. 683, s. 1.)

§ 146-14. Proceeds of dispositions of certain State lands.—The net proceeds of all sales, leases, rentals, or other dispositions of the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, and all interests and rights therein, shall be paid into the State Literary Fund, except as otherwise provided in this chapter. (1959, c. 683, s. 1.)

§ 146-15. Definition of net proceeds.—For the purposes of this subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

- (1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
- (2) Amounts paid pursuant to G. S. 105-296.1, if any; and
- (3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten per cent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this subchapter, no service charge shall be paid into the State Land Fund from proceeds derived from the sale of land or products of land owned or held for the use of the Wildlife Resources Commission, or purchased or acquired with funds of the Wildlife Resources Commission. (1959, c. 683, s. 1.)

ARTICLE 3.

Discovery and Reclamation.

§ 146-16. Department of Administration to supervise.—The Department of Administration shall be responsible for discovering, inventorying, surveying, and reclaiming the vacant and unappropriated lands, swamp lands, and lands acquired by the State by virtue of being sold for taxes, and shall take all measures necessary to that end. All expenses incurred in the performance of these activities shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

§ 146-17. Mapping and discovery agreements.—The Department of Administration, acting on behalf of the State, for the purpose of discovering State lands, may, with the approval of the Governor and Council of State, enter into agreements with counties, municipalities, persons, firms, and corporations providing for the discovery of State land by the systematic mapping of the counties of the State and by other appropriate means. All expenses incurred by the Department incident to such mapping and discovery agreements shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

ARTICLE 4.

Miscellaneous Provisions.

§ 146-18. **Recreational use of State lakes regulated.**—All recreation, except hunting and fishing, in, upon, or above any or all of the State lakes referred to in this subchapter may be regulated in the public interest by the State agency having administrative authority over these areas. (1933, c. 516, s. 1; G. S., s. 146-8; 1959, c. 683, s. 1.)

§ 146-19. **Fishing license fees for nonresidents of counties in which State lakes are situated.**—The Wildlife Resources Commission, through its authorized agent or agents, is hereby authorized to require of nonresidents of the county within which a State lake is situated a daily or weekly permit in lieu of the regular "resident State license" for fishing with hook and line or rod and reel within said lake in accordance with the regulations of the Commission relating to said lake. Except for the provisions of this section, the laws and regulations dealing with the issuance of fishing permits by said Commission must be complied with. (1933, c. 516, s. 4; G. S., s. 146-11; 1959, c. 683, s. 1.)

§ 146-20. **Forfeiture for failure to register deeds.** — All the grants and deeds for swamp lands made prior to November 1, 1883, must have been proved and registered, in the county where the lands are situate, within twelve months from November 1, 1883, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the State; but the provisions of this section shall be applicable only to the swamp lands which have been surveyed or taken possession of by, or are vested in, the State or its agencies. (R. S., c. 67, s. 10; R. C., c. 66, s. 10; Code, ss. 2513, 3866; Rev., s. 4046; C. S., s. 7623; G. S., s. 146-96; 1959, c. 683, s. 1.)

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 5.

General Provisions.

§ 146-21. **Intent of subchapter.**—It is the purpose and intent of this subchapter to provide for and regulate the acquisition, disposition, and management of all State lands other than the vacant and unappropriated lands, swamp lands, lands acquired by the State by virtue of being sold for taxes, and submerged lands. (1959, c. 683, s. 1.)

ARTICLE 6.

Acquisitions.

§ 146-22. **All acquisitions to be made by Department of Administration.**—Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-103; 1959, c. 683, s. 1.)

§ 146-23. **Agency must file statement of needs; Department must investigate.**—Any State agency desiring to acquire land, whether by purchase, condemnation, lease, or rental, shall file with the Department of Administration an application setting forth its needs, and shall furnish such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects

of the requested acquisition, including the existence of actual need for the requested property on the part of the requesting agency; the availability of land already owned by the State or by any State agency which might meet the requirements of the requesting agency; the availability, value, and status of title of other land, whether for purchase, condemnation, lease, or rental, which might meet the requirements of the requesting agency; and the availability of funds to pay for land if purchased, condemned, leased, or rented. (1957, c. 584, s. 6; G. S., s. 146-104; 1959, c. 683, s. 1.)

§ 146-24. Procedure for purchase or condemnation.—(a) If, after investigation, the Department determines that it is in the best interest of the State that land be acquired, the Department shall proceed to negotiate with the owners of the desired land for its purchase.

(b) If the purchase price and other terms are agreed upon, the Department shall then submit to the Governor and Council of State the proposed purchase, together with a copy of the deed, for their approval or disapproval. If the Governor and Council of State approve the proposed purchase, the Department shall pay for the land and accept delivery of a deed thereto. All conveyances of purchased real property shall be made to "the State of North Carolina," and no such conveyance shall be made to a particular agency, or to the State for the use or benefit of a particular agency.

(c) If negotiations for the purchase of the land are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right of eminent domain and acquire any such land by condemnation in the manner prescribed by chapter 40 of the General Statutes. Upon approval by the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. Approval by no other State agency shall be required as a prerequisite to the exercise of the power of eminent domain by the Department. (1957, c. 584, s. 6; G. S., s. 146-105; 1959, c. 683, s. 1.)

§ 146-25. Leases and rentals.—If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be leased or rented for the use of the State or of any State agency, the Department shall proceed to negotiate with the owners for the lease or rental of such property. All lease and rental agreements entered into by the Department shall be promptly submitted to the Governor and Council of State for approval or disapproval. (1957, c. 584, s. 6; G. S., s. 146-106; 1959, c. 683, s. 1.)

§ 146-26. Donations and devises to State.—No devise or donation of land or any interest therein to the State or to any State agency shall be effective to vest title to the said land or any interest therein in the State or in any State agency until the devise or donation is accepted by the Governor and Council of State. Upon acceptance by the Governor and Council of State, title to the said land or interest therein shall immediately vest as of the time title would have vested but for the above requirement of acceptance by the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-107; 1959, c. 683, s. 1.)

ARTICLE 7.

Dispositions.

§ 146-27. All sales, leases, and rentals to be made by Department of Administration.—Every sale, lease, or rental of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. In no event shall the Department of Administration have authority to initiate any proceeding for the sale,

lease, or rental of land heretofore allocated to or used by any State agency. (1957, c. 584, s. 6; G. S., s. 146-108; 1959, c. 683, s. 1.)

§ 146-28. **Agency must file application with Department; Department must investigate.**—Any State agency desiring to sell, lease, or rent any land owned by the State or by any State agency shall file with the Department of Administration an application setting forth the facts relating to the proposed transaction, and shall furnish the Department with such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the proposed transaction, including particularly present and future State need for the land proposed to be conveyed, leased, or rented. (1957, c. 584, s. 6; G. S., s. 146-109; 1959, c. 683, s. 1.)

§ 146-29. **Procedure for sale, lease, or rental.**—If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G. S. 146-74 through 146-78. (1957, c. 584, s. 6; G. S., s. 146-110; 1959, c. 683, s. 1.)

§ 146-30. **Application of net proceeds.**—The net proceeds of any disposition made in accordance with this subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer in a capital improvement account to the credit of the State agency at whose request the disposition was approved, to be used for such specific capital improvement projects or other purposes as are approved by the Director of the Budget and the Advisory Budget Commission.

For the purposes of this subchapter, the term “net proceeds” means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

- (1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
- (2) Amounts paid pursuant to G. S. 105-296.1, if any; and
- (3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten per cent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. (1959, c. 683, s. 1.)

ARTICLE 8.

Miscellaneous Provisions.

§ 146-31. **Right of appeal to Governor and Council of State.**—The requesting agency, in the event of disagreement with a decision of the Depart-

ment of Administration regarding the acquisition or disposition of land pursuant to the provisions of this subchapter, shall have the right of appeal to the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-113; 1959, c. 683, s. 1.)

§ 146-32. Exemptions as to leases, etc.—The Governor, acting with the approval of the Council of State, may adopt rules and regulations

- (1) Exempting from any or all of the requirements of this subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and
- (2) Authoring any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this chapter. (1959, c. 683, s. 1.)

§ 146-33. State agencies to locate and mark boundaries of lands.—Every State agency shall locate and identify, and shall mark and keep marked, the boundaries of all lands allocated to that agency or under its control. The Department of Administration shall locate and identify, and mark and keep marked, the boundaries of all State lands not allocated to or under the control of any other State agency. The chief administrative officer of every State agency is authorized to contract with the State Prison Department for the furnishing, upon such conditions as may be agreed upon from time to time between the State Prison Department and the chief administrative officer of that agency, of prison labor for use where feasible in the performance of these duties. (1957, c. 584, s. 2; G. S., s. 143-145.1; 1959, c. 683, s. 1.)

§ 146-34. Agencies may establish agreed boundaries.—Every State agency may establish agreed boundaries between lands allocated to it or under its control, and the lands of any other owner, subject to the approval of the Governor and Council of State. The Department of Administration is authorized to establish agreed boundaries between State lands not allocated to or under the control of any other State agency and the lands of any other owner, subject to the approval of the Governor and Council of State. The Attorney General shall represent the State in all proceedings to establish boundaries which cannot be established by agreement. (1957, c. 584, s. 3; G. S., s. 143-145.2; 1959, c. 683, s. 1.)

§ 146-35. Severance approval delegation.—The Governor, acting with the approval of the Council of State, may adopt rules and regulations delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands. Upon such approval of severance, the buildings or timber affected shall be, for the purposes of this chapter, treated as personal property. (1959, c. 683, s. 1.)

§ 146-36. Acquisitions for and conveyances to federal government.—The Governor and Council of State may, whenever they find that it is in the best interest of the State to do so, enter into any contract or other agreement which will be sufficient to comply with federal laws or regulations, binding the State to acquire for and to convey to the United States government land or any interest in land, and to do such other acts and things as may be necessary for such compliance.

The Governor and Council of State may authorize any conveyance to the United States government to be made upon nominal consideration whenever they deem it to be in the best interest of the State to do so. (1959, c. 683, s. 1.)

SUBCHAPTER III. ENTRIES AND GRANTS.

ARTICLE 9.

General Provisions.

§ 146-37. **Intent of subchapter.**—It is the purpose and intent of this subchapter to protect vested rights, titles, and interests acquired under the laws governing entries and grants as they read immediately prior to the ratification of this chapter. (1959, c. 683, s. 1.)

§ 146-38. **Pending entries.**—All entries which have been filed with entry-takers within one year prior to the ratification of this chapter, or filed more than one year prior to the ratification of this chapter but still pending due to the filing of protest to the entry, shall be processed pursuant to the provisions of chapter 146 of the General Statutes as it read immediately prior to the ratification of this chapter. Every such entry shall be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event it shall be paid for within one year after final judgment on the protest; and all entries not thus paid for shall become null and void, and shall not be subject to renewal. It shall be the duty of both the enterer and protestant to conclude, within twelve months from the date of ratification of this chapter, all actions wherein a protest has been filed, and such cases shall be given preference on the dockets of the courts of the State. Any action not so concluded shall be deemed a lapse as to enterer and protestant. It is not the intent of this proviso to void any previous grant of the State of North Carolina, or to divest any vested right, but to terminate all rights accrued on account of an entry wherein no grant has been made. Provided that the resident judge of the superior court or the judge holding the superior courts of the district where the land lies, may, for good cause shown, extend the time within which an action in which a protest has been filed is required by this section to be concluded; but no single extension shall exceed one year in duration. A copy of this section shall be mailed by the Secretary of State to all parties to actions wherein protests have been filed as may be determined by records available in his office, and to all clerks of the superior court of the State. (1959, c. 683, s. 1.)

§ 146-39. **Void grants; not color of title.** — Every entry made and every grant issued for any lands not authorized by G. S. 146-1 through 146-77, as those sections read immediately prior to the ratification of this chapter, to be entered or granted shall be void.

Every grant of land issued since March 6, 1893, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this State, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person. (R. C., c. 42, s. 2; Code, s. 2755; 1893, c. 490; Rev., s. 1699; C. S., s. 7545; G. S., s. 146-13; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-13.

In General.—Where there are two or more conflicting titles derived from the State, the elder shall be preferred, upon the familiar maxim that he who is prior in time shall be prior in right and shall be adjudged to have the better title. *Berry v. Lumber Co.*, 141 N. C. 386, 54 S. E. 278, (1906).

Under the express provisions of this

statute where land in controversy has been previously granted to plaintiff's predecessor in title, a subsequent grant of the same land, under which defendants claimed title, was void for all purposes. *Johnston v. Kramer Bros. & Co.*, 203 F. 733 (1913).

The State's grant of land was held not invalid under this section where land conveyed by the grant had not been covered by any previous grant. *Peterson v. Sucro*, 101 F. (2d) 282 (1939).

State Not Interested in Conflicting

Grants.—A protest to the entry raises the issue of title solely between the enterer and protestant, in which the State is not interested, the burden being on the enterer to prove the protestant's grant does not cover the land described in his entry. *Walker v. Parker*, 169 N. C. 150, 85 S. E. 306 (1915).

Title by Adverse Possession. — Where upon protest to the entry of the State's lands it is ascertained that the lands described in the entry are not contained in the former grant, the protestant may show that the lands are not vacant and unappropriated by sufficient adverse possession to take the title out of the State and vest it in himself. *Walker v. Parker*, 169 N. C. 150, 85 S. E. 306 (1915).

Title to Lappage by Adverse Possession. —To mature a title under the junior grant, there must be shown adverse and exclu-

sive possession of the lappage, or the law will presume possession to be in the true owner as to all that portion of the lappage not actually occupied by the junior claimant. *McLean v. Smith*, 106 N. C. 172, 11 S. E. 184 (1890); *Boomer v. Gibbs*, 114 N. C. 76, 19 S. E. 226 (1894); *Currie v. Gilchrist*, 147 N. C. 648, 61 S. E. 581 (1908); *Blue Ridge Land Co. v. Floyd*, 167 N. C. 686, 83 S. E. 687 (1914); *Carolina Central Land Co. v. Potter*, 189 N. C. 56, 127 S. E. 343 (1925).

Application to Grants Since March 6, 1893.—This section providing that a junior grant shall not be color of title so far as it covers land previously granted, applies by its terms only to grants issued since March 6, 1893. *Weaver v. Love*, 146 N. C. 414, 59 S. E. 1041 (1907); *Land Co. v. Western*, 177 N. C. 248, 98 S. E. 706 (1919).

ARTICLE 10.

Surveys.

§ 146-40. Record of surveys to be kept.—The county commissioners of the several counties of the State shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. Such record shall have an alphabetical and numerical index, the numerical index to run consecutively. It shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the date such survey was made. (1905, c. 242; Rev., s. 1722; C. S., s. 7570; G. S., s. 146-39; 1959, c. 683, s. 1.)

Vague Record Not Good against Junior Enterer.—Prior to this section an entry of the State's vacant and unappropriated lands too vague to give notice of the boundaries of the land intended to be entered was not sufficient notice to a second enterer who has perfected his grant in ignorance of the first; and the mere running of the lines of the lands by survey or the making of a map by the first enterer which

he could keep in his possession, or the warrant to the county surveyor, necessarily no more definite than the original entry, did not remedy the defective description of the entry. This section provides for notice of all surveys and such will not hereafter arise. *Lovin v. Carver*, 150 N. C. 710, 64 S. E. 775 (1911), cited under former § 146-39.

§ 146-41. Former surveys recorded. — Where any ex-surveyor of a county is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in the Record of Surveys, and the county commissioners shall pay for such services ten cents (10¢) for each survey so recorded and indexed. (1905, c. 242, s. 2; Rev., s. 1725; C. S., s. 7571; G. S., s. 146-40; 1959, c. 683, s. 1.)

§ 146-42. What record must show; received as evidence. — All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee; and shall be duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry and in the name of the assignee

if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided that if such record differs from the original certificates of survey heretofore made or on file in the office of the Secretary of State, such original or certified copy of the certificate in the Secretary of State's office shall control. (1905, c. 242, ss. 2, 3, 6; Rev., s. 1723; C. S., s. 7572; G. S., s. 146-41; 1959, c. 683, s. 1.)

ARTICLE 11.

Grants.

§ 146-43. **Cutting timber on land before obtaining a grant.**—If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a misdemeanor. Any person found guilty under the provisions of this section shall further pay to the State double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (1903, c. 272, s. 4; Rev., s. 3741; C. S., s. 7582; G. S., s. 146-51; 1959, c. 683, s. 1.)

§ 146-44. **Card index system for grants.** — The Secretary of State shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

.....	County	Acres
Name			
Grant No.	Issued		
Grant Book	Page		
Entry No.	Entered		
File No.			
Location			
Remarks			

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the Secretary of State shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made. (1909, c. 505, ss. 1, 2, 3; C. S., s. 7584; G. S., s. 146-53; 1959, c. 683, s. 1.)

§ 146-45. **Grant of Moore's Creek Battlefield authorized.**—In conjunction with an act of Congress relating to the establishment of the Moore's Creek National Military Park (June 2, 1926, c. 448, s. 2, 44 Stat. 684; U. S. Code, Title 16, ss. 422-422(d)), the Governor of the State of North Carolina is hereby authorized to execute to the United States government a deed vesting the title to Moore's Creek Battlefield, Pender County, in said United States government on behalf of the State of North Carolina, to preserve the same as an historical battlefield: Provided that the consent of the State of North Carolina to such acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such battlefield as that all civil and criminal processes issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given: Provided further, that the title to said battlefield so conveyed to the United States shall revert to the State of North Carolina unless said land is used for the purpose for which it is ceded. (1925, c. 40; 1927, c. 56; G. S., s. 146-54; 1959, c. 683, s. 1.)

ARTICLE 12.

Correction of Grants.

§ 146-46. **When grants may issue.**—In any case where, under the provisions of this subchapter, the Secretary of State is authorized to issue a grant or a duplicate grant to correct an error in a prior grant, the grant of correction shall be authenticated by the Governor, countersigned by the Secretary of State, and recorded in the office of the Secretary of State. The date of the entry and the number of the survey from the certificate of survey upon which the grant is founded shall be inserted in every such grant, and a copy of the plot shall be attached to the grant. (1777, c. 114, s. 10, P. R.; 1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. C., c. 42, ss. 12, 22; Code, ss. 2769, 2779; 1889, c. 522; Rev., ss. 1729, 1734, 1735; C. S., s. 7578; G. S., s. 146-47; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-47.

Grants under State Seal.—A grant without the Great Seal of the State affixed does not show title under that grant, as it is mandatory that the Seal be affixed to authenticate the signature of the Governor and Secretary of State. *Howell v. Hurley*, 170 N. C. 798, 83 S. E. 699 (1914).

A paper signed by the Governor and countersigned by the Secretary of State, although not bearing the Great Seal of the State, is admissible in evidence to show title. *Howell v. Hurley*, 170 N. C. 401, 87 S. E. 107 (1915).

Secretary of State Must Sign.—A grant of land if not signed by the Secretary of State is void. *Hunter v. Williams*, 8 N. C. 221 (1820).

§ 146-47. **Change of county line before grant issued or registered.**—All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor or the registration of the grants, by the change of former county lines or the establishment of new lines, the lands so entered were placed in a county or in counties different from that in which they were situated, and the grants were registered in the county where the entries were made, shall be good and valid, and the registration of the grant shall have the same force and effect as if they had been registered in the county where the lands were situated. All persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the Secretary of State, or from the office of the register of deeds when they had been erroneously registered, recorded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties. (1807, c. 37; Rev., s. 1736; C. S., s. 7585; G. S., s. 146-55; 1959, c. 683, s. 1.)

When the entry and survey are made in one county, the registering of the deed in that county gives good title although a new county may have been organized including the land granted before the grant

Deputy Signing.—It is necessary that the Secretary of State sign the grant, and if he signs it, it is valid no matter if there has been an attempt to sign by one of the deputies. *Fowler v. Development Co.*, 158 N. C. 48, 73 S. E. 488 (1911).

Place of Signature Immaterial.—It is not necessary that the Secretary of State countersign at any especial place on the grant to make it valid. *Richards v. Lumber Co.*, 158 N. C. 54, 73 S. E. 485 (1911).

Secretary of State Must Issue.—Where the claimant has complied with the law, and it appears from the warrant and survey that the entry-taker and surveyor have discharged their duties, the Secretary must issue the grant, and has no discretion in the matter. *Wool v. Saunders*, 108 N. C. 729, 13 S. E. 294 (1891).

was registered. *McMillan v. Gombill*, 106 N. C. 359, 11 S. E. 273 (1890); *Wyman v. Taylor*, 124 N. C. 426, 32 S. E. 740 (1899), cited under former § 146-55.

§ 146-48. **Entries in wrong county.**—Whereas many citizens of the State, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the State or not knowing

the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon. (1805, c. 675, P. R.; 1834, c. 17; R. C., c. 42, s. 27; Code, s. 2784; Rev., s. 1737; C. S., s. 7586; G. S., s. 146-56; 1959, c. 683, s. 1.)

Applied and discussed in *Harris v. Norman*, 96 N. C. 59, 2 S. E. 72 (1887). See *Lunsford v. Boston*, 16 N. C. 483 (1830); cited under former § 146-56. *Avery v. Strother*, 1 N. C. 558 (1802);

§ 146-49. **Errors in surveys of plots corrected.** — Whenever there may be an error by the surveyor in plotting or making out the certificate for the Secretary's office, or whenever the Secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so that such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto. The court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the Secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the Secretary of State, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition, unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law. (1790, c. 326, P. R.; 1798, c. 504, P. R.; 1804, c. 655, P. R.; 1814, c. 876, P. R.; R. C., c. 42, s. 28; Code, s. 2785; Rev., s. 1738; C. S., s. 7587; G. S., s. 146-57; 1959, c. 683, s. 1.)

§ 146-50. **Resurvey of lands to correct grants.** — Persons who have entered vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors. In every case where the purchase money has been paid into the State treasury within the time prescribed by law after entry, and the survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the register of deeds of the county where the land lies, and have his entry surveyed as is directed by existing laws. On presenting a certificate of survey and two fair plots thereof to the Secretary of State within six months after the payment of the purchase money, the party mak-

ing such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the Secretary of State to issue to him, the proper grant for the lands so entered. (1901, c. 734; Rev., s. 1739; C. S., s. 7588; G. S., s. 146-58; 1959, c. 683, s. 1.)

§ 146-51. Lost seal replaced.—In all cases where the seal annexed to a grant is lost or destroyed, the Governor may, on the certificate of the Secretary of State that the grant was fairly obtained, cause the seal of the State to be affixed thereto. (1807, c. 727, P. R.; R. C., c. 42, s. 24; Code, s. 2781; Rev., s. 1740; C. S., s. 7589; G. S., s. 146-59; 1959, c. 683, s. 1.)

§ 146-52. Errors in grants corrected. — If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the Secretary of State has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded, the Secretary of State shall, upon the application of any party interested and the payment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, the Secretary of State shall make the former correspond with the latter as the true facts may require. In case the party interested shall prefer it, the Secretary of State shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded, he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the State as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases. (1889, c. 460; Rev., s. 1741; C. S., s. 7590; G. S., s. 146-60; 1959, c. 683, s. 1.)

Power to Correct Errors Not Judicial.—The power conferred upon the Secretary of State to correct errors in grants of State's land, by supplying omissions, or correcting the names of grantees, material

words or figures, etc., confers on him only a ministerial authority and not a judicial power. *Herbert v. Union Development Co.*, 179 N. C. 662, 103 S. E. 380 (1920), cited under former § 146-60.

§ 146-53. Irregular entries validated.—Wherever persons have, prior to January 1, 1883, irregularly entered lands and have paid the fees required by law to the Secretary of State, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made. (1868-9, c. 100, s. 4; 1868-9, c. 173, s. 6; 1874-5, c. 48; Code, s. 2761; Rev., s. 1743; C. S., s. 7591; G. S., s. 146-61; 1959, c. 683, s. 1.)

Section Cures Irregularities. — Irregularities in receiving grants from the State are cured by this section. *Wyman v. Tay-*

lor, 124 N. C. 426, 32 S. E. 740 (1899), cited under former § 146-61.

§ 146-54. Grant signed by deputy Secretary of State validated.—Where State grants have heretofore been issued and the name of the Secretary of State has been affixed thereto by his deputy or chief clerk, or by anyone purporting to act in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights. (1905, c. 512; Rev., s. 1744; C. S., s. 7592; G. S., s. 146-62; 1959, c. 683, s. 1.)

This section does no interfere with vested rights, and therefore a grant countersigned by a clerk is not valid if it conflicts with a prior grant, but is valid as be-

tween the state and the grantee, if there was no prior grant. *Richard v. Ritter Lumber Co.*, 158 N. C. 54, 73 S. E. 485 (1911), cited under former § 146-62.

§ 146-55. **Registration of grants.** — Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the Secretary of State, which shall have the same effect as if the original had been registered. (1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. S., c. 42, s. 24; R. C., c. 42, s. 22; Code, s. 2779; Rev., s. 1729; C. S., s. 7579; G. S., s. 146-48; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-48.

Grant Not Void for Failure to Register It.—A grant is not void because of failure to record it. A junior grant that is recorded is not valid until there has been seven years' adverse possession. *North Carolina Mining Co. v. Westfeldt*, 151 F. 290 (1907).

Sufficient Evidence for Registration.—The certificate of the Secretary of State of North Carolina, attached to a grant of land and attested by the Great Seal of the State, is sufficient evidence of its official character to warrant its registration without further proof. *Ray v. Stewart*, 105 N. C. 472, 11 S. E. 182 (1890); *Barcello v. Hapgood*, 118 N. C. 712, 24 S. E. 124 (1896);

Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740 (1899).

Extension of Time for Registration.—“Prior to 1885 the statutes provided that all grants, deeds, etc., be registered in the county wherein the land was situated within two years from the date thereof. With one or two omissions, the legislature uniformly extended the time for registration for two years. The Supreme Court with equal uniformity held that such instruments, when registered within two years from their date or within the extended period, were good and valid for all purposes from their date by relation.” *Janney v. Blackwell*, 138 N. C. 437, 50 S. E. 857 (1905).

§ 146-56. **Time for registering grants extended.**—All grants from the State of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within six years from January 1, 1918, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1893, c. 40; 1901, c. 175; 1905, c. 6; Rev., s. 1747; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. Sess. 1913, cc. 27, 45; 1915, c. 170; 1917, c. 84; C. S., s. 7593; Ex. Sess. 1920, c. 78; 1921, c. 153; G. S., s. 146-63; 1959, c. 683, s. 1.)

Registration against Junior Grant. — Where neither party has possession the senior grant is valid against a junior grant duly recorded no matter how long registration may have been delayed by senior grantee. *Janney v. Blackwell*, 138 N. C. 437, 50 S. E. 857 (1905).

It is not necessary that a grant from the

State be registered to make it valid. The retroactive statutes making grants registered after the times prescribed valid, gives good title against a junior grant duly recorded. *Dew v. Pyke*, 145 N. C. 300, 59 S. E. 76 (1907), cited under former § 146-63.

§ 146-57. **Time for registering grants and other instruments extended.**—The time is hereby extended until September 1, 1926, for the proving and registering of all deeds of gift, grants from the State, or other instruments of writing heretofore executed and which are permitted or required by law to be registered, and which were or are required to be proved and registered within a limited time from the date of their execution; and all such instruments which have heretofore been or may be probated and registered before the expiration of

the period herein limited shall be held and deemed, from and after the date of such registration, to have been probated and registered in due time, if proved in due form, and registration thereof be in other respects valid: Provided that nothing in this section shall be held or deemed to validate or attempt to validate or give effect to any informal instrument; and provided further that this section shall not affect pending litigation: Provided further that nothing herein contained shall be held deemed to place any limitation upon the time allowed for the registration of any instrument where no such limit is now fixed by law. (Ex. Sess. 1924, c. 20; G. S., s. 146-64; 1959, c. 683, s. 1.)

Effect on § 47-26.—Where a mother has made a deed of gift of her lands to her son, who has failed to have it registered in the time required by § 47-26, and it is for that reason void, a latter curative statute extending the time for registration cannot

revive the void deed to the son. Under the facts, vested rights thereunder have been acquired. *Booth v. Hairston*, 193 N. C. 278, 136 S. E. 879, 57 A. L. R. 1186 (1927); (re-hearing) 195 N. C. 8, 141 S. E. 480 (1928), cited under former § 146-64.

§ 146-58. Time for registering grants further extended.—The time for the registration of grants issued by the State of North Carolina is hereby extended for a period of two years from January 1, 1925: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1925, c. 97; G. S., s. 146-65; 1959, c. 683, s. 1.)

§ 146-59. Time for registering grants or copies extended. — The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1927, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1927, c. 140; G. S., s. 146-66; 1959, c. 683, s. 1.)

§ 146-60. Further extension of time for registering grants or copies.—The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1947, next ensuing, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1947, c. 99; G. S., s. 146-66.1; 1959, c. 683, s. 1.)

ARTICLE 13.

Grants Vacated.

§ 146-61. Civil action to vacate grant. — When any person claiming title to lands under a grant or patent from the King of Great Britain, any of the

lords proprietors of North Carolina, or from the State of North Carolina, shall consider himself aggrieved by any grant or patent issued or made since July 4, 1776, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated. (R. C., c. 42, s. 29; Code, s. 2786; Rev., s. 1748; C. S., s. 7594; G. S., s. 146-67; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146 67.

Collateral Attack on Grant. — If the land be not subject to entry, the grant is void, and may be attacked collaterally. *Janney v. Blackwell*, 138 N. C. 437, 50 S. E. 857 (1905).

Plaintiff Must Claim an Interest in Land.—An action cannot be had under this section unless it is made to appear that the plaintiff has an interest in the land claimed by the defendant. *Jones v. Riggs*, 104 N. C. 281, 70 S. E. 465 (1889); *Wadsworth v. Cozard*, 175 N. C. 15, 94 S. E. 670 (1917).

Where the State has no interest in the land an action to vacate a grant must be brought by the party in interest in his own name and at his own expense. *State v. Bland*, 123 N. C. 739, 31 S. E. 475 (1898).

Fraud Practiced on the State. — A grant cannot be set aside at the suit of a junior grantee on the ground of fraud practiced on the State. *Henry v. McCoy*, 131 N. C. 586, 42 S. E. 955 (1902).

§ 146-62. Judgment recorded in Secretary of State's office. — If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, it may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the Secretary of State's office, where it shall be recorded in a book kept for that purpose; and the Secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office. (R. C., c. 42, s. 30; Code, s. 2787; Rev., s. 1749; C. S., s. 7595; G. S., s. 146-68; 1959, c. 683, s. 1.)

§ 146-63. Action by State to vacate grants. — An action may be brought by the Attorney General in the name of the State for the purpose of vacating or annulling letters patent granted by the State, in the following cases:

- (1) When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or
- (2) When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or
- (3) When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. (C. C.

P., s. 367; Code, s. 2788; Rev., s. 1750; C. S., s. 7596; G. S., s. 146-69; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-69.

State Must Be a Party Interested.—The State can only bring action under this section to vacate a grant, when title would vest in the State upon cancellation of the grant. *State v. Bland*, 123 N. C. 739, 31 S. E. 475 (1898).

Attorney General Must Bring Action.—The right to bring action to set aside a grant because of fraud practiced on the State must be brought by the Attorney General in the name of the State, and cannot be brought by any other person. *Henry v. McCoy*, 131 N. C. 586, 42 S. E. 955 (1902); *Jones v. Riggs*, 154 N. C. 281, 70 S. E. 465 (1911).

Grounds for Vacating.—Where a grant has been in strict compliance with the law,

rights of property have been acquired which cannot be taken away, even by the State, in the absence of an allegation of fraud or mistake, except after compensation and under the principle of eminent domain. *State v. Spencer*, 114 N. C. 770, 19 S. E. 93 (1894).

Applicable Only to Land Grants.—A license to sell liquor is not a letter patent to be vacated by quo warranto under this section. *Hargett v. Bell*, 134 N. C. 394, 46 S. E. 959 (1904).

Proceeding by the Attorney General to vacate a charter of a corporation cannot be brought under this section, or because of any authority vested by this section, but must be brought under chapter 55. *Attorney General v. Holly Shelter R. Co.*, 134 N. C. 481, 46 S. E. 959 (1904).

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-64. **Definitions.**—As used in this chapter:

- (1) "State lands" means all land and interests therein, title to which is vested in the State of North Carolina, or in any State agency, or in the State to the use of any agency, and specifically includes all vacant and unappropriated lands, swamp lands, submerged lands, lands acquired by the State by virtue of being sold for taxes, escheated lands, and acquired lands.
- (2) "Land" means real property, buildings, space in buildings, timber rights, mineral rights, rights-of-way, easements, and all other rights, estates, and interests in real property.
- (3) "Vacant and unappropriated lands" means all State lands title to which is vested in the State as sovereign, and land acquired by the State by virtue of being sold for taxes, except swamp lands as hereinafter defined.
- (4) "Swamp lands" means lands too wet for cultivation except by drainage, and includes
 - a. All State lands which have been or are known as "swamp" or "marsh" lands, "pocosin bay", "briary bay" or "savanna", and which are a part of one swamp exceeding 2,000 acres in area, or which are a part of one swamp 2,000 acres or less in area which has been surveyed by the State; and
 - b. All State lands which are covered by the waters of any State-owned lake or pond.
- (5) "Submerged lands" means State lands which lie beneath
 - a. Any navigable waters within the boundaries of this State, or
 - b. The Atlantic Ocean to a distance of three geographical miles seaward from the coastline of this State.
- (6) "Escheated lands" means all State lands, title to which has been acquired by escheat.
- (7) "Acquired lands" means all State lands, title to which has been acquired

by the State or by any State agency by purchase, devise, gift, condemnation, or adverse possession.

- (8) "Navigable waters" means all waters which are navigable in fact.
- (9) "State agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions of the State, county or city boards of education, or other local public bodies. The term "State agency" does not include any private corporation created by act of the General Assembly. In case of doubt as to whether a particular agency, corporation, or institution is a State agency for the purposes of this chapter, the Attorney General, upon request of the Governor and Council of State, shall make a determination of the issue. Upon a finding by the Attorney General that an agency, corporation, or institution is not a State agency for the purpose of this chapter, the Governor and Council of State may execute a deed or other appropriate instrument releasing and quitclaiming all title and interest of the State in the lands of that agency, corporation, or institution. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; 1891, c. 302; Rev., ss. 1693, 1695; C. S., ss. 7540, 7542; G. S., ss. 146-1, 146-4; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former §§ 146-1 and 146-4.

Effect of Grant.—Lands once granted by the State to individual citizens do not become "vacant lands" within the meaning of the statute, where the State subsequently acquires title to them but abandons the actual use to which they were put. *State v. Bevers*, 86 N. C. 538 (1882).

Swamp lands, within the meaning of this section are those too wet for cultivation except by drainage. *Beer v. Whiteville Lumber Co.*, 170 N. C. 337, 86 S. E. 1024 (1915).

Swamp lands of two creeks may be separate and not subject to the same application of this section though it appears that sometimes during freshets and high water these are all covered with one sheet of water. *Beer v. Whiteville Lumber Co.*, 170 N. C. 337, 86 S. E. 1024 (1915).

A tract of land within the area of swamp lands coming within the meaning of this section need not necessarily be free from knolls or higher and drier places. *State Board v. Roanoke R. Co.*, 158 N. C. 313, 73 S. E. 994 (1912).

Tract Held Not Swamp Land. — See *Resort Development Co. v. Parmele*, 235 N. C. 689, 71 S. E. (2d) 474 (1952).

Tidelands.—The fact that tidelands conveyed by the State Board of Education are thereafter filled in and reclaimed by the purchaser does not divest the title of the purchaser, since the conveyance is of the fee and not an easement in the lands. *Home Real Estate Loan, etc., Co. v. Parmele*, 214 N. C. 63, 197 S. E. 714 (1938).

Watercourses Navigable in Fact Are Navigable in Law. — The present North Carolina law as to navigable waters is that all watercourses are regarded as navigable in law that are navigable in fact. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Grant of Land under Navigable Waters Void in Absence of Specific Authority.— In the absence of specific authority from the legislature, the State at no time had the power to grant land under navigable waters and all of such grants are void. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Grant Impeding Navigation.—In respect to navigable waters the State has no right to grant or convey the land under such waters for any purpose which will destroy or materially impede the use of such waters for navigation. *Home Real Estate Loan, etc., Co. v. Parmele*, 214 N. C. 63, 197 S. E. 714 (1938).

Governor Not Authorized to Agree to Boundary Line Over Land under Navigable Waters. — The Governor of North Carolina was without authority in 1927 to agree as to a private owner's boundary line over lands under navigable waters, as this section at the time prohibited the grant of or entry upon such lands. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Decrees in Torrens Proceeding Adjudging Ownership in Land under Navigable Water. — Insofar as a decree in a Torrens proceeding adjudged the plaintiff the owner in fee of shoal lands under navigable water, it transcended the power

of the court under the law, and, therefore, is open to collateral attack. *Swan Island Club v. White*, 114 F. Supp. 95 (1953).

Grants to Land Not Subject to Entry.—An entry made to swamp land when the body contains more than 2,000 acres is

void, and a grant under such entry is void. *State Board v. Roanoke R. Co.*, 158 N. C. 313, 73 S. E. 994 (1912). See *Home Real Estate Loan, etc., Co. v. Parmele*, 214 N. C. 63, 197 S. E. 714 (1938).

§ 146-65. **Exemptions from chapter.**—None of the provisions of chapter 146 shall apply to:

- (1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the State Highway Department; or
- (2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G. S. 143-216 through G. S. 143-228.1 or to the exercise of all or any of such authority and powers.

Nor shall the provisions of chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement. (1957, c. 584, s. 6; G. S., s. 146-112; 1959, c. 683, s. 1.)

§ 146-66. **Voidability of transactions contrary to chapter.**—Any sale, lease, rental, or other disposition of State lands or of any interest or right therein, made or entered into contrary to the provisions of this chapter, shall be voidable in the discretion of the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-111; 1959, c. 683, s. 1.)

§ 146-67. **Governor to employ persons.**—The Governor may employ persons to perform such services as may be necessary to carry out the provisions of this chapter, and he shall fix the compensation to be paid for such services. All expenditures for such services shall be paid from the State Land Fund on order of the Director of the Budget, or the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

§ 146-68. **Statutes of limitation.**—The provisions of G. S. 1-35, 1-36, and 1-37 are made applicable to this chapter. (1959, c. 683, s. 1.)

§ 146-69. **Service on State in land actions.**—In all actions and special proceedings brought by or against the State or any State agency with respect to State land or any interest therein, service of process upon the Director of Administration, with delivery to him of copies for the Attorney General and for the administrative head of each State agency known by the party in whose behalf service is made to have an interest in the land which is the subject of the action or proceeding, shall constitute service upon the State for all purposes. (1959, c. 683, s. 1.)

§ 146-70. **Institution of land actions by the State.**—Every action or special proceeding in behalf of the State or any State agency with respect to State lands or any interest therein, or with respect to land being condemned by the State, shall be brought by the Attorney General in the name of the State, upon the complaint of the Director of Administration. (1959, c. 683, s. 1.)

ARTICLE 15.

State Land Fund.

§ 146-71. **State Land Fund created.**—The State Land Fund, which is hereby created, shall consist of the moneys required by this chapter to be paid into that fund, together with such amounts as the General Assembly may appropriate thereto. (1959, c. 683, s. 1.)

§ 146-72. **Purpose.**—The State Land Fund may, in accordance with rules and regulations adopted by the Governor and approved by the Council of State, be used for the following purposes:

- (1) To pay any expenses incurred in carrying out the duties and responsibilities created by the provisions of this chapter.
- (2) For the acquisition of land, when appropriation is made for that purpose by the General Assembly. (1959, c. 683, s. 1.)

§ 146-73. **Administration.**—The State Land Fund shall be administered by the Department of Administration, in accordance with rules and regulations adopted by the Governor and approved by the Council of State. All expenditures from the fund shall be made upon order of the Director of the Budget, or of the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

ARTICLE 16.

Form of Conveyances.

§ 146-74. **Approval of conveyances.**—Every proposed conveyance in fee of State lands shall be submitted to the Governor and Council of State for their approval. Upon approval of the proposed conveyance in fee by the Governor and Council of State, a deed for the land being conveyed shall be executed in the manner prescribed in this article. (1957, c. 584, s. 7; G. S., s. 143-147; 1959, c. 683, s. 1.)

§ 146-75. **Execution; signature; attestation; seal.**—Each such conveyance in fee shall be in the usual form of deeds of conveyance of real property and shall be executed in the name of the State of North Carolina, signed in the name of the State by the Governor, and attested by the Secretary of State; and the great seal of the State of North Carolina shall be affixed thereto. (1929, c. 143, s. 2; G. S., s. 143-148; 1959, c. 683, s. 1.)

§ 146-76. **Exclusive method of conveying State lands.**—The manner and method of conveying State lands herein set out shall be the exclusive and only method of conveying State lands in fee. Any conveyance thereof by any other person or executed in any other manner or by any other method shall not be effective to convey the interest or estate of the State in such land. (1929, c. 143, s. 4; G. S., s. 143-150; 1959, c. 683, s. 1.)

§ 146-77. **Admission to registration in counties.**—Each such conveyance shall be admitted to registration in the several counties of the State upon the probate required by law for deeds of corporations. (1929, c. 143, s. 3; G. S., s. 143-149; 1959, c. 683, s. 1.)

§ 146-78. **Validation of conveyances of State-owned lands.**—All conveyances heretofore made by the Governor, attested by the Secretary of State, and authorized by the Council of State, in the manner provided by G. S. 146-74 and 146-75 of any lands, the title to which was vested in the State for the use of any State institution, department, or agency, or vested in the State for any other purpose, are hereby ratified and validated. (1917, c. 129; C. S., s. 7524; 1951, c. 18; 1957, c. 584, s. 7; G. S., s. 143-146; 1959, c. 683, s. 1.)

ARTICLE 17.

Title in State.

§ 146-79. **Title presumed in the State; tax titles.** — In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be

in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title or the right of possession of any lands claimed by the State or by any State agency under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purported to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this State, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title. (1842-3, c. 36, s. 3; R. C., c. 66, s. 24; Code, s. 2527; 1889, c. 243; Rev., s. 4047; C. S., s. 7617; G. S., s. 146-90; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-90.

Title Presumed in the Board of Education.—When it is shown that the land is swamp land and within a swamp of more than 2,000 acres, the law presumes that the Board of Education is the owner thereof, because grants of such land are void and unauthorized. *Board v. Makely*, 139 N. C. 31, 51 S. E. 784 (1905); *State Board v. Roanoke R. Co.*, 158 N. C. 313, 73 S. E. 994 (1912).

Presumption Rebuttable. — The presumption of title in the Board of Education lasts only until good title is shown to be in another party. *Shingle Co. v. Lumber Co.*, 178 N. C. 221, 100 S. E. 332 (1919).

Effect of Presumption as to Title on Interpretation of Deed.—The description "to the high water mark" of nonnavigable arm of the sea, a broad shallow sound, restricts

or limits conveyance to correctly located line of mean high water as indicated on the ground, particularly where title to marsh lands was at time lots were laid off held by State subject to disposition by State Board of Education, since title to swamp lands is presumed to be in Board or its assignees until a valid title to such land is shown otherwise. *Kelly v. King*, 225 N. C. 709, 36 S. E. (2d) 220 (1945).

Presumption That Officers Do Their Duty.—It is entirely proper and competent for the State to provide that the presumption that public officials have done their duty should apply, and throw upon any adverse claimant the burden of proving the contrary. This decision does not, in any way, conflict with the cases of *King v. Cooper*, 128 N. C. 347, 38 S. E. 924 (1901); *Matthews v. Fry*, 141 N. C. 582, 54 S. E. 379 (1906); *Warren v. Williford*, 148 N. C.

474, 62 S. E. 697 (1908), and *Rexford v. Phillips*, 159 N. C. 213, 74 S. E. 337 (1912), the facts in those cases and this one being very different. *State v. Remick*, 160 N. C. 562, 76 S. E. 627 (1912).

§ 146-80. Statute of limitations.—No statute of limitations shall affect the title or bar the action of the State, or of any State agency, or of its assigns, unless the same would protect the person holding and claiming adversely against the State. Neither the State nor any State agency, nor its assigns, shall commence any action for the recovery of damages for timber cut and removed from lands owned by the State or by any State agency or for any other act of trespass committed on such lands, more than ten years after the occurrence of such cutting, removal, or other act of trespass. The provisions of this section shall not have the effect of reviving any cause of action which was, at the date of ratification of this chapter, barred by any applicable statute of limitations. (1842, c. 36, s. 5; R. C., c. 66, s. 25; Code, s. 2528; Rev., s. 4048; 1917, c. 287; C. S., s. 7618; G. S., s. 146-91; 1959, c. 683, s. 1.)

Editor's Note.—The cases in the following note were cited under former § 146-91.

Tillery v. Lumber Co., 172 N. C. 296, 90 S. E. 196 (1916) laid down the rule that this statute was not intended to protect an assignee of the State against the statute of limitations when the action was for damage to timber. By amendment 1917 the part of the section following the semicolon was added making it clear that the statute of limitations was not to be applied in actions for damages to timber.

The purpose of this section was to make applicable to the State Board of Education the same limitations applicable to the State, and the words "or its assigns" were intended to make applicable to assigns of the Board the same limitations applicable to the Board, but only as applied to adverse possession had while title was in the Board. *Virginia-Carolina Tie, etc., Co. v. Dunbar*, 106 F. (2d) 383 (1939).

Assignee Not Barred by Statute of Limitations.—In an action for land the plaintiff

is not barred by the statute of limitations, which does not run in such cases, unless the State would have been barred by adverse possession. *State Board v. Roanoke R. Co.*, 158 N. C. 313, 73 S. E. 994 (1912).

Harmless Error.— In action for damages for alleged trespass in the cutting of timber on swamp land where defendants claimed adverse possession under color of title of land in dispute, and plaintiff claimed title under deeds executed by the State Board of Education to a third party, error, if any, in charging that the 7-year statute of limitations, rather than the 21-year statute, was applicable was harmless to plaintiff where, under defendants' evidence, jury could not have found that defendants and those under whom defendants claimed had been in possession for 7 years without finding that they had been in possession for more than 21 years. *Virginia-Carolina Tie, etc., Co. v. Dunbar*, 106 F. (2d) 383 (1939).

§ 146-81. Title to lands sold for taxes.—The title to all land acquired by the State by virtue of being sold for taxes is hereby vested in the State of North Carolina. (1917, c. 209; C. S., s. 7615; G. S., s. 146-88; 1959, c. 683, s. 1.)

§ 146-82. Protection of interest in lands sold for taxes.—Whenever any lands in which the State of North Carolina or any State agency has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes or special assessment, or under any lien, the Department of Administration is authorized, if in its judgment it is necessary to protect the interest of the State, to appear at any sale of such lands and to buy the same as any other person would. For the purpose of paying therefor, the Director of the Budget is authorized to draw upon the State Land Fund. (1917, c. 246; C. S., s. 7616; G. S., s. 146-89; 1959, c. 683, s. 1.)

ARTICLE 18.

Miscellaneous.

§ 146-83. **Vested rights protected.**—No provision of this chapter shall be applied or construed to the detriment of vested rights, interests, or estates of any private individual, firm, or corporation, acquired prior to the ratification of this chapter. (1959, c. 683, s. 1.)

Chapter 147.

State Officers.

Article 3.

The Governor.

- Sec.
147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.
147-11.1. Succession to office of Governor; Acting Governor.
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tivities of State employees in course of employment.

Article 3A.

Emergency War Powers of Governor.

- 147-33.1. Short title.
147-33.2. Emergency war powers of the Governor.
147-33.3. Orders, rules and regulations.
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147-33.5. Federal action controlling.
147-33.6. Construction of article.

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-8. **Mileage allowance to officers or employees using public or private automobiles.**

Local Modification. — City of Greensboro: 1959, c. 1137, s. 15; Guilford: 1961, c. 905.

§ 147-9. **Unlawful to pay more than allowance.**

Local Modification. — City of Greensboro: 1959, c. 1137, s. 16.

ARTICLE 3.

The Governor.

§ 147-11. **Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.** — The salary of the Governor shall be twenty-five thousand dollars (\$25,000.00) per annum, payable monthly. He shall be paid annually the sum of five thousand dollars (\$5,000.00) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such

travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1.)

Editor's Note.—

The 1961 amendment, effective July 1, 1963, increased the annual salary from 1961, added the last sentence.

The 1963 amendment, effective July 1, 1963, increased the annual salary from \$15,000.00 to \$25,000.00.

§ 147-11.1. Succession to office of Governor; Acting Governor.—

(a) Lieutenant-Governor.—

- (1) The Lieutenant-Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant-Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.
- (2) During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant-Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(b) President of Senate, Speaker of the House and Other Officers.—

- (1) If, by reason of failure to qualify, death, resignation, or removal from office, there is neither a Governor nor a Lieutenant-Governor to discharge the powers and duties of the office of Governor, then the President of the Senate shall, upon his resignation as President of the Senate and as Senator, become Governor.
- (2) If, at the time when under paragraph (1) of this subsection the President of the Senate is to become Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Governor, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative, become Governor.
- (3) If, at the time when under paragraph (2) of this subsection the Speaker of the House of Representatives is to become Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Governor, shall, upon his resignation of the office which places him in the order of succession, become Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(c) Acting Governor Generally.—

- (1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant-Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.
- (2) If, at the time when under paragraph (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.

(3) If, at the time when under paragraph (2) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(d) Governor Serving under Subsection (c).—An individual serving as Acting Governor under subsection (c) of this section shall continue to act for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified, except that:

(1) If his tenure as Acting Governor is founded in whole or in part upon the absence of both the Governor and Lieutenant-Governor from the State, then he shall act only until the Governor or Lieutenant-Governor returns to the State; and

(2) If his tenure as Acting Governor is founded in whole or in part upon the physical or mental incapacity of the Governor or Lieutenant-Governor, then he shall act only until the removal of the incapacity of the Governor or Lieutenant-Governor.

(e) Officers to Which Subsections (b), (c) and (d) Applicable.—Subsections (b), (c), and (d) of this section shall apply only to such officers as are eligible to the office of Governor under the Constitution of North Carolina, and only to officers who are not under impeachment by the House of Representatives at the time they are to become Governor or Acting Governor.

(f) Compensation of Acting Governor. — During the period that any individual serves as Acting Governor under subsection (c) of this section, his compensation shall be at the rate then provided by law in the case of the Governor. (1961, c. 992, s. 1.)

Editor's Note.—Section 3 of the act inserting this section provides: "This act shall take effect upon the certification by the Governor to the Secretary of State that the constitutional amendment proposed by chapter 466 of the Session Laws of 1961 has been ratified by a majority of the qualified voters of the State who vote thereon; and in the event that the pro-

posed amendment is not so ratified and certified by the Governor to the Secretary of State, then this act shall not take effect."

The constitutional amendment proposed by chapter 466 of the Session Laws of 1961 was ratified at the General Election held November 6, 1962. See N. C. Const., Art. III, § 12.

§ 147-12. Powers and duties of Governor.

(3) He is to make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, he may also appoint to fill any vacancy occurring in that office, and the person he appoints shall serve for the unexpired term of the office and until his successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

- a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
- b. During the continued absence of the regular holder of the office,
or
- c. During a vacancy in an office and pending the selection and

qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

- a. Upon the termination of the incapacity of the officer in whose stead he acts,
- b. Upon the return of the officer in whose stead he acts, or
- c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as he deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of his office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor with the approval of the Advisory Budget Commission.

(1959, c. 285.)

Editor's Note.—

The 1959 amendment rewrote subdivision (3) and provided that "nothing in this act shall be construed to repeal G. S. 128-39."

As only subdivision (3) was affected by the amendment the rest of the section is not set out.

§ 147-15. Salary of private secretary.—The salary of the private secretary to the Governor shall be fixed by the Governor with the approval of the Advisory Budget Commission. (R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Code, ss. 1689, 3721; Pr. 1901, c. 405; 1903, c. 729; Rev., s. 2737; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; C. S., s. 3859; 1921, c. 227; 1929, c. 322, ss. 1, 2; 1945, c. 45; 1953, c. 675, s. 22; 1955, c. 910, s. 4; c. 1313, s. 8; 1961, c. 738, s. 1.)

Editor's Note.—

The 1961 amendment rewrote this section

which formerly also related to the collection of fees. Now see § 147-15.1.

§ 147-15.1. Fees collected by private secretary.—The secretary to the Governor shall charge and collect the following fees, to be paid by the person for whom the services are rendered: For the commission of a notary public, seven dollars and fifty cents (\$7.50); for the commission of a special policeman, five dollars (\$5.00). All fees collected by the secretary shall be paid into the State Treasury. (1961, c. 738, s. 2.)

§ 147-17. May employ counsel in cases wherein State is interested; defending suits arising from activities of State employees in course of employment. — No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except by and with the consent and approval of the Governor. In any case, civil or criminal, in any court in the State or in any other state or territory or in any United States court, or in any other matter, thing, or controversy, of whatever nature or kind, in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation as he may fix for their services. The Attorney General, with his assistants, shall be counsel for all such departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in

part from the State, and whenever the Attorney General shall advise the Governor that it is impracticable for him and his assistants to render legal services to any State agency, institution, commission, bureau or other organized activity, the Governor may employ such counsel as, in his judgment, should be employed to render such services, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation for their services as he may fix, and he may direct that such warrant be paid out of the appropriations to such department, agency, institution, commission, bureau or other organized activity of the State, or out of the contingent fund.

Whenever it shall be made to appear to the Attorney General that a civil action has been commenced against an employee of the State of North Carolina alleging the negligence of said employee as a proximate cause of injuries received by the plaintiff, and the Attorney General shall, upon investigation, determine that the employee at the time of his alleged negligence was acting in the course and scope of his employment as a State employee, the Attorney General shall advise the Governor whether, in his opinion, the defense of such suit by the employee will require the payment of attorney's fees, and shall recommend to the Governor whether counsel should be employed by the employee at State expense to conduct the defense of the employee in such suit. Whenever it shall be made to appear to the Attorney General that a civil action has been commenced against an employee of the State arising out of any action of such employee, taken in good faith in the course and scope of his employment, the Attorney General shall recommend to the Governor that counsel be employed, at State expense, to conduct the defense of the employee in such action. Upon the recommendation of the Attorney General, the Governor may authorize the employment of such counsel, and may direct payment for such services by counsel in the manner heremabove set forth. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C. S., s. 7640; 1925, c. 207, s. 3; 1961, c. 1007; 1963, c. 1009.)

Editor's Note.—The 1961 amendment added the second paragraph.

The 1963 amendment inserted the next-to-last sentence of the second paragraph.

§ 147-33. Compensation of Lieutenant Governor.—As authorized by article III, section eleven, of the Constitution of North Carolina, the salary of the Lieutenant Governor is hereby fixed at two thousand and one hundred dollars (\$2,100.00) per year, which amount shall be in addition to the compensation for the Lieutenant Governor as the presiding officer of the Senate, provided by article II, section twenty-eight, of the Constitution of North Carolina. Whenever the Lieutenant Governor shall attend any meeting of State officials, or other meetings which by law he is required to attend, he shall be paid his necessary traveling expenses in going to and from such meetings. From and after the time that the Lieutenant Governor shall take the oath of office and begin serving the term for which he was elected in 1952, he shall be paid an annual expense allowance in the sum of three thousand dollars (\$3,000.00). If there is no Lieutenant Governor, the salary and expense allowance provided herein shall be paid to the presiding officer of the Senate. (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050.)

Editor's Note.—

The 1963 amendment substituted "three thousand dollars (\$3,000.00)" for "one

thousand dollars (\$1,000.00)" at the end of the third sentence and added the present last sentence.

ARTICLE 3A.

Emergency War Powers of Governor.

§ 147-33.1. **Short title.**—This article may be cited as the “North Carolina Emergency War Powers Act.” (1943, c. 706, s. 1; 1959, c. 337, s. 6.)

Editor’s Note. — Session Laws 1945, c. 7, re-enacted the sections of this article. And Session Laws 1955, c. 125 extended the duration of the article to March 1, 1957.

Session Laws 1959, c. 337, s. 6, provides: “All the provisions of §§ 1 through 6, in-

clusive, of chapter 706 of the Session Laws of 1943, known and cited as the ‘North Carolina Emergency War Powers Act’, not inconsistent with this act, are hereby in all respects re-enacted.” For other sections of the 1959 act, see §§ 166-1.1, 166-3, 166-4, 166-6, 166-8.

§ 147-33.2. **Emergency war powers of the Governor.**—Upon his own initiative, or on the request or recommendation of the President of the United States, the army, navy or any other branch of the armed forces of the United States, the federal Director of Civilian Defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the successful prosecution thereof, the Governor may, with the approval of the Council of State, at any time and from time to time during the existing state of war:

- (1) Formulate and execute plans for:
 - a. The inventory, mobilization, conservation, distribution or use of food, fuel, clothing and other necessities of life and health, and of land, labor, materials, industries, facilities and other resources of the State necessary or useful in the prosecution of the war;
 - b. Organization and co-ordination of civilian defense in the State in reasonable conformity with the program of civilian defense as promulgated from time to time by the Office of Civilian Defense of the federal government; and, further, to effectuate such plans for civilian defense in such manner as to promote and assure the security, protection and mobilization of the civilian population of the State for the duration of the war and in the interest of State and national defense.
- (2) Order and carry out blackouts, radio silences, evacuations and all other precautionary measures against air raids or other forms of enemy action, and suppress or otherwise control any activity which may aid or assist the enemy.
- (3) Mobilize, co-ordinate and direct the activities of the police, fire fighting, health, street and highway repair, public utility, medical and welfare forces and services of the State, of the political subdivisions of the State, and of private agencies and corporations, and formulate and execute plans for the interchange and use of such forces and services for the mutual aid of the people of the State in cases of air raid, sabotage or other enemy action, fire, flood, famine, violence, riot, insurrection, or other catastrophe or emergency.
- (4) Prohibit, restrict, or otherwise regulate and control the flow of vehicular and pedestrian traffic, and congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities.

- (5) Accept, or authorize any officer or department of the State to accept, from the federal government or any federal agency or instrumentality, or from any other source, grants of funds and grants or loans of equipment, materials, supplies or other property for war or defense purposes, subject to the terms and conditions appertaining to such grants and loans.
- (6) Authorize any department or agency of the State to lease or lend to the army, navy or any other branch of the armed forces of the United States, any real or personal property of the State upon such terms and conditions as he may impose, or, on behalf of the State, to make a contract directly therefor.
- (7) Authorize the temporary transfer of personnel of the State for employment by the army, navy or any other branch of the armed forces of the United States and fix the terms and conditions of such transfers.
- (8) At any time when the General Assembly is not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when he shall find and proclaim after such study, investigation or hearings as he may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:
 - a. The use of the roads, streets and highways of the State, with particular reference to speed limits, weights and sizes of motor vehicles, regulations of automobile lights and signals, transportation of munitions or explosives and parking or assembling of automobiles on highways or any other public place within the State; provided that any changes in the laws referred to in this subdivision shall be first approved by the State Highway Commission and the Commissioner of Motor Vehicles of the State;
 - b. Public health, in so far as suspension or modification of the laws in reference thereto may be stipulated by the United States Public Health Service or other authoritative agency of the United States government as being essential in the interest of national safety and in the successful prosecution of the war effort; provided that such suspension or modification of public health laws shall first be submitted to and approved by the State Board of Health;
 - c. Labor and industry; provided, however, that any suspension or modification of laws regulating labor and industry shall be only such as are certified by the Commissioner of Labor of the State as being necessary in the interest of national safety and in the furtherance of the war program; and provided further that any such changes as may result in an increase in the hours of employment over and above the limits of the existing statutory provisions shall carry provision for adequate additional compensation; and provided, further, that no changes in such laws or regulations shall be made as affecting existing contracts between labor and management in this State except with the approval of the contracting parties;
 - d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State militia in addition to

the existing units of the State guard; to provide transportation and facilities for mobilization and full utilization of the State guard, or other units of militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;

- e. Manufacture, sale, transportation, possession and use of explosives or fireworks, or articles in simulation thereof, and the sale, use and handling of firearms;
- (9) Co-operate with agencies established by or pursuant to the laws of the United States and the several states for civilian protection and the promotion of the war effort, and co-ordinate and direct the work of the offices and agencies of the State having duties and responsibilities directly connected with the war effort and the protection of the civilian population.
- (10) Aid in the administration and enforcement in this State of any rationing, freezing, price-fixing or similar order or regulation duly promulgated by any federal officer or agency under or pursuant to the authority of any act of Congress or of any order or proclamation of the President of the United States, by making temporarily available personnel and facilities of the State to assist in the administration thereof and/or by adopting and promulgating in this State an order or regulation substantially embodying the provisions of such federal order or regulation, filing the same in the office of the Secretary of State, prescribing the penalties for the violation thereof, and specifying the State and local officers and agencies to be charged with the enforcement thereof.
- (11) Formulate and execute plans and adopt rules for:
- a. The organization, recruiting, training, maintenance and operation of aircraft warning services, observation and listening posts, information and control centers and such other services and facilities as may be necessary for the prompt and accurate reception and transmission of air-raid warnings and signals;
 - b. The organization, recruiting, training, equipment, identification, conduct, powers, duties, rights, privileges and immunities of air-raid wardens, auxiliary police, auxiliary firemen and of the members of all other auxiliary defense and civilian protection forces and agencies.
- (12) Adopt, promulgate, publicize and enforce such orders, rules and regulations as may be necessary for the proper and effective exercise of the powers granted by this article, and amend or rescind the same.
- (13) Hold and conduct hearings, administer oaths and take testimony, issue subpoenas to compel the attendance of witnesses and the production of revelant books, papers, records or documents, in connection with any investigation made by him under the authority of this article. (1943, c. 706, s. 2; 1959, c. 337, s. 6.)

Editor's Note.—By virtue of § 136-1.1, and Public Works Commission" in sub- the words "State Highway Commission" division (8), paragraph a. have been substituted for "State Highway

§ 147-33.3. Orders, rules and regulations.—All orders, rules and regulations promulgated by the Governor pursuant to this article shall have the full force and effect of law from and after the date of the filing of a duly authenticated copy thereof in the office of the Secretary of State. All laws, ordinances, rules and regulations, in so far as they are inconsistent with the provisions of this article or of any rule, order or regulation made pursuant to this article, shall be

suspended during the period of time and to the extent that such conflict exists. A violation of any such order, rule or regulation, unless otherwise provided therein, shall be deemed a misdemeanor and punishable as such. (1943, c. 706, s. 3; 1959, c. 337, s. 6.)

§ 147-33.4. **Immunity.**—Neither the State nor any political subdivision thereof, nor the agents or representatives of the State or any political subdivision thereof, under any circumstances, nor any individual, firm, partnership, corporation or other entity, or any agent thereof, in good faith complying with or attempting to comply with any order, rule or regulation made pursuant to this article, shall be liable for the death of or any injury to persons or for any damage to property as the result of any air raid, invasion, act of sabotage, or other form of enemy action, or of any action taken under this article or such order, rule or regulation. This section shall not be construed to impair or affect the right of any person to receive any benefits or compensation to which he may otherwise be entitled under Workmen's Compensation Law, any pension law, or any other law, or any act of Congress, or any contract of insurance or indemnification. (1943, c. 706, s. 4; 1959, c. 337, s. 6.)

§ 147-33.5. **Federal action controlling.** — All action taken under this article and all orders, rules and regulations made pursuant thereto in any field or with respect to any subject matter over which the army or navy or any other department or agency of the United States government has duly taken jurisdiction shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations and requests of such department or agency and shall be consistent therewith. Blackouts, radio silences and evacuations shall be carried out only in such areas, at such times, and for such periods as shall be designated by air-raid warnings or orders with respect thereto issued by the United States army, or its duly designated agency, and only under such conditions and in such manner as shall be consistent with such warning or order, and practice blackouts shall be held only when and as authorized by the United States army or its duly designated agency. (1943, c. 706, s. 5; 1959, c. 337, s. 6.)

§ 147-33.6. **Construction of article.** — This article shall be construed liberally to effectuate its purposes. (1943, c. 706, s. 6; 1959, c. 337, s. 6.)

ARTICLE 4.

Secretary of State.

§ 147-35. **Salary of Secretary of State.**—The salary of the Secretary of State shall be eighteen thousand dollars (\$18,000.00) a year, payable monthly. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1.)

Editor's Note.— 1963, increased the salary from \$12,000.00
The 1963 amendment, effective July 1, to \$18,000.00.

§ 147-45. **Distribution of copies of Session Laws, and other State publications by Secretary of State.**

Editor's Note.— Deeds of the Counties" followed by the
Session Laws 1959, c. 215, amended figure and word "1 each", in the column
this section by adding to the table of headed "Session Laws."
enumerated officials, etc.: "Registers of

ARTICLE 5.

Auditor.

§ 147-55. **Salary of Auditor.**—The salary of the State Auditor shall be eighteen thousand dollars (\$18,000.00) a year, payable monthly. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; c. 994, s. 2; 1911, c. 108, s. 1; c. 136, s. 1; 1913, c. 172; 1919, c. 149; c. 247, s. 7; C. S., s. 3867; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1.)

Editor's Note.— 1963, increased the salary from \$12,000.00
The 1963 amendment, effective July 1, to \$18,000.00.

§ 147-59. **Warrants to bear limitations; presented within sixty days.**

Cross Reference. — As to transfer of Director of the Budget, see §§ 143-3.2, 147-58 (21).
power to issue warrants upon the State Treasurer from the State Auditor to the

§ 147-60. **Surrender of barred warrant; issue of new warrant.**

Cross Reference. — As to transfer of Director of the Budget, see §§ 143-3.2, 147-58 (21).
power to issue warrants upon the State Treasurer from the State Auditor to the

§ 147-61. **Warrants issued before March 10, 1925.**

Cross Reference. — As to transfer of Director of the Budget, see §§ 143-3.2, 147-58 (21).
power to issue warrants upon the State Treasurer from the State Auditor to the

§ 147-63. **Warrants for money paid into treasury by mistake.**

Cross Reference. — As to transfer of Director of the Budget, see §§ 143-3.2, 147-58 (21).
power to issue warrants upon the State Treasurer from the State Auditor to the

§ 147-64. **Warrants for surplus proceeds of sale of property mortgaged to State.**

Cross Reference. — As to transfer of Director of the Budget, see §§ 143-3.2, 147-58 (21).
power to issue warrants upon the State Treasurer from the State Auditor to the

ARTICLE 6.

Treasurer.

§ 147-65. **Salary of State Treasurer.**—The salary of the State Treasurer shall be eighteen thousand dollars (\$18,000.00) a year, payable monthly. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1.)

Editor's Note.— 1963, increased the salary from \$12,000.00
The 1963 amendment, effective July 1, to \$18,000.00.

§ 147-69.1. **Deposit or investment of surplus State funds; reports of State Treasurer.**—It shall be the duty of the State Treasurer, with assistance of the Director of the Budget, on or before the tenth day of each calendar month, and upon request of the Governor or the Council of State, at any other time, to carefully analyze the amount of cash in the general fund of the State and in all special funds credited to any special purpose designated by the General Assembly or held to meet the budgets or appropriations for maintenance and per-

manent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the State, and to determine in his opinion when the cash in any such funds is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the Governor and the Council of State. The Governor and the State Treasurer, acting jointly, with the approval of the Council of the State, are hereby authorized and empowered to deposit such excess funds at interest with any official depository of the State upon such terms as may be authorized by applicable laws of the United States and the State of North Carolina, or to invest such excess funds in bonds or certificates of indebtedness or treasury bills of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in certificates of deposit issued by banks or official depositories within the State of North Carolina yielding a return at rates not less than U. S. treasury notes and certificates of indebtedness of comparable maturities. Notwithstanding the above, if such rates on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturity are higher than the rates banks are permitted to pay by federal or State statutes or regulations and if in the judgment of the Governor and the Council of State it would benefit the economy of the State, such excess funds may be invested in certificates of deposit issued by those banks or official depositories within the State of North Carolina, whose ratio of total loans to total deposits is equal to or exceeds thirty-nine per cent (39%) on the date of application for new deposits or renewal of outstanding certificates of deposit, yielding a return at the maximum rate permitted by statutes or regulations: Provided further, however, that if the rates available on United States treasury bonds, notes, certificates of indebtedness or bills exceed the rates banks are permitted to pay by as much as one-half of one per cent ($\frac{1}{2}$ of 1%), the funds invested with banks on certificates of deposit shall be withdrawn and invested otherwise as provided by this section; provided further that any such bank shall, on its application for such funds certify that the sum applied for is needed to make loans to farmers or domestic industries and will not be invested by the applicant in U. S. treasury bonds, notes, certificates of indebtedness or bills. The said funds shall be so invested that in the judgment of the Governor and State Treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the State's general fund; provided, however, that on and after July 1, 1961, all interest accruing on the monthly balance of the highway fund of the State shall be paid to the State Highway Fund.

The State Treasurer shall include in his biennial reports to the General Assembly a full and complete statement of all funds invested by virtue of the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the General Assembly with reference thereto.

The State Treasurer shall also cause to be prepared a quarterly statement on or before the tenth day of each January, April, July and October in each year. This statement shall show the amount of cash on hand, the amount of money on deposit and the name of each depository, and all investments for which he is in any way responsible. This statement shall be delivered to the Governor as Director of the Budget, and a copy thereof shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2.)

Editor's Note.—

The 1961 amendment, effective July 1,

1961, added the proviso at the end of the first paragraph.

ARTICLE 7.

Commissioner of Revenue.

§ 147-87. **Commissioner of Revenue; appointment; salary.**

Cited in *Boylan-Pearce, Inc. v. Johnson*,
257 N. C. 582, 126 S. E. (2d) 492 (1962).

Chapter 148.

State Prison System.

Article 2.

Prison Regulations.

Sec.

148-20. Corporal punishment of prisoners prohibited.

148-21. [Repealed.]

148-22.1. Educational facilities and programs for selected inmates.

Article 3.

Labor of Prisoners.

148-33.1. Sentencing, quartering, and control of prisoners with work release privileges.

148-43. [Repealed.]

148-44. Separation as to sex and age.

148-45. Escaping or assisting escape from the State prison system; escape by conditionally and temporarily released prisoners.

148-46.1. Inflicting or assisting in infliction of self-injury to prisoner

Sec.

resulting in incapacity to perform assigned duties.

Article 4.

Paroles.

148-55. Administrative assistant; field supervisors; clerical and secretarial help, etc., for Board of Paroles.

Article 7.

Consolidated Records Section—Prison Department.

148-75. [Repealed.]

Article 8.

Compensation to Persons Erroneously Convicted of Felonies.

148-84. Evidence; action by Board of Paroles; payment and amount of compensation.

ARTICLE 1.

Administration by Director of Prisons.

§ 148-1. **Prison Department created; State Prison Commission; Director of Prisons.**

Suits against Prison Department. — The State Prison Department was created as the State's agency for the performance of an essential governmental function. A suit against the State Prison Department eo

nomine is essentially a suit against the State. Hence, absent constitutional or legislative authority therefor, one cannot maintain such a suit. *Pharr v. Garibaldi*, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-3. **Prison property.**

Editor's Note.—

By virtue of 1961 Session Laws, c. 833, s. 2.1, effective July 1, 1961, the note reference in the Replacement Volume to section 12 of chapter 349 of 1957 Session Laws is deleted.

Operation of Prison on Particular Site Is Discretionary with Commission. — Whether the maintenance and operation of a prison on a particular site shall be conducted either as at present, or as enlarged by the construction of additional buildings

and facilities, or as a "minimum security prison," is a matter for determination by the State Prison Commission in the exercise of its discretion, and the court has no power to substitute its discretion for that of the Commission; and, in the absence of fraud, manifest abuse of discretion or conduct in excess of lawful authority, the court has no power to intervene. *Pharr v. Garibaldi*, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

A. prison is not a nuisance per se. Hence,

the construction of a prison on a site selected by public officials pursuant to statutory authority will not be enjoined. Pharr

v. Garibaldi, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-4. Control and custody of prisoners.—The Director of Prisons shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Prison Department, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Director of Prisons or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Director shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Director of Prisons for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109.)

Editor's Note.—

The 1959 amendment added the last two sentences.

803, 115 S. E. (2d) 18 (1960).

Cited in State v. Davis, 253 N. C. 86, 116 S. E. (2d) 36 (1960).

Stated in Pharr v. Garibaldi, 252 N. C.

§ 148-5. Director to manage prison property.

Cited in Pharr v. Garibaldi, 252 N. C. 803, 115, S. E. (2d) 18 (1960).

§ 148-6. Custody, employment and hiring out of convicts.

Predicate of Section.—This section and §§ 148-26 and 48-33.1, as well as provisions with reference to paroles contained in article 4 of this chapter, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in

honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252, N. C. 803, 115 S. E. (2d) 18 (1960).

ARTICLE 2.

Prison Regulations.

§ 148-12. Classification of prisoners. — The rules and regulations for the government of the State prison system shall provide for initial classification and periodic reclassification of prisoners, and for classification and conduct records to be kept on all prisoners held in the system. Any prisoner confined in the State prison system while under a sentence to imprisonment imposed upon con-

viction of a felony shall be classified and treated as a convicted felon even if, before beginning service of the felony sentence, such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 5; 1959, c. 50.)

Editor's Note.—

The 1959 amendment added the second sentence.

§ 148-20. Corporal punishment of prisoners prohibited.—It is unlawful for the Director of Prisons or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1.)

Editor's Note.—

The 1963 amendment rewrote this sec-

tion, which formerly permitted whipping or flogging under certain circumstances.

§ 148-21: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-22.1. Educational facilities and programs for selected inmates.—(a) The State Prison Department is authorized to take advantage of aid available from any source in establishing facilities and developing programs to provide inmates of the State prison system with such academic and vocational education as seems most likely to facilitate the rehabilitation of these inmates and their return to free society with attitudes, knowledge, and skills that will improve their prospects of becoming law-abiding and self-supporting citizens. The State Department of Public Instruction is authorized to cooperate with the State Prison Department in planning academic and vocational education of prison system inmates, but the State Department of Public Instruction is not authorized to expend any funds in this connection.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational education, the State Prison Department shall give priority to meeting the needs of inmates who are less than twenty-one years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a regular parole. These inmates shall be given appropriate tests to determine their educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them. (1959, c. 431.)

ARTICLE 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners.

Predicate of Section.—See same catchline under § 148-6.

§ 148-27. Women prisoners; limitations on labor of prisoners.

Cited in *State v. Brown*, 252 N. C. 366, 113 S. E. (2d) 584 (1960).

§ 148-30. Sentencing to public roads.

Cross Reference.—See note to § 14-335.

§ 148-32. Prisoners may be sentenced to work on city and county properties; Department may provide prisoners for county.

Cross Reference.—See note to § 14-335.

§ 148-33. Prison labor furnished other State agencies.—The State Prison Department may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of § 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. Provided, further, that notwithstanding any provisions of law contained in this article or in this chapter, no male prisoner or group of male prisoners may be assigned to work in any building utilized by any State department, agency, or institution where women are housed or employed unless a duly designated custodial agent of the Director of Prisons is assigned to the building to maintain supervision and control of the prisoner or prisoners working there. (1933, c. 172, s. 30; 1957, c. 349, s. 10; 1961, c. 966.)

Editor's Note.—

The 1961 amendment added the last proviso.

§ 148-33.1. Sentencing, quartering, and control of prisoners with work release privileges.—(a) Whenever a person is sentenced to imprisonment for a term not exceeding five years to be served in the State prison system, the presiding judge of the sentencing court may recommend to the State Prison Department that the prisoner be granted the option of serving the sentence under the work release plan as hereinafter authorized.

(b) The Board of Paroles of this State may authorize the State Prison Department to grant work release privileges to any inmate of the State prison system serving a term of imprisonment: Provided, in any case where the inmate being considered for work release privileges has not yet served a fourth of his sentence if determinate or a fourth of his minimum sentence if indeterminate, the Board of Paroles shall not authorize the Prison Department to grant him work release privileges without considering the recommendations of the presiding judge of the court which imposed the sentence.

(c) The State Prison Department shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for quartering prisoners with work release privileges. In areas where facilities suitable for this purpose are not available within the State prison system when needed, the State Prison Department may contract with the proper authorities of political subdivisions of this State for quartering in suitable local confinement facilities prisoners with work release privileges. No prisoner shall be granted work release privileges until suitable facilities for quartering him have been provided in the area where the prisoner has employment or the offer of employment.

(d) The State Prison Department is authorized and directed to establish a work release plan under which an eligible prisoner may be released from actual custody during the time necessary to proceed to the place of his employment, perform his work, and return to quarters designated by the prison authorities. No prisoner shall be granted work release privileges except upon recommendation of the presiding judge set forth in the judgment of imprisonment or written authorization of the Board of Paroles. If the prisoner shall violate any of the conditions prescribed by prison rules and regulations for the administration of the work release plan, then such prisoner may be withdrawn from work release privileges,

and the prisoner may be transferred to the general prison population to serve out the remainder of his sentence. Rules and regulations for the administration of the work release plan shall be established in the same manner as other rules and regulations for the government of the State prison system.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Prison Department their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Prison Department shall

- (1) Allow the prisoner to draw from the balance a sufficient sum to cover his incidental expenses,
- (2) Retail to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him on his release from prison,
- (3) Cause to be paid through the county department of public welfare such part of any additional balance as is needed for the support of the prisoner's dependents.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The State Board of Public Welfare is authorized to promulgate uniform rules and regulations governing the duties of county welfare departments under this section.

(1959, c. 126; 1961, c. 420; 1963, c. 469, ss. 1, 2.)

Editor's Note. — The 1959 amendment rewrote subsections (a) through (d).

The 1961 amendment deleted the words "apart from prisoners serving regular sentences" formerly appearing at the end of the first sentence of subsection (c). It also deleted the words "apart from other prisoners" formerly appearing after the words "him" in the third sentence of such subsection. The amendatory act provided that it was its purpose and intent "to allow the State Prison Department to determine the

extent to which it is necessary and practicable to quarter prisoners with work release privileges apart from other prisoners."

The 1963 amendment deleted the words "not exceeding five years" formerly immediately following the word "imprisonment" in subsection (b). It also rewrote the second sentence of subsection (f).

Only the subsections mentioned are set out.

Predicate of Section.—See same catchline under § 148-26.

§ 148-40. Recapture of escaped prisoners.

Applied in *Davis v. North Carolina*, 196 F. Supp. 488 (1961), cert. denied 365 U. S. 855, 81 S. Ct. 816, 5 L. Ed. (2d) 819 (1961).

Quoted in *State v. Davis*, 253 N. C. 86, 116 S. E. (2d) 365 (1960).

§ 148-42. Indeterminate sentences.

Applied in *State v. Lee*, 247 N. C. 230, 100 S. E. (2d) 372 (1957).

§ 148-43: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-44. Separation as to sex and age.—The Department shall provide quarters for female prisoners separate from those for male prisoners; and shall provide for separate facilities for youthful offenders as required by §§ 15-210 to 15-215. (1933, c. 172, s. 25; 1947, c. 262, s. 2; 1957, c. 349, s. 10; 1963, c. 1174, s. 2.)

Editor's Note.—

Prior to the 1963 amendment this sec-

tion required separate sleeping and eating places for the different races and sexes.

§ 148 45. Escaping or assisting escape from the State prison system; escape by conditionally and temporarily released prisoners.—(a) Any prisoner serving a sentence imposed upon conviction of a misdemeanor who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one

year. Any prisoner serving a sentence imposed upon conviction of a felony who escapes or attempts to escape from the State prison system shall for the first such offense be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years. Any prisoner convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years. Any prisoner who connives at, aids or assists other prisoners to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned at the discretion of the court. Any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the prisoner is held at the time an offense defined by this statute is committed by such prisoner. Any prisoner convicted of an escape or attempt to escape classified as a felony by this statute shall be immediately classified and treated as a convicted felony even if such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(b) Any defendant convicted and in the custody of the North Carolina Prison Department and ordered or otherwise assigned to work under the work-release program, G. S. 148-33.1, or any convicted defendant in the custody of the North Carolina Prison Department and on a temporary parole by permission of the State Board of Paroles or other authority of law, who shall fail to return to the custody of the North Carolina Prison Department, shall be guilty of the crime of escape and subject to the provisions of subsection (a) of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, wilful failure to return to an appointed place and at an appointed time as ordered. (1933, c. 172, s. 26; 1955, c. 279, s. 2; 1963, c. 681.)

Editor's Note.—

The 1963 amendment designated the former section as subsection (a) and added subsection (b).

The criminal offenses defined in this section may be committed only by a person in custody of the State prison system and serving a sentence imposed upon conviction of a criminal offense. *State v. Jordan*, 247 N. C. 253, 100 S. E. (2d) 497 (1957).

Sufficiency of Indictment.—It is necessary to allege that the escape or attempted escape occurred when defendant was serving a sentence imposed upon conviction of a misdemeanor or of a felony, irrespective of whether the presently alleged escape or attempted escape was alleged to be a first or a second offense. *State v. Jordan*, 247 N. C. 253, 100 S. E. (2d) 497 (1957).

§ 148-46. Degree of protection against violence allowed.

Editor's Note. — For note on use of deadly force in preventing escape of flee-

ing minor felon, see 34 N. C. Law Rev. 122.

§ 148-46.1. Inflicting or assisting in infliction of self-injury to prisoner resulting in incapacity to perform assigned duties. — Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, wilfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Prison Department, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the State's prison for a term not exceeding ten years in the discretion of the court. (1959, c. 1197.)

Cross Reference.—As to procedure for treatment of self-inflicted injuries upon prisoners where consent is refused, see § 130-191.1.

§ 148-47. **Disposition of child born of female prisoner.**—Any child born of a female prisoner while she is in custody shall as soon as practicable be surrendered to the director of public welfare of the county wherein the child was born upon a proper order of the domestic relations court or juvenile court of said county affecting the custody of said child. When it appears to be for the best interest of the child, the court may place custody beyond the geographical bounds of Wake County: Provided, however, that all subsequent proceedings and orders affecting custody of said child shall be within the jurisdiction of the proper court of the county where the infant is residing at the time such proceeding is commenced or such order is sought: Provided, further, that nothing in this section shall affect the right of the mother to consent to the adoption of her child nor shall the right of the mother to place her child with the legal father or other suitable relative be affected by the provisions of this section. (1933, c. 172, s. 28; 1955, c. 1027; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in line three.

ARTICLE 3A.

Prison Camp for Youthful and First Term Offenders.

§ 148-49.1. **Conversion of "Prisoners of War" Camp at Camp Butner into prison camp for youthful and first term offenders.**—The State Department of Mental Health is authorized and empowered to convert the old "Prisoners of War" Camp located on its property at Camp Butner into a modern prison camp or guardhouse with a capacity of one hundred (100) for the purpose of receiving and detaining such youthful and first term prisoners as may be sent it by the Director of Prisons under such rules and regulations as may be jointly adopted by the Director of Prisons and the North Carolina State Department of Mental Health. Should the North Carolina State Department of Mental Health find it more practicable to establish the prison camp or guardhouse on some other property owned by the State at Butner, then, and in such event, such prison camp or guardhouse may be constructed at such other location on property owned by the State at Butner. (1949, c. 297, s. 1; 1951, c. 250; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Editor's Note.—

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental

Health" has been substituted for "State Hospitals Board of Control" and for "Hospitals Board of Control."

§ 148-49.3. **Employment and supervision of prisoners.** — Prisoners received at Camp Butner Prison shall be employed in work on the farm, workshops, the upkeep and maintenance of the property located at Camp Butner or in such other similar work as may be determined by the State Department of Mental Health and the Director of Prisons. The said prisoners to be under the general supervision of the agents and employees of the Director of Prisons or of such employees of the State Department of Mental Health as may be agreed upon by the two State agencies. (1949, c. 297, s. 3; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Editor's Note.—

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental

Health" has been substituted for "State Hospitals Board of Control."

§ 148-49.4. **Expenses incident to conversion of Camp and maintenance of prisoners.**—All expenses incident to the conversion of the old "Prisoners of War" Camp shall be borne by the State Department of Mental Health and paid out of the proceeds from the sale of surplus property owned by said De-

partment and located at Camp Butner. Said prison camp or guardhouse to fully meet the requirements of the Director of Prisons as to construction, plans and specifications. The cost of the maintenance of prisoners assigned to said prison shall be borne by the State Department of Mental Health. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Editor's Note.—

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health"

has been substituted for "State Hospitals Board of Control" and "Department" has been substituted for "Board."

§ 148-49.5. **Adoption of rules and regulations.**—As soon as practicable the State Department of Mental Health and the Director of Prisons shall jointly adopt such rules and regulations as they may deem necessary to fully carry out the intents and purposes of this article. (1949, c. 297, s. 5; 1955, c. 238, s. 9; 1963, c. 1166, s. 10.)

Editors Note.—

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental

Health" has been substituted for "State Hospitals Board of Control."

§ 148-49.6. **Other prison camps for youthful and first term offenders.**—The State Department of Mental Health is authorized to establish and construct modern prison camps or guardhouses on any other property of the State under its supervision and control where youthful and first term prisoners may be sent, supervised and employed as and in the manner provided in this article. (1953, c. 1249; 1963, c. 1166, s. 10.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "State Hospitals Board of Control."

tuted for "State Hospitals Board of Control."

ARTICLE 4.

Paroles.

§ 148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes.

Predicate of Article.—Sections 148-6, 148-26 and 148-33.1, as well as provisions with reference to paroles contained in this article, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest em-

ployment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. *Pharr v. Garibaldi*, 252 N. C. 803, 115 S. E. (2d) 18 (1960).

§ 148-55. **Administrative assistant; field supervisors; clerical and secretarial help, etc., for Board of Paroles.** — (a) The Board of Paroles shall have authority to employ sufficient field supervisors, clerical and secretarial help and other necessary labor to conduct the affairs of the Board with economy and efficiency. It shall also have authority to discharge personnel, assign their duties and responsibilities, administer all fiscal affairs relating to the budget, expenditures, purchases, and equipment. All employees of the Board of Paroles shall be subject to the provisions of chapter 143, article 2 of the General Statutes.

(b) The chairman of the Board of Paroles shall exercise such administrative authority as the Board shall delegate to him. The Board of Paroles may designate its chief supervisor or one of its investigators to serve (in addition to his regular duties) as administrative assistant to the chairman. (1935, c. 414, s. 5; 1953, c. 17, s. 6; 1955, c. 867, s. 3; 1963, c. 1174, s. 3.)

Editor's Note.—

The 1963 amendment deleted the former last sentence of subsection (a).

§ 148-56. **Assistance in supervision of parolees and preparation of case histories.**—Upon request by the Board of Paroles, the county directors of public welfare shall assist in the supervision of parolees and shall prepare and submit to the Board of Paroles case histories or other information in connection with any case under consideration for parole or some form of executive clemency. (1935, c. 414, s. 6; 1955, c. 867, s. 9; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "directors" for "superintendents."

ARTICLE 5.

Farming Out Convicts.

§ 148-70. **Management and care of convicts; prison industries; disposition of products of convict labor.**

All departments, institutions and agencies of this State which are supported in whole or in part by the State shall give preference to Prison Department products in purchasing articles and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system and offered for sale to them by the Prison Department, and no article or commodity available from the Prison Department shall be purchased by any such State department, institution, or agency from any other source without permission of the board of award provided for in G. S. 143-52, unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the board of award, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of article 3 of chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Prison Department, but the Prison Department shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the board of award or with competitive bids which the board of award may in its discretion require, taking into consideration the best interest of the State as a whole. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C. S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2.)

Editor's Note.—

The 1959 amendment added the second

paragraph. As the first paragraph was not changed it is not set out.

ARTICLE 7.

Consolidated Records Section—Prison Department.

§ 148-75: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-79. **Fingerprints taken; photographs.**

Local Modification. — City of Greensboro: 1959, c. 1137, s. 1.

ARTICLE 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ 148-83. **Form, requisites and contents of petition; nature of hearing.** — Such petition shall be addressed to the Board of Paroles, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be sup-

ported by affidavits substantiating such claim. Upon its presentation the Board of Paroles shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least fifteen days before the time fixed therefor. (1947, c. 465, s. 2; 1963, c. 1174, s. 4.)

Editor's Note. — The 1963 amendment substituted "Board of Paroles" for "Commissioner of Pardons."

§ 148-84. Evidence; action by Board of Paroles; payment and amount of compensation.—At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the Board of Paroles finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Board of Paroles shall report the facts, together with his conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the contingency and emergency fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars (\$500.00) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of five thousand dollars (\$5,000.00). (1947, c. 465, s. 3; 1963, c. 1174, s. 4.)

Editor's Note. — The 1963 amendment substituted "Board of Paroles" for "Commissioner of Pardons."

Chapter 150.

Uniform Revocation of Licenses.

§ 150-9. Definitions. — As used in this chapter the term "board" shall mean the State Board of Certified Public Accountant Examiners, the State Board of Architectural Examination and Registration, the State Board of Barber Examiners, the State Board of Chiropody Examiners, the North Carolina State Board of Chiropractic Examiners, the North Carolina Licensing Board for Contractors, the North Carolina State Board of Cosmetic Art Examiners, the Board of Examiners of Electrical Contractors, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Engineers and Land Surveyors, the North Carolina Board of Nurse Examiners, and the North Carolina Board of Nurse Examiners Enlarged, the North Carolina Board of Opticians, the North Carolina State Board of Examiners in Optometry, the North Carolina State Board of Osteopathic Examination and Registration, the State Board of Examiners of Plumbing and Heating Contractors, the State Examining Committee of Physical Therapists, the Board of Examiners for Licensing Tile Contractors, the North Carolina Board of Veterinary Medical Examiners, and the State Board of Refrigeration Examiners. (1953, c. 1093; 1959, c. 1207.)

Editor's Note.—

The 1959 amendment added at the end of the section the words "and the State Board of Refrigeration Examiners."

For note as to constitutionality of statutes licensing occupations, see 35 N. C. Law Rev. 473.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1963

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1963 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.

THOMAS WADE BRUTON,
Attorney General of North Carolina

